United States Department of Labor
Employees' Compensation Appeals Board

T.C., Appellant	)	
and	)	**Docket No. 13-441**
	)	**Issued: June 4, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 18, 2012 appellant filed a timely appeal from a December 6, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation benefits effective July 1, 2012 on the grounds that she no longer had any residuals or disability causally related to her March 13, 1990 employment-related injury.

FACTUAL HISTORY

OWCP accepted that on March 13, 1990 appellant, then a 43-year-old city carrier, twisted her back when the corner of a mail cart she was pushing up a ramp caught the wall and caused

[1] 5 U.S.C. § 8101 *et seq.*

her to suddenly stop. Her claim was accepted for thoracolumbar strain and sciatica.[2] Appellant stopped work and was placed on the periodic rolls.

Appellant underwent vocational rehabilitation services. On July 15, 2000 she returned to modified duty. In a decision dated July 25, 2001, OWCP reduced appellant's monetary compensation benefits based on her actual earnings as a modified distribution clerk. It determined that the position of modified distribution clerk fairly and reasonably represented her wage-earning capacity. Appellant continued to receive wage-loss compensation benefits.

Effective September 17, 2010, the modified position was withdrawn by the employing establishment under the National Reassessment Program (NRP).After appropriate analysis, OWCP modified the July 25, 2001 loss of wage-earning capacity decision finding that the job offer on which the decision was based was not permanent. It further determined that the medical evidence established that appellant was still unable to perform the duties of her original position. Appellant was paid compensation and again placed on the periodic rolls.

In a June 16, 2011 report, Dr. Jeffrey T. Newfield, an osteopath, stated that appellant's symptoms had increased even though she was not working or performing the activities that normally created her symptoms. He stated that her diagnoses and issues that were present in 2008 were still accurate. Dr. Newfield diagnosed disc protrusion, degenerative disc disease of the lumbar spine and bilateral carpal tunnel syndrome. He explained that appellant's conditions were chronic and that they were not going to miraculously disappear. Dr. Newfield reported that she had a series of work restrictions that had been consistent over a number of years and that those same restrictions applied, whether it was work for the postal service or any other circumstance. He authorized appellant to work a six-hour workday with a sedentary classification but stated that she was not to do any activity for no more than two hours at a time.

On June 8, 2011 OWCP referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. Jonathan Black, a Board-certified orthopedic surgeon, for a secondopinion examination to determine the extent of hercontinuing employment-related residuals and disability. The SOAF stated that her claim was accepted for thoracolumbar strain, sciatica and aggravation of a herniated disc at C3-4 and C6-7. In a July 12, 2011 report, Dr. Black accurately described the March 13, 1990 employment injury and reviewed appellant's records, including the SOAF. He noted that a December 14, 1999 magnetic resonance imaging (MRI) scan of the cervical spine suggested a small, central disc protrusion and a December 6, 1999 MRI scan of the lumbar spine revealed desiccation of the L5-S1 disc with no evidence of disc herniation or stenosis. Dr. Black reported that an April 2002 electromyography and nerve conduction study was suggestive of bilateral carpal tunnel syndrome. Upon examination of the lumbar spine, he observed no step-off or bruising and neutral sagittal and coronal balance. Lumbar alignment was normal. Dr. Black noted hypersensitivity to palpation at the lumbosacral junction with exaggerated pain response and decreased range of motion in the flexion and

[2] Appellant has two additional accepted claims. OWCP accepted that she sustained an aggravation of preexisting herniated discs at C3-4 and C6-7 as a result of bending, twisting and leaning forward while performing sedentary duties (File No. xxxxxx933). On June 7, 2002 it also accepted that appellant developed bilateral carpal tunnel due to repetitive work duties and use of a cane on the right hand (File No. xxxxxx742).

extension of the lumbar spine. Straight leg raise testing was negative. Examination of the cervical spine revealed no step-off or bruising. Cervical alignment was normal. Dr. Black noted tenderness to palpation at the cervicothoracic junction with exaggerated pain response and decreased range of motion on flexion, extension and rotation of the cervical spine. Spurling's sign was negative bilaterally. Dr. Black reported that there were no objective medical findings suggesting that appellant's work-related conditions of aggravation of a herniated disc and sciatica were currently active other than the fact that she exhibited hypersensitivity to palpation at the base of the neck and lumbar spine. Appellant was completely neurologically intact. Dr. Black found that she was capable of sedentary work as defined by the dictionary of occupational titles. He noted that appellant had been able to perform duties within these limitations until September 17, 2010.

In a July 12, 2011 work capacity evaluation form, Dr. Black noted that appellant was not able to perform her usual job but could work eighthours a day with full-time restrictions. He limited her to two hours of walking and standing and three hours of lifting no more than 10 pounds.

On August 21, 2011 OWCP requested Dr. Black clarify his secondopinion examination report regarding whether appellant's thoracolumbar strain and sciatica conditions had resolved and the physical work restrictions. It enclosed a revised statement of accepted facts, which noted that appellant's conditions were accepted for thoracolumbar strain and sciatica.

In a September 2, 2011 report, Dr. Black provided a history of injury and presented findings on examination that were identical to the July 12, 2011 report. He opined that appellant's conditions of thoracolumbar strain and sciatica were no longer active.

In a November 28, 2011 report, Dr. Newfield noted that appellant had retired since he last examined her and related that the intensity of her discomfort, except for a current bout of sciatica, was significantly better since she was not working.

On February 13, 2012 OWCP issued a notice of proposed termination of appellant's disability compensation and medical benefits based on Dr. Black's July 12 and September 2, 2011 medical reports. Appellant was advised that she had 30 days to submit additional relevant evidence or argument if she disagreed with the proposed action.

In a February 21, 2012 statement, appellant disagreed with the proposed termination of benefits. She disagreed with Dr. Black's review of Dr. Gregory Lower's September 28, 2000 report because she filed ethical charges against him shortly after his evaluation of her. Appellant also contested the fact that Dr. Black selected MRI scan reports that were 13 years old and met her for only 10 minutes. She noted that, although Dr. Black concluded that her work-related injuries had resolved, she still had restrictions from walking, standing and lifting.

Appellant submitted reports dated from 1997 to 2011 regarding her medical treatment for thoracolumbar strain, sciatica and bilateral carpal tunnel syndrome.

In a February 17, 2012 report, Dr. Newfield stated that although appellant's symptoms had diminished because she had been out of work she was still actively being treated for

diagnoses associated with her cervical spine, carpal tunnel syndrome, lumbar spine and sciatica. He noted that she was examined by a third party and disagreed that just because her symptoms were not active did not mean that her treatment should be terminated. Dr. Newfield explained that the fact that appellant's symptoms were diminished did not mean that she had no disability or residuals from these issues.

In a decision dated June 7, 2012, OWCP finalized the termination of appellant's compensation benefits effective July 1, 2012. It found that Dr. Black's report represented the weight of the medical evidence in establishing that her accepted conditions had ceased and that she no longer had any residuals or disability causally related to her accepted employment injuries.

On July 26, 2012 appellant submitted a request for reconsideration. She submitted a description of letter carrier duties. In a June 28, 2012 report, Dr. Newfield stated that he did not understand how Dr. Black could opine that appellant's conditions had resolved since previous documents and diagnostic studies still revealed symptoms of carpal tunnel syndrome. He also noted that nerve conduction studies indicated an L4-5 radiculopathy within her lumbar spine. Dr. Newfield explained that, although there were no updated studies, appellant continued to exhibit soft tissue changes associated with the lumbar spine and lower extremity that were consistent with this diagnosis. He also alleged that the ignorance to his qualifications disassembled the case workers' logic and raised questions of violation of law.

OWCP determined that a conflict in medical opinion existed between Dr. Black and Dr. Newfield as to whether appellant had any continuing residuals or disability due to her accepted employment injuries. On October 16, 2012 it referred her, together with a statement of accepted facts and the medical record, to Dr. Robert Hatch, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a November 18, 2012 report, Dr. Hatch provided an accurate history of injury and complaints of back problems since the March 13, 1990 employment incident. He noted that appellant was able to return to light duty but had not worked since September 2010. Appellant stated that therapy and other treatment modalities helped but seemed to be more "maintenance than cure." Dr. Hatch related her current complaints of low back pain that sometimes radiated to the left leg. He reported that the pain interfered with strenuous activity but was disabling at times and that general activities such as standing, walking, bending and twisting increased the symptoms. Upon examination, Dr. Hatch observed that appellant went from a standing position to a sitting position without hesitation and also rose from a sitting position without apparent difficulty. Evaluation of the head, neck, thoracolumbar region, upper extremities, upper pelvis and lower extremities showed no swelling. Dr. Hatch noted that appellant ambulated with a cane in hand and that her gait was best described as mild left and antalgic. Examination of the thoracolumbar spine revealed no significant tenderness, significant guarding, true spasm or masses. Straight leg raise testing was negative. Dr. Hatch observed tenderness in the left thigh, superior gluteal region and adjoining tenderness when palpating the mid-gluteal region. He diagnosed mild symptomatic spondylosis with a stable cervical spine, history of bilateral carpal tunnel syndrome and history of low back pain without associated clinical neuropathy or muscular atrophy.

Dr. Hatch stated that appellant's neck symptoms and upper extremity symptoms, including her accepted cervical disc conditions, had largely resolved or were being managed to a point where there was no significant deficit. He however concluded that she was capable of sedentary work, given her current findings.

Regarding appellant's lower back symptoms, Dr. Hatch noted that the medical records were controversial since some practitioners reported that it was permanent and others reported no injury whatsoever. He opined that there were still some residual symptoms of low back pain and that the question of whether appellant still had sciatica or even significant low back pain was still an unsettled question. Dr. Hatch reported that there was no strong objective evidence for significant thoracolumbar pathology and that her low back concern was almost entirely a subjective concern. He opined that appellant's subjective complaints did not outweigh the objective findings, but that her complaints and few objective findings were correspondingly weak. Dr. Hatch reported that, according to his physical examination and her testimony, her conditions of the cervical spine, bilateral carpal tunnel and low back were all stable and there was no strong case for appellant's inability to perform at age-appropriate levels. Heagreed with Dr. Black's September 2, 2011 opinion that there were no objective medical findings suggesting that appellant's work-related conditions of aggravation of a herniated disc and lumbar spondylosis with sciatica were currently active other than hypersensitivity to palpation and concluded that she was capable of sedentary work. Dr. Hatch stated that she was able to work under the restrictions of modified clerk which included lifting under 10 pounds intermittently for two to six hours, sitting with ergonomic chair with arms for four to sixhours, standing and comfort measures as needed for four to sixhours and simple grasping intermittently for three to five hours a day.

In a November 20, 2012 work capacity evaluation, Dr. Hatch noted appellant's accepted conditions of thoracolumbar strain and sciatica. He indicated that she was capable of working a light, sedentary job. Dr. Hatch restricted appellant to walking for three hours a day.

In a decision dated December 6, 2012, OWCP denied modification of the June 7, 2012 termination decision. It found that the weight of the medical evidence rested with Dr. Hatch's impartial medical examination.

LEGAL PRECEDENT

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.[3] OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[4] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5] The

[3] *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[4] *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[5] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[6] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[7]

If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[8]

ANALYSIS

OWCP accepted that on March 13, 1990 appellant sustained a thoracolumbar strain and sciatica in the performance of duty. Appellant stopped work and returned to modified duty. On September 17, 2010 the modified position was withdrawn under NRP. Appellant stopped work and was placed on the periodic rolls.

OWCP found that a conflict in medical opinion existed between appellant's physician, Dr. Newfield, who found that appellant continued to suffer residuals of her work-related injuries and Dr. Black, the secondopinion examiner, who found that she work-related injuries had resolved. It referred appellant to Dr. Hatch for an impartial medical examination to resolve the conflict in medical opinion. In a November 18, 2012 report, Dr. Hatch agreed with Dr. Black's opinion that there were no objective medical findings suggesting that her work-related conditions of aggravation of a herniated disc and lumbar spondylosis with sciatica were currently active. OWCP determined that Dr. Hatch's opinion constituted the weight of the evidence and thereafter terminated appellant's entitlement to disability compensation.

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's disability compensation and medical benefits because the medical evidence does not establish that her work-related injuries had resolved.

OWCP terminated appellant's compensation benefits based on Dr. Hatch's November 18, 2012 report. Dr. Hatch provided an accurate history of injury and conducted an examination. He diagnosed mild symptomatic spondylosis with a stable cervical spine, history of bilateral carpal tunnel syndrome and history of low back pain without associated clinical neuropathy or muscular atrophy. Dr. Hatch stated that appellant's neck symptoms and upper extremity symptoms, including her accepted cervical disc conditions, had largely resolved or were being managed to a point where there was no significant deficit. He concluded that she was capable of sedentary work, given her current findings. The Board finds that as appellant was employed as a city carrier on the date ofinjury, a medical opinion that she could return to sedentary work does not establish that disability has ceased. Dr. Hatch opined that appellant's accepted conditions

[6] *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

[7] *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P., id*.

[8] 5 U.S.C. § 8123; 20 C.F.R. § 10.321(b); *see also Darlene R. Kennedy*, 57 ECAB 414 (2006).

were currently being properly managed but he did not adequately explain why further medical care was no longer necessary.

Regarding appellant's lower back conditions, Dr. Hatch noted that the question of whether she still had sciatica or even significant low back pain was an "unsettled question."The Board finds that he did not offer an affirmative opinion that her thoracolumbar strain and sciatica had resolved. Instead, Dr. Hatch reports that appellant had residuals of low back pain and that it was an "unsettled question" whether she still suffered from sciatica and significant low back pain. His opinionis inconclusive. The Board has held that medical opinions that are speculative or equivocal in character and not based on reasonable medical certainty lack probative value.[9] Dr. Hatch also stated that appellant's subjective complaints did not outweigh the objective findings and that her complaints and few objective findings were correspondingly weak. He did not however explain what those objective findings were. Dr. Hatch did not reference any specific diagnostic imaging or MRI scan tests to demonstrate his opinion that the objective evidence was weak. The Board has found that medical conclusions unsupported by medical rationale are of little probative value.[10] Because Dr. Hatch does not affirmatively conclude that appellant's work-related back injury had resolved and does not support his opinion with medical rationale his report is insufficient to justify termination of her medical benefits.

In assessing medical evidence, the weight of medical evidence is determined by its reliability, its probative value and its convincing quality. Factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[11] In this case, the medical evidence and rationale supporting Dr. Hatch's opinion is lacking. Accordingly, his opinion has diminished probative value and is not entitled to special weight in resolving the conflict between Drs. Newfield and Black. As that conflict remains unresolved, the Board will reverse OWCP's December 6, 2012 decision and will remand the case for a proper reinstatement of compensation benefits.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to justify termination of appellant's disability compensation and medical benefits.

[9] *See S.B.*, Docket No. 12-1144 (issued November 5, 2012); *Beverly R. Jones*, 55 ECAB 411 (2004).

[10] *A.D.*, 58 ECAB 149 (2006); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1949).

[11] *Anna M. Delaney*, 53 ECAB 384 (2002).

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2012 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 4, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board