United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 13-625**
	)	**Issued: June 11, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Richmond, CA, Employer	)	

Appearances:
Hank Royal, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 20, 2013 appellant, through her attorney, filed a timely appeal from an August 27, 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 the case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss and medical benefits effective October 23, 2011 on the grounds that she no longer had any residuals or disability causally related to her accepted April 18, 1997 employment-related injury.

FACTUAL HISTORY

On April 18, 1997 appellant, then a 54-year-old fork lift operator, placed a six foot box of parcels on a forklift and started to back out; but a dumping machine operator attempted to dump

[1] 5 U.S.C. §§ 8101-8193.

the boxes of parcels and the forks were lifted. When she turned to grab the steering wheel and hit the brakes she sustained a lumbar strain and right ankle strain. The right ankle strain subsequently resolved.[2] Following the work injury, appellant returned to modified-duty work until May 21, 2002 when her condition worsened and she became totally disabled. Her physician noted that her disability was related to a multitude of work-related injuries.[3]

By decision dated March 16, 2004, OWCP terminated appellant's wage-loss and medical benefits finding that the weight of the medical evidence was presented by Dr. Clarence Boyd,[4] a Board-certified orthopedic surgeon and impartial medical specialist, who determined that appellant had no objective residuals to support a claim for continuing disability for work, permanent partial impairment, or need for continued medical care causally related to the work injuries of December 26, 1989, April 18, 1997, January 19 and November 22, 1999. The decision noted that monetary compensation would be paid through March 20, 2004. On March 17, 2004 appellant requested a hearing and submitted additional evidence. By decision dated August 23, 2004, an OWCP hearing representative affirmed the termination decision.

On February 25, 2005 appellant requested reconsideration. By decision dated June 20, 2005, OWCP vacated the August 23, 2004 decision in part and accepted the case for disability related to an accepted left shoulder strain (case number xxxxxx165), bilateral carpal tunnel syndrome (case number xxxxxx544) and lumbar strain (case number xxxxxx410). It affirmed the August 23, 2004 decision, in part, with respect to the termination of medical benefits for an accepted cervical strain (case number xxxxxx109).

By decision dated May 9, 2011, OWCP denied appellant's claim for a schedule award due to her accepted back condition. It accorded determinative weight to an OWCP medical adviser's April 24, 2011 opinion that appellant had no permanent impairment of either

[2] OWCP assigned the April 18, 1997 incident, claim number xxxxxxx410.

[3] The record reflects that appellant has several other claims. Under claim number xxxxxx544, OWCP accepted a November 29, 1999 occupational disease claim for bilateral carpal tunnel condition; under claim number xxxxxx165, it accepted left shoulder strain for the May 24, 1999 injury; under claim number xxxxxx416, it accepted left hip/thigh strain for the March 8, 1996 injury; and under claim number xxxxxx109, it accepted left shoulder strain and cervical sprain for the December 26, 1989 injury

[4] OWCP asked Dr. Boyd to resolve a conflict of medical opinion between the second opinion physician, Dr. Thomas Schmitz, a Board-certified orthopedic surgeon, and appellant's treating physician, Dr. Fred Blackwell, a Board-certified orthopedic surgeon, on whether appellant could return to an eight-hour workday with restrictions and whether she continued to suffer from her cervical condition. In a January 2, 2004 report, Dr. Boyd opined that the normal physical examination and appellant's symptom description indicated that she had no findings consistent with ongoing effects of the cervical, lumbar, left shoulder or right ankle injuries. Similarly, he noted no abnormal neurological findings consistent with carpal tunnel syndrome at either wrist and indicated that appellant's noted symptoms were inconsistent with carpal tunnel syndrome. Dr. Boyd also noted inconsistent results in the interpretation of prior electromyogram (EMG) tests. He concluded that the examination findings and lack of noted symptoms consistent with carpal tunnel syndrome indicated that the condition no longer existed. Dr. Boyd also noted that the right ankle sprain/strain had fully resolved based on examination findings. Finally, he opined that appellant was not in need of continued medical treatment as there were no consistent subjective or objective findings to establish continuing residuals of any of her work duties and concluded that appellant could return to the position of mail handler equipment operator without restrictions on a full-time basis.

lower extremity consequential to the April 18, 1997 work injury. Maximum medical improvement was reached by January 2, 2004.[5]

In order to determine appellant's current condition and residuals from her accepted April 18, 1997 injury, OWCP referred her for a second opinion examination by Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon. In a March 14, 2011 report, Dr. Swartz noted the history of appellant's work injury, reviewed the medical record and presented findings on examination which included range of motion testing, grip strength, flexion/extension, straight leg raising. With regard to the work injury to her lumbar spine, he noted that on January 2, 2004 Dr. Boyd had found a normal range of motion with no tenderness or spasm. He also noted a normal shoulder examination, no problems with the feet or lower extremities, a normal examination with respect to the upper extremities and no neurologic findings or abnormal objective findings. Dr. Swartz opined that appellant had reached maximum medical improvement at the date of Dr. Boyd's examination on January 2, 2004 without the need for any further healthcare services referable to her low back or the need for restricted duty or modified duty referable to her lumbar spine injury of April 18, 1997. On examination, he found that appellant had normal range of motion and no spasm in the neck and low back. Dr. Swartz noted that there was tenderness without spasm in the low back. There was an absent left Achilles reflex, the significance of which is unknown, and she claimed to have pain with straight leg raise bilaterally at 20 degrees; however, she was lying face down on the examination table and also claimed pain in the low back with flexion of each knee to 20 degrees and when she sat up she could flex both knees to 80 degrees with no pain. Dr. Swartz found there were inconsistencies in her examination. He found that there was no evidence of any residuals due to her work injury. Dr. Swartz noted that there were no objective findings when Dr. Boyd examined her in 2004 and there were no objective findings on his examination. There was no evidence of disability referable to the April 18, 1997 work injury and any disability would have reasonably ended as of January 2, 2004, the date of Dr. Boyd's examination. Dr. Swartz found no lower extremity permanent impairment due to the lumbar spine, noting that February 11, 2008 electrodiagnostic studies were normal without any evidence of radiculopathy, mononeuropathy or polyneuropathy affecting the lower extremities.

Appellant's treating physician, Dr. Fred Blackwell, a Board-certified orthopedic surgeon, submitted several reports following Dr. Swartz's examination. On March 18, 2011 he noted that appellant had persistent issues with respect to her lower back, with some diminished range of

[5] In his April 24, 2011 report, OWCP's medical adviser reviewed the medical evidence of record to determine whether appellant sustained an impairment to her lower extremities from the April 18, 1997 injury which was accepted for lumbar strain and right ankle strain. He noted that the ankle strain had subsequently resolved. The medical adviser noted that a July 8, 2003 second opinion medical report noted that plain x-rays of the lumbar and cervical spine were essentially normal with a little bit of "osteophytosis" in the anterior superior body of L5 and L3. The report did not indicate any positive objective findings relating to the lower back. The medical adviser noted that the January 2, 2004 referee report also found no abnormal objective findings consistent with any ongoing effects of either cervical or lumbar strain. He indicated that a January 29, 2007 magnetic resonance imaging (MRI) scan noted spondylolisthesis and stenosis and mild bulging at L5-S1 and L1-L2. February 11, 2208 electrodiagnostic studies were normal. The medical adviser also indicated that the March 24, 2011 second opinion examination showed no clinical objective findings of the accepted lumbar strain. He opined that appellant had zero percent impairment of each lower extremity and had reached maximum medical improvement no later than January 2, 2004, the date of Dr. Boyd's examination.

motion and irritability when arising from a seated position. Dr. Blackwell found no evidence of radiculopathy, but pain in the lower back upon maximum straight leg raise. The femoral stretch test was noted as positive for lower back pain. Strengthening and stretching exercises were recommended. On April 22, 2011 Dr. Blackwell noted that appellant was having some increasing symptoms related to her lower back probably related to barometric pressure changes. Appellant clinically showed diminished range of motion, impaired mobility and was tender in the region of the illiolumbar ligaments. In a May 20, 2011 report, Dr. Blackwell noted that she had ongoing symptoms with prolonged standing, walking and sitting; but stated there was no evidence of neurological impairment. He noted that appellant's weight gain and the fact that she did not exercise were factors of her low back pain. Appellant was advised to engage in more active exercise.

On April 24, 2011 OWCP's medical adviser reviewed the record based on appellant's request for a schedule award due to the accepted lumbar strain. He noted that a July 8, 2003 second opinion report found that plain x-rays of the lumbar and cervical spine were essentially normal, with no positive objective findings relating to the lower back. A January 2, 2004 impartial referee report found no abnormal objective evidence consistent with any ongoing effects of either a cervical or lumbar strain. He noted a January 29, 2007 MRI scan found spondylosisthesis and stenosis and that February 11, 2008 electrodiagnostic studies were normal. The medical adviser also noted that the March 14, 2011 second opinion examination did not make any clinical objective findings in relation to work-related lumbar strain. He opined that maximum medical improvement was reached no later than January 2, 2004 and the medical evidence did not support any impairment of either lower extremity.

On September 13, 2011 OWCP issued a notice of proposed termination of compensation. It found the weight of the medical evidence was represented by the opinion of Dr. Swartz, the second opinion physician. It allowed appellant 30 days to submit additional evidence or legal argument in response to the proposed termination. Appellant did not submit any additional medical evidence or argument.

By decision dated October 18, 2011, OWCP terminated appellant's medical and wage-loss benefits effective October 23, 2011, finding that Dr. Swartz's referral opinion represented the weight of the medical evidence.[6]

On December 1, 2011 appellant, through her representative, requested reconsideration. She stated that Dr. Blackwell's medical report contradicted the opinion provided by Dr. Swartz.

In an October 6, 2011 report, Dr. Blackwell critiqued Dr. Swartz's opinion noting that it was based in part on a 2004 report by Dr. Boyd. He noted that Dr. Swartz's findings on examination were not consistent with his findings. He commented that Dr. Boyd's report of 2004 was a prejudicial report. Dr. Blackwell noted that appellant had MRI scan evidence of degenerative disc disease, degenerative joint disease and a spondylolisthesis at L4-5 and anterolisthesis at L3-4, which Dr. Swartz did not take into account. He also stated that appellant had radiculitis and an absence of the left Achilles tendon reflex (per Dr. Swartz) with MRI scan

[6] This decision made no findings related to appellant's disability or need for medical care related to her accepted left shoulder strain (case number xxxxxx165) or bilateral carpal tunnel syndrome (case number xxxxxx544).

data that was consistent with a chronic low back problem alighted by her injury that continues to remain symptomatic. Dr. Blackwell stated that orthopedic literature provided that patients with underlying spondylosis or degenerative disc disease could have a previously asymptomatic condition that progressed to permanent impairment. He listed an impression of chronic musculoligamentous strain/sprain lumbosacral spine, degenerative joint disease and spondylosis with spondylolisthesis and left lower extremity radiculitis. Dr. Blackwell stated that appellant had objective findings, but no findings on a neurological basis that cause concern for any need for surgical intervention despite the abnormal reflex noted above. A progress note dated February 10, 2012 was also submitted.

By decision dated August 27, 2012, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[7] Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[8] OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[9]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[10] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.[11]

ANALYSIS

Appellant's April 18, 1997 claim was accepted for lumbar and right ankle strains. Her right ankle strain subsequently resolved. She continued to be treated for her lumbar strain by Dr. Blackwell. OWCP referred her to Dr. Swartz for a second opinion evaluation, to determine whether appellant still had residuals of the April 18, 1997 lumbar strain work injury.

In a March 14, 2011 report, Dr. Swartz described the history of injury and appellant's complaints, reported physical findings and noted that she exhibited no objective evidence of a continuing lumbar strain. On physical examination, the back demonstrated lumbosacral tenderness and no palpable spasm. Dr. Swartz noted that, while there was an absent left Achilles reflex, the significance was unknown and there were inconsistencies in her examination. Based

[7] *Bernadine P. Taylor*, 54 ECAB 342 (2003).

[8] *Id.*

[9] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[10] *Roger G. Payne*, 55 ECAB 535 (2004).

[11] *Pamela K. Guesford*, 53 ECAB 726 (2002).

on the examination findings, he advised that appellant had no evidence of any residuals or disability due to her work injury. Dr. Swartz found no objective basis on which to attribute any continuing residuals or disability due to the accepted April 18, 1997 work injury. He noted that the findings on examination were consistent with those of Dr. Boyd, who found on January 2, 2004 that appellant had normal range of motion with no tenderness or spasm with respect to the lumbar spine, a normal shoulder examination, no problems with the feet or lower extremities, a normal upper extremity examination and no neurologic findings or abnormal objective findings. He also opined that there was zero percent lower extremity impairment referable to the lumbar spine.

The Board finds Dr. Swartz had a full and accurate knowledge of the relevant facts and evaluated the course of appellant's condition. He provided a review of the records, diagnostic tests and performed a thorough physical examination. Dr. Swartz addressed the medical records as well as his own examination findings to reach a reasoned conclusion regarding appellant's condition.[12] He found no basis to support that appellant had injury residuals or work-related disability from the accepted lumbar strain. Dr. Swartz's opinion as set forth in his report of March 14, 2011 is found to be probative and reliable. At the time benefits were terminated, Dr. Swartz found no residuals or ongoing disability attributable to appellant's accepted lumbar strain. His opinion as set forth in his March 14, 2011 report is found to be probative and reliable. Dr. Swartz's conclusion was supported by the earlier report of Dr. Boyd, who found that appellant had no objective evidence of a continuing lumbar sprain. The Board finds that Dr. Swartz's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted lumbar strain.

Dr. Blackwell submitted several progress notes on appellant's increasing symptoms related to her lower back. On April 22, 2011 he noted clinical signs of diminished range of motion, impaired mobility and tenderness in the iliolumbar ligaments. However, Dr. Blackwell's reports fail to provide a well-rationalized opinion that appellant continues to suffer from residuals of her accepted lumbar strain. He did not offer any explanation as to why appellant would continue to exhibit such symptoms, due to the accepted lumbar strain, some 14 years after the injury. The Board also notes that he attributed appellant's pain complaints to her inactivity, and sedentary life style, rather than to her 1997 employment injury. Thus, Dr. Blackwell's reports are of diminished probative value and insufficient to overcome the weight of Dr. Swartz's report or to create a medical conflict.

In an October 6, 2011 report, Dr. Blackwell noted chronic musculoligamentous strain/sprain lumbosacral spine; degenerative joint disease and spondylosis with spondylolisthesis and left lower extremity radiculitis as current diagnosis. While he disagreed with Dr. Swartz's opinion, he did not provide an adequate explanation on why appellant's current diagnosed conditions are causally related to the accepted lumbar strain of April 18, 1997. Dr. Swartz stated generally, that an underlying spondylosis or degenerative disc disease can be asymptomatic but alighted in such a manner as to become permanent. His report does not

[12] *See Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of 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 are facts, which determine the weight to be given to each individual report).

adequately address how appellant's underlying back condition or disability were contributed to by the accepted employment injury. Dr. Blackwell's reports are of diminished probative value and insufficient to overcome the weight of Dr. Swartz's report or to create a medical conflict.

On appeal, appellant notes that she disagreed with OWCP's decision. As noted, Dr. Swartz's report represents the weight of the medical evidence and establishes that her accepted conditions have resolved.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

The Board finds that OWCP met its burden of proof to terminate appellant's benefits effective October 23, 2011 on the grounds that her accepted lumbar strain had ceased without residuals.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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