United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 12-1672**
	)	**Issued: March 20, 2013**
DEPARTMENT OF LABOR, OCCUPATIONAL, SAFETY & HEALTH ADMINISTRATION, Fort Worth, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 30, 2012 appellant filed a timely appeal from a July 25, 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 justify termination of appellant's compensation benefits for her accepted injury effective July 25, 2012.

FACTUAL HISTORY

On May 6, 2011 appellant, then a 47-year-old safety and occupational health specialist, sustained back and neck injuries in an automobile accident while in the performance of duty.

[1] 5 U.S.C. §§ 8101-8193.

OWCP accepted thoracic, lumbar and cervical sprain. Appellant stopped work on May 6, 2011 and returned to part-time limited-duty work on August 12, 2011. She stopped work on August 16, 2011 and returned to part-time limited duty on November 21, 2011.

Appellant was treated initially treated by Dr. Temple Howell-Stampley, a Board-certified internist, on May 9, 2011 for injuries sustained in a traffic accident. He diagnosed cervicalgia and backache. Appellant came under the treatment of Dr. Charles E. Willis, II, a Board-certified anesthesiologist, from May 6 to August 5, 2011, for back and neck injuries sustained in a work-related automobile accident. Dr. Willis diagnosed cervical, trapezius, thoracic, lumbar strain, radiculopathy of the right lower extremity cervical disc displacement and L5 facet syndrome. On June 28, 2011 he noted that conservative treatment failed and recommended epidural steroid injections at L7-T1, which were performed on June 28 and August 5, 2011. In a May 23, 2011 duty status report, Dr. Willis noted that appellant was totally disabled, but in an August 5, 2011 duty status report, he returned her to work part time, four hours per day, limited duty. A magnetic resonance imaging (MRI) scan of the lumbar spine dated June 22, 2011 revealed L3-4 and L4-5 posterocentral disc herniation. An electromyogram (EMG) dated July 6, 2011 revealed trauma or entrapment at the right ulnar nerve at the elbow and possible C5 and C6 radiculopathy on the right.

On August 8, 2011 the employing establishment noted that appellant returned to work part time, four hours per day subject to the restrictions set forth by Dr. Willis on August 5, 2011.

Appellant submitted reports from Dr. Willis dated August 19 to October 28, 2011, who noted that she had temporary pain control with the current regimen including steroid injections. On October 14, 2011 Dr. Willis noted her complaints of pain in the low back and neck with tingling and weakness in the left leg. In duty status reports dated October 14 and 28, 2011, he diagnosed cervical disc displacement and noted that appellant could not work. An October 19, 2011 functional capacity evaluation revealed that appellant could work subject to restrictions. Reports from Dr. Francisco J. Battle, a Board-certified neurologist, dated October 27 and November 1, 2011, diagnosed lumbar disc displacement, lumbar radiculitis, lumbago and lumbar myofascial injury. He recommended epidural steroid and chronic pain management therapy.

On September 26, 2011 OWCP referred appellant to Dr. Marvin E. Van Hal, a Board-certified orthopedist, to determine if the accepted conditions had resolved. In an October 18, 2011 report, Dr. Van Hal indicated that he reviewed the records provided and examined appellant. He noted findings of intact sensation and strength in the upper and lower extremities, intact reflexes and limited cervical and lumbar range of motion due to pain. Dr. Van Hal noted x-rays of the cervical and thoracic spine revealed no fracture, subluxation or spondylosis and the lumbar spine revealed no spondylosis or spondylolisthesis. He diagnosed status post motor vehicle accident with cervical and mid and low back pain, myofascial pain without radiculopathy and hypertension. Dr. Van Hal noted that subjective symptoms were pervasive throughout the spine with inconsistency and noted that the subjective complaints were greater than the objective findings. He opined that appellant's condition should have resolved as she had no large disc herniations that would require ongoing epidural steroid injections and opined that her dysfunction was lasting longer than what would be typical. Dr. Van Hal noted that she had an aggravation of an underlying degenerative disc disorder manifested by disc bulges at C3-4 and C4-5 and a disc bulge at C5-6 and D2-3; however, he opined that these conditions were present

at the time of the work incident. He advised that if there was an aggravation of the degenerative condition it would be temporary and resolved over a four- to five-month period. Dr. Van Hal recommended physical therapy and oral medications but found no necessity for injections or surgery. He returned appellant to work light duty.[2]

On October 31, 2011 OWCP referred appellant for an EMG, which was performed on November 3, 2011, which revealed left acute L4 radiculopathy with denervation.

Appellant continued to submit reports from Dr. Willis dated October 28, 2011 to January 17, 2012, which noted treatment for low back and cervical pain. On November 15, 2011 Dr. Willis diagnosed lumbosacral radiculopathy and recommended nerve root injections at L4 and L5. In duty status reports dated November 15, 2011 and January 12, 2012, he noted that appellant could return to work November 21, 2011 part time, four hours per day subject to restrictions. On December 15, 2012 Dr. Willis reviewed Dr. Van Hal's report and disagreed with his findings stating that appellant was a candidate for epidural steroid injections for her low back as he found objective evidence of lumbar radiculopathy.

OWCP requested Dr. Van Hal provide a supplemental report after reviewing the EMG. In a December 27, 2011 report, Dr. Van Hal noted reviewing the EMG and opined that appellant was not a candidate for surgery or for further injection treatment. He noted no objective radiculopathy on clinical examination and advised that the EMG and nerve condition had no clinical correlation.

OWCP found that a conflict of medical opinion existed between Dr. Willis, who indicated that appellant sustained residuals of her work-related injuries and was partially disabled and could work four hours per day and Dr. Van Hal, who determined that her accepted conditions had resolved and she could return to work full time with restrictions.

To resolve the conflict OWCP, on January 31, 2012, referred appellant to a referee physician, Dr. Robert Holladay, IV, a Board-certified orthopedist. In a March 1, 2012 report, Dr. Holladay noted reviewing the record, including the history of her work injury and examining her. Examination revealed tenderness over the cervical spine and lumbar spine without spasm and limited range of motion. Reflexes were positive and equal bilaterally with intact motor strength and sensation in the upper and lower extremities. Appellant had negative Tinel's and Phalen's signs. Dr. Holladay opined that she did not have any objective findings upon examination and no neurological findings although her expressed subjective complaints of pain. He noted that appellant had some residual soft tissue symptoms with no severe findings. Dr. Holladay noted that upon clinical examination and review of the medical records he found no additional spine conditions related to the May 6, 2011 injury other than soft tissue complaints at the cervical, thoracic and lumbar spine. He noted no objective evidence or findings to suggest an aggravation of an underlying condition. Dr. Holladay noted that appellant complained of radiculitis; however, the EMG and MRI scan provided no correlating pathology to support radiculopathy. He noted that based on the lack of documentation supporting transforaminal

[2] Dr. Van Hal noted preparing a work capacity evaluation but it was not found in the case file. In an e-mail dated January 13, 2012, the claims examiner noted that Dr. Van Hal provided an OWCP-5, work capacity evaluation, which noted that appellant could work eight hours per day limited duty.

epidural steroid injections he would not recommend that treatment. Dr. Holladay opined that appellant could continue her light-duty work, with slight increase of her activities over the next three to four weeks when she could return to full work activities. In a work capacity evaluation, he noted that she could return to work full-time limited duty with restrictions for four weeks.

Appellant submitted an MRI scan of the lumbar spine dated June 22, 2011, an EMG dated July 8, 2011 and a functional capacity evaluation dated October 19, 2011, all previously of record. She submitted an August 19, 2011 procedure note from Dr. Willis, previously of record, in which he performed lumbar branch blocks. Appellant continued to submit reports from him dated February 14 to May 1, 2012, who noted her treatment for low back pain and numbness in the left leg. Dr. Willis noted no changes on examination and persistent L-S radiculopathy and recommended transforaminal epidural steroid injections at L4-5. In duty status reports dated April 10 and May 1, 2012, he noted that appellant could continue to work part time four hours per day with restrictions.

On June 25, 2012 OWCP proposed to terminate all benefits finding that Dr. Holladay's March 1, 2012 report established no continuing residuals of her work-related conditions.

In a July 3, 2012 statement, appellant asserted that she continued to have residuals of her accepted condition. She noted that Dr. Willis' opinion supported that she sustained nerve damage and additional injuries including cervical and lumbar disc displacement and lumbar radiculopathy, which were not fully considered by Dr. Holladay when he performed his examination.

In a decision dated July 25, 2012, OWCP terminated appellant's medical and compensation benefits effective the same day finding that the medical evidence established that she had no continuing residuals of her accepted conditions.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[3] After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[4] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[5]

[3] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[4] *Mary A. Lowe*, 52 ECAB 223 (2001).

[5] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

ANALYSIS

OWCP accepted appellant's claim for thoracic, lumbar and cervical sprain. It determined that a conflict in medical opinion existed between her attending physician, Dr. Willis, who indicated that she sustained residuals of her work-related injuries and could work part time four hours per day and Dr. Van Hal, who determined that her accepted conditions had resolved and she could return to work full time with restrictions. Consequently, OWCP referred appellant to Dr. Holladay to resolve the conflict.

The Board finds that, under the circumstances of this case, the opinion of Dr. Holladay is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that disabling residuals of appellant's work-related conditions have ceased. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[6]

In a March 1, 2012 report, Dr. Holladay reviewed appellant's history, reported findings and noted that she exhibited no objective complaints or findings due to the accepted conditions. He noted that she did not have any objective findings upon examination and no neurological findings. Dr. Holladay noted that appellant had some residual soft tissue symptoms with no severe findings. He noted no objective evidence or findings to suggest an aggravation of an underlying condition. Dr. Holladay explained that, while appellant complained of radiculitis, the EMG and MRI scan provided no correlating pathology to support radiculopathy. He did not believe that she was a candidate for transforaminal epidural steroid injections as the EMG and MRI scan provided no correlating pathology to support radiculopathy. In a work capacity evaluation, Dr. Holladay noted that appellant could return to full work activity after increasing her activities over three to four weeks. He indicated that she did not require further treatment for the accepted work conditions of May 6, 2011.

The Board finds Dr. Holladay had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Holladay is a specialist in the appropriate field. He did not indicate that there was a work-related reason for disability or treatment. Dr. Holladay's opinion as set forth in his report of March 1, 2012 is found to be probative evidence and reliable. The Board finds that his opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of wage-loss and medical benefits for the accepted conditions.

After Dr. Holladay's examination appellant submitted an MRI scan of the lumbar spine dated June 22, 2011, an EMG dated July 8, 2011 and a functional capacity evaluation dated October 19, 2011, all previously of record. She submitted an August 19, 2011 procedure note from Dr. Willis in which he performed a lumbar branch blocks, which was previously of record. Appellant submitted reports from Dr. Willis dated February 14 to May 1, 2012, who noted appellant's treatment for low back pain and numbness in the left leg. Dr. Willis noted no changes on examination and persistent L-S radiculopathy and recommended transforaminal

[6] *Solomon Polen*, 51 ECAB 341 (2000). *See* 5 U.S.C. § 8123(a).

epidural steroid injections at L4-5. Similarly, in duty status reports dated April 10 and May 1, 2012, he noted that appellant could continue to work part time four hours per day with restrictions. Although Dr. Willis supported that she had continuing symptoms, none of the reports specifically address how any continuing disability was causally related to the accepted employment injuries of May 6, 2011.[7] The Board also notes that OWCP did not accept lumbar radiculopathy as being work related.[8] Additionally, Dr. Willis was on one side of the conflict that Dr. Holladay resolved and this report is insufficient to overcome that of Dr. Holladay or to create a new medical conflict.[9] Consequently, the medical evidence submitted after Dr. Holladay's report is insufficient to overcome his report or to create another conflict in the medical evidence.

On appeal, appellant asserts that she continues to have residuals of her accepted conditions and her benefits should not have been terminated. As noted above, Dr. Holladay had full knowledge of the relevant facts and evaluated the course of her condition and at the time wage-loss benefits were terminated he clearly opined that appellant had no work-related reason for disability. His opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of wage-loss and medical benefits for the accepted conditions.

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.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate benefits effective July 25, 2012.

[7] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[8] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted or approved by OWCP, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury).

[9] *See Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Willis' report did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 25, 2012 is affirmed.

Issued: March 20, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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