United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant	)	
and	)	**Docket No. 13-1159**
	)	**Issued: November 1, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Carol Stream, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of 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 April 15, 2013 appellant, through her attorney, filed a timely appeal from a December 12, 2012 decision of the Office of Workers' Compensation (OWCP) Programs terminating her compensation benefits. Pursuant to the Federal Employees' Compensation Act[1] (FECA), 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 compensation benefits for her accepted injury effective June 11, 2012.

FACTUAL HISTORY

On August 24, 2010 appellant, then a 40-year-old rural carrier associate, sustained a back injury when she was carrying heavy parcels to a truck. OWCP accepted the claim for a lumbar sprain. Appellant stopped work on August 25, 2010 and did not return. She was initially treated

[1] 5 U.S.C. §§ 8101-8193.

by Dr. Jude C. Pinto, a family practitioner, from August 30, 2010 to January 27, 2011, for a back and left elbow injury that occurred when she was lifting heavy parcels at work. Dr. Pinto diagnosed acute low back strain and ecchymosis. In duty status reports, he diagnosed acute lumber and cervical radiculopathy and advised that appellant was totally disabled.

An August 31, 2010 lumbar spine x-ray revealed no compression fracture, no spondylosis or spondylolisthesis with a mild thoracolumbar dextroscoliosis. A September 17, 2010 magnetic resonance imaging (MRI) scan of the lumbar spine showed mild disc bulging at L4-5 and L5-S1, with no evidence of significant central canal or foraminal stenosis. An October 15, 2010 cervical spine MRI scan revealed multilevel cervical spondylosis with mild paracentral indentation and thecal sac impingement with mild cord contact at C6-7, left neural foramen at C6-7, bilateral lateral foraminal narrowing at C5-6, C4-5 and C3-4.

From October 4, 2010 to January 17, 2011, appellant was treated by Dr. Kanu Panchal, a neurosurgeon, who diagnosed lumbar radiculopathy, bulging disc at L5-S1, cervical radiculopathy, status post decompressive laminectomy, right shoulder pathology and osteoarthritis. On January 17, 2011 Dr. Panchal opined that appellant injured her neck in a work-related accident on August 24, 2010 when she was lifting a box. He recommended physical therapy and advised that she was totally disabled.

On January 31, 2011 OWCP referred appellant to Dr. Peter Snitovsky, a Board-certified orthopedic surgeon, for a second opinion physician to determine if the accepted conditions had resolved. In a February 14, 2011 report, Dr. Snitovsky reviewed the medical records provided and examined appellant. He noted findings of tenderness over the thoracic and lumbar paraspinal muscles, limited range of motion and decreased sensation over the fourth and fifth digits. Dr. Snitovsky diagnosed cervical spine strain, cervical herniated disc and cervical radiculopathy. He opined that appellant did not have a permanent work-related condition, rather she strained the lumbar spine which should have resolved in three months or less. Dr. Snitovsky opined that her continued low back pain was no longer related to the lumbar strain of August 24, 2010 and that the cervical spine symptoms were not causally related to the accepted injury. He opined that appellant sustained a temporary aggravation of her preexisting condition. Dr. Snitovsky noted that appellant was unable to perform her regular duties and could return to full-time limited-duty work.

Appellant continued to submit reports from Dr. Panchal dated February 17 to May 12, 2011. Dr. Panchal diagnosed herniated disc at C6-7 and cervical spondylosis at C5-6. He recommended lumbar steroid injections and an anterior cervical discectomy and fusion at C5-6 and C6-7. Dr. Panchal opined that appellant was totally disabled until July 30, 2011. In a May 17, 2011 report, Dr. Pinto treated appellant for neck and back pain and noted no change in her condition.

OWCP found a conflict of medical opinion arose between Dr. Panchal, who advised that appellant had residuals of her work-related injuries and was totally disabled and Dr. Snitovsky, who determined that her accepted conditions had resolved and she could return to work full time with restrictions.

On March 29, 2011 OWCP referred appellant to Dr. David A. Fetter, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a May 26, 2011 report, Dr. Fetter reviewed the record, including the history of her work injury. On examination, cervical and thoracic spine revealed tenderness over the cervical spine, no evidence of paravertebral spasm of the cervical or thoracic spine, no evidence of atrophy or fasciculations of the arms, generalized decreased interosseous strength of the right hand, decreased scapulothoracic excursion and normal shoulder range of motion with no motor deficits. For the lumbar spine, extensor hallucis longus and quadriceps strength was normal. Straight leg raising was negative while sitting but was reported positive on the right and left at 60 degrees in the supine position. Appellant reported a generalized decreased sensation throughout both feet. Dr. Fetter diagnosed chronic cervical, thoracic and lumbar pain; a resolved August 24, 2010 lumbar strain; preexisting degenerative disc disease and degenerative arthritis of the cervical and lumbar spine; right paracentral disc herniation at C6-7; and tendinosis of the right shoulder and rotator cuff. He opined that appellant's severe cervical and lumbar degenerative disc disease was preexisting. Dr. Fetter stated that the preexisting degenerative disease of the lumbar spine was causing her present disability but was not causally related to the August 24, 2010 work injury. He noted that appellant did not have a permanent work-related condition and that work-related lumbar strain injury of August 24, 2010 was temporary and resolved within six to eight weeks. Dr. Fetter noted multiple nonorganic signs during the evaluation. He noted nonverified cervical and lumbar radiculopathy or neuropathy of the upper and lower extremities with a suggested neuropathy of both hands and feet of undetermined etiology. Dr. Fetter noted a tremor in appellant's hands of undetermined etiology, nonwork related. He opined that there was no aggravation of a preexisting condition. Dr. Fetter advised that she could not perform the regular duties of a carrier. In a May 26, 2011 work capacity evaluation, he noted that appellant could return to work full time with restrictions.

On June 1, 2011 OWCP proposed to terminate all benefits finding that Dr. Fetter's May 26, 2011 report established no continuing residuals of her work-related condition.

In a July 1, 2011 statement, appellant asserted that she continued to have residuals of her accepted condition. In a June 13, 2011 report, Dr. Panchal diagnosed herniated disc at C6-7 and cervical spondylosis at C5-6 and placed appellant off work until July 30, 2011. In a June 13, 2011 duty status report, he diagnosed cervical radiculopathy at C6-7 and lumbar radiculopathy and opined that appellant was totally disabled. In a June 14, 2011 report, Dr. Pinto treated her for neck and back pain.

In a decision dated July 8, 2011, OWCP terminated appellant's medical and wage-loss benefits effective that day, finding that the medical evidence established that she had no residuals of her accepted lumber condition.

Appellant requested an oral hearing which was held on October 3, 2011. She submitted reports from Dr. Panchal dated June 30 to November 29, 2011. Dr. Panchal noted that she reported no symptoms relating to her neck until the August 24, 2010 injury when she lifted a box at work. He opined that appellant had preexisting cervical spondylosis but the herniated disc at C6-7 was precipitated by the work injury on August 24, 2010. Dr. Panchal recommended an anterior cervical discectomy. He diagnosed cervical radiculopathy and herniated disc at C6-7 and spondylosis and opined that appellant was totally disabled until September 12, 2011. On

November 29, 2011 Dr. Panchal stated that based on the information provided by her and if that information was accurate, correct and reliable, she sustained a herniated disc and cervical radiculopathy, attributed to the work injury of August 24, 2010. Dr. Pinto also noted that appellant presented with a low back and right elbow injury sustained on August 24, 2010 after a lifting incident at work. He diagnosed musculoligamentous strain of the lumbar sacral spine and ecchymosis/contusion of the right elbow. Dr. Pinto disagreed with the findings of Dr. Fetter and opined that at no time prior to the August 24, 2010 injury did appellant complain of lumbar and cervical problems. He reiterated that she sustained injuries to her back, neck and shoulder caused by lifting and carrying parcels to her car at work on August 24, 2010.

In a decision dated December 22, 2011, an OWCP hearing representative set aside the July 8, 2011 decision and remanded the case for further medical development. She found that the opinion of Dr. Fetter was not sufficient and directed OWCP to obtain a supplemental report regarding whether her preexisting lumbar degenerative disc disease was aggravated by the August 24, 2010 work injury.

On January 27, 2012 OWCP requested clarification from Dr. Fetter. In a March 7, 2012 report, Dr. Fetter opined that appellant had a preexisting degenerative disc disease and degenerative arthritis of her lumbar spine. He reviewed the cervical and lumbar MRI scan reports from September and October 2010 that indicated that degenerative disc disease was present. Dr. Fetter noted that the work-related lumbar strain on August 24, 2010 was temporary in nature and would have resolved within six to eight weeks. He opined that the lumbar strain on August 24, 2010 was a temporary aggravation of appellant's preexisting degenerative lumbar spine condition; however, the temporary aggravation no longer continued and ceased within six to eight weeks of August 24, 2010. He referenced medical literature that supported his opinion.

Appellant submitted reports from Dr. Panchal dated June 30, 2011 to March 5, 2012. Dr. Panchal diagnosed herniated disc at C6-7 and stenosis at C5-6 and recommended an anterior cervical discectomy and fusion. He returned appellant to work at a full-time sedentary position. On March 14, 2012 appellant was treated by Dr. Robert T. Nixon, a Board-certified orthopedic surgeon, for neck and shoulder pain. She reported an onset of pain in her back, neck and shoulders after a carrying incident at work on August 24, 2010. Dr. Nixon diagnosed bilateral shoulder pain. He noted abnormal cervical discs from appellant's diagnostic scan and opined that they may be contributing to the shoulder symptoms. Dr. Nixon recommended subacromial cortisone injections for the left shoulder and physical therapy.

On April 12, 2012 OWCP proposed to terminate appellant's compensation benefits finding that Dr. Fetter's March 7, 2012 report established no continuing residuals of her work-related lumber conditions.

Appellant submitted reports from Dr. Panchal dated April 5 to May 25, 2012. Dr. Panchal noted that appellant underwent an electromyogram (EMG), which revealed cervical radiculopathy. He diagnosed cervical radiculopathy due to herniated disc at C5-6 and C6-7.

In a decision dated June 11, 2012, OWCP terminated appellant's medical and wage-loss benefits effective that day finding that the medical evidence established that she had no continuing residuals of her accepted conditions.

On June 15, 2012 appellant requested a telephone oral hearing which was changed to a review of the written record. She submitted a February 7, 2011 physical therapy note, for treatment for neck and back pain. An May 11, 2012 EMG revealed bilateral subacute neurogenic changes in C5-6 paraspinals with prolongation of the medial F latencies consistent with cervical radiculopathy from C5-7. Appellant was treated by Dr. Panchal from April 26 to November 12, 2012 repeated the diagnosis of cervical radiculopathy due to herniated disc at C5-6 and C6-7 and recommended an anterior cervical discectomy and fusion. Dr. Panchal noted that she was seen by Dr. Fetter who did not diagnose cervical radiculopathy. He reaffirmed his opinion that appellant had cervical radiculopathy. Dr. Panchal indicated that her symptoms had increased and she was not responding to conservative treatment or capable of returning to any kind of meaningful work.

In a decision dated December 12, 2012, an OWCP hearing representative affirmed the June 11, 2012 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] 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.[3] 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.[4]

ANALYSIS

OWCP accepted appellant's claim for a lumbar sprain. It found that a conflict in medical opinion arose between Dr. Panchal, who found that she had residuals of her work-related injuries and was totally disabled and Dr. Snitovsky a second opinion physician, who determined that her accepted conditions had resolved and she could work full time with restrictions. OWCP properly referred appellant to Dr. Fetter to resolve the conflict.

The Board finds that the opinion of Dr. Fetter is sufficiently well rationalized and based upon a proper factual background. It is entitled to special weight and establishes that the 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.[5]

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

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

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

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

In a May 26, 2011, report, Dr. Fetter reviewed appellant's history, reported findings on examination and noted that she had no objective complaints or findings due to the accepted condition. He diagnosed chronic cervical, thoracic and lumbar pain, the work-related lumbar strain was resolved and preexisting degenerative disc disease and degenerative arthritis of the cervical and lumbar spine, right paracentral disc herniation at C6-7 and tendinosis, supraspinatus of the right shoulder and rotator cuff. Dr. Fetter opined that appellant's severe degenerative disc disease was a preexisting condition which caused her present disability and was not causally related to the work-related injury of August 24, 2010. He advised that she did not have a permanent work-related condition and determined that the work-related lumbar strain injury of August 24, 2010 was temporary and resolved within six to eight weeks. Dr. Fetter listed multiple nonorganic signs during the evaluation. He noted nonverified cervical and lumbar radiculopathy or neuropathy of the upper and lower extremities with a suggested neuropathy of both hands and feet of undetermined etiology. In a March 7, 2012 supplemental report, Dr. Fetter diagnosed preexisting degenerative disc disease and degenerative arthritis of the lumbar spine. He opined that the lumbar strain of August 24, 2010 was a temporary aggravation of appellant's preexisting degenerative lumbar spine condition. It was a temporary aggravation and would have ceased within six to eight weeks of August 24, 2010. This report referenced diagnostic testing from 2010 that confirmed a degenerative spine condition.

The Board finds that Dr. Fetter had full knowledge of the relevant facts and evaluated appellant's condition. Dr. Fetter is a specialist in the appropriate field. He did not find any ongoing work-related reason for disability or treatment. Dr. Fetter's opinion as set forth in his reports of May 26, 2011 and March 7, 2012 is found to be probative evidence and reliable and constitutes the weight of the medical evidence. OWCP properly terminated wage-loss and medical benefits for the accepted conditions.

Appellant submitted reports from Dr. Panchal dated June 13, 2011 to November 12, 2012. Dr. Panchal diagnosed herniated disc at C6-7 and cervical spondylosis at C5-6 and opined that she was off work until July 30, 2011. He opined that she had preexisting cervical spondylosis; however the herniated disc at C6-7 was precipitated by the work-related injury on August 24, 2010. Similarly, on April 26, 2012 Dr. Panchal noted that appellant had cervical radiculopathy and was not capable of returning to any kind of meaningful work. Likewise in duty status reports dated June 13, 2011 to March 15, 2012, he diagnosed cervical radiculopathy at C6-7 and lumbar radiculopathy and opined that appellant was totally disabled. Although Dr. Panchal 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 August 24, 2010.[6] The Board also notes that OWCP did not accept cervical spondylosis, herniated disc at C6-7 and cervical radiculopathy as being work related.[7] Additionally, Dr. Panchal was on one side of the conflict that Dr. Fetter resolved and this report

[6] *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).

[7] *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).

is insufficient to overcome that of Dr. Fetter or to create a new medical conflict.[8] The medical evidence submitted after Dr. Fetter's report is insufficient to overcome his report or to create another conflict in the medical evidence.

Appellant submitted reports from Dr. Pinto dated June 14, 2011 to March 6, 2012, who noted that on August 30, 2010 she presented with a low back and right elbow injury sustained on August 24, 2010 after a lifting incident at work. He diagnosed musculoligamentous strain of the lumbar sacral spine and ecchymosis/contusion of the right elbow. Dr. Pinto disagreed with Dr. Fetter and opined that at no time prior to the August 24, 2010 injury did appellant complain of lumbar and cervical problems and opined that the herniated disc and symptoms were precipitated by the work injury of August 24, 2010. He related her current back and neck condition to the work injury but his only rationale for doing so was that she had no back or cervical problems before the employment injury. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.[9] The Board also notes that OWCP did not accept a cervical condition as being work related.

Appellant submitted a March 14, 2012 report from Dr. Nixon who diagnosed bilateral shoulder pain. She reported an onset of pain in her back, neck and shoulders after a carrying incident at work on August 24, 2010. However, Dr. Nixon appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether her condition was work related. To the extent that he is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between her low back and shoulder pain and the employment injury.

Consequently, the medical evidence submitted after Dr. Fetter's report is insufficient to overcome his report or to create another conflict in the medical evidence.

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 June 11, 2012.

[8] *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. Panchal's report did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

[9] *Kimper Lee*, 45 ECAB 565 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 12, 2012 is affirmed.

Issued: November 1, 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