

FACTUAL HISTORY

The case has been before the Board on a prior appeal. In a decision dated February 8, 2012, the Board reversed a May 19, 2011 OWCP decision terminating appellant's wage-loss and medical benefits.² OWCP had accepted cervical, thoracic and lumbosacral sprain/strains causally related to a September 15, 2004 employment incident. The Board found that the report of the second opinion physician, Dr. William Dinenberg, a Board-certified orthopedic surgeon, did not provide a rationalized medical report such that OWCP did not meet its burden of proof to terminate compensation. The history of the case as provided by the Board in its prior decision is incorporated by reference.

On return of the case record, OWCP referred appellant to Dr. Jonathan Black, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated August 6, 2012, Dr. Black reviewed a history of injury and medical treatment. On examination he noted hypersensitivity to palpation along the cervical, thoracic and lumbar spine. Dr. Black reported decreased range of motion in flexion and extension of the cervical spine with pain. He noted that the maneuvers performed did not produce radicular symptoms or muscle spasm. As to the lumbar spine, Dr. Black reported decreased range of motion in flexion and extension. He referred to prior diagnostic tests, noting an October 2004 lumbar magnetic resonance imaging (MRI) scan which revealed mild annular bulging at L4-6 without herniation or stenosis. An October 2004 cervical MRI scan revealed a tear of the posterior annulus with mild bulging C3-4. An April 2005 electromyography and nerve conduction studies showing a normal lumbar spine and suggested bilateral C6-7 radiculopathy. With respect to the specific question posed by OWCP, Dr. Black stated that appellant described chronic neck and back pain, but "[t]here are no objective medical findings that indicate that the work-related conditions were still active and causing symptoms other than the claimant's complaints of pain." He stated that there were no objective findings on physical examination to support evidence of any neurologic compromise, and stated that the cervical, thoracic and lumbosacral sprain/stains had resolved. Dr. Black concluded that there were "no objective findings on physical examination or thorough review of radiographic studies or electrodiagnostic studies that would preclude the claimant from returning to his position as a correctional officer."

In a letter dated February 25, 2013, OWCP advised appellant that it proposed to terminate compensation for wage-loss and medical benefits. It indicated that the proposal was based on the report from Dr. Black. Appellant was advised to submit evidence or argument within 30 days. By letter dated March 19, 2013, he indicated that Dr. Black disagreed with the proposed termination. Appellant stated that he had reported decreased range of motion, but then found his medical condition had resolved.

By decision dated April 8, 2013, OWCP terminated compensation for wage-loss and medical benefits. It found the weight of the evidence was represented by Dr. Black.

² Docket No. 11-1565 (issued February 8, 2012).

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background of reasonable medical certainty and supported by medical rationale explaining the opinion. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁴

ANALYSIS

OWCP terminated appellant's compensation for wage-loss and medical benefits, effective April 8, 2013, based on the report of Dr. Black. The issue presented, as it was on the prior appeal, is whether the medical evidence was sufficiently rationalized such that it represents the weight of the medical evidence and meets OWCP's burden of proof to terminate compensation.

Dr. Black provided an opinion that the accepted conditions had resolved. The medical rationale provided for his opinion is that there were "no objective findings" of a continuing employment-related condition. A review of his report indicates that his statement as to the lack of objective findings required additional explanation in order to constitute a rationalized medical opinion. The physical examination findings, for example, clearly noted decreased range of motion in flexion and extension of the cervical and lumbar spine, as well as sensitivity to palpation. Board case law has noted a physician's findings of decreased range of motion in the spine as an objective finding.⁵ If Dr. Black felt that in this particular case the findings reported did not constitute objective findings, or were objective findings but not employment related; he needed to provide additional explanation.⁶ OWCP requested a narrative report responding to questions concerning appellant's present diagnosis and residuals. Dr. Black, however, provided only brief statements that the accepted conditions had resolved without adequate explanation. In addition, he did not discuss his opinion as to lack of objective findings in terms of the diagnostic studies. Dr. Black's description of previous studies did refer to objective findings and he did not provide additional discussion of the issue.

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

⁴ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁵ *See, e.g., E.G.*, Docket No. 12-1011 (issued November 28, 2012); *N.W.*, Docket No. 11-661 (issued July 6, 2012).

⁶ *See C.C.*, Docket No. 13-446 (issued May 15, 2013); *S.K.*, Docket No. 12-1798 (issued February 20, 2013) (the physician explained that back range of motion was "voluntary" and not supported by other evidence).

It is OWCP's burden of proof and they should have requested clarification from the second opinion physician. The August 6, 2012 report does not meet the requirements of a rationalized medical opinion. The Board finds that OWCP did not meet its burden of proof in this case.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate compensation for wage-loss and medical benefits effective April 8, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 8, 2013 is reversed.

Issued: November 13, 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