



appointments. When the employing establishment could no longer accommodate her restrictions in 2009, appellant received compensation for temporary total disability on the periodic rolls.<sup>2</sup>

Dr. Mark H. Chan, the attending Board-certified physiatrist, submitted periodic progress notes. In May 2010, appellant continued to complain of low back pain. Dr. Chan diagnosed lumbar sprain/strain and spondylosis. He prescribed acupuncture, which appellant found effective. In October 2010, appellant complained of intermittent low back pain. Dr. Chan found her status to be permanent and stationary. In October 2011, appellant continued with intermittent low back pain which increased with cold or rainy weather. Her diagnosis remained unchanged.

In 2012, OWCP referred appellant, together with the case record and a statement of accepted facts, to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion on the status of the accepted employment injury. Dr. Swartz reviewed the statement of accepted facts and related appellant's history and complaints. He described his findings on physical examination and reviewed the medical record.

Dr. Swartz diagnosed chronic degenerative disc disease and arthritis of the lumbar spine, mild disc bulge at L2-3 with anterior osteophyte formation at L3 and basically an unremarkable examination of the lumbar spine compatible with age-related changes. He also diagnosed right patellofemoral chondromalacia and extreme obesity. Dr. Swartz noted that the mechanism of injury was bending over to pick up mail from the floor, which caused a soft-tissue lumbar strain. There was no evidence of discogenic injury. Indeed, appellant had no disc herniation or protrusion and no evidence of sciatic radiculopathy. Her morbid obesity, Dr. Swartz noted, was a contributing factor to her low back pain.

Dr. Swartz concluded that appellant had no residuals referable to the soft-tissue back strain in 2005. He believed that she fully recovered from this injury by May 2010, six months from the date she stopped working. Appellant's current lumbar spine condition was no longer industrially related. Dr. Swartz noted a medical report in June 2006 citing nonindustrial factors, obesity and diabetes, for her delayed recovery. He stated: "I would find [appellant's] obesity and her diabetes are the current conditions that are affecting her low back ...." Dr. Swartz added that her findings were all nonindustrial: "There are no findings that would be considered residuals of her injury." Appellant's restrictions, he explained, were based on appellant's preexisting conditions.

In a decision dated November 29, 2012, OWCP terminated appellant's compensation benefits for the accepted medical condition. It found that Dr. Swartz' opinion represented the weight of the medical evidence. OWCP noted that appellant's treating physician offered no discussion of Dr. Swartz' findings and provided no medical evidence or rationale that would create a conflict on the issue.

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<sup>2</sup> In a separate claim (OWCP File No. xxxxxx616), OWCP accepted that appellant sustained an occupational right knee enthesopathy and right knee bursitis. That claim is before the Board on a separate appeal (Docket No. 13-1722).

## LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>4</sup> After it has determined that an employee has disability causally related to federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup>

## ANALYSIS

After appellant picked up some mail that had dropped on the floor at work, OWCP accepted her claim for a lumbosacral strain. The burden of proof, therefore, falls upon OWCP to justify its termination of compensation for the accepted medical condition.

Appellant sustained her soft-tissue injury on September 13, 2005. She received compensation benefits for seven years, including compensation for temporary total disability beginning in 2009. The attending physiatrist, Dr. Chan, submitted periodic progress reports that appellant continued with intermittent low back pain and flares. He did not continue to relate her condition to what happened at work on September 13, 2005.

Dr. Swartz, the second-opinion orthopedic surgeon, found that appellant was no longer suffering from the September 13, 2005 employment injury. Taking note of the mechanism of injury, which involved picking some mail off the floor, he observed that she suffered no disc herniation or protrusion and had no evidence of sciatic radiculopathy. Appellant's was a soft-tissue lumbar strain, a condition he believed resolved within six months after she stopped work in late 2009. What she currently suffered from, he determined, was obesity and diabetes. These were the conditions that were affecting appellant's low back, not the muscle strain she sustained in 2005. Also, Dr. Swartz diagnosed appellant with chronic degenerative disc disease and arthritis of the lumbar spine, a mild disc bulge at L2-3 with anterior osteophyte formation at L3 and basically an unremarkable examination of the lumbar spine compatible with age-related changes. He concluded that her current lumbar spine condition was no longer industrially related.

OWCP provided Dr. Swartz with appellant's case record and a statement of accepted facts so he could base his opinion on a proper factual and medical history. Dr. Swartz reviewed appellant's medical record and evaluated her current complaints and findings on physical examination. He supported his conclusion with medical rationale that appears sound and logical. Dr. Swartz' opinion appears consistent with the mechanism of injury, the nature of the accepted

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>5</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

medical condition and appellant's nonindustrial medical status. There is no medical opinion evidence to the contrary from Dr. Chan or any other physician.

Accordingly, the Board finds that the weight of the medical evidence establishes that appellant no longer suffers from the lumbosacral strain she sustained on September 13, 2005 when she picked up some mail that had fallen on the floor at work. OWCP has thus met its burden of proof to justify the termination of compensation benefits for the accepted employment injury. The Board will affirm OWCP's November 29, 2012 decision.

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 properly terminated appellant's compensation benefits for the accepted lumbosacral strain.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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