

FACTUAL HISTORY

OWCP accepted that on January 29, 2010 appellant, then a 49-year-old rural letter carrier, sustained a right lower back and right leg injury when she was involved in a motor vehicle accident in the performance of duty. It accepted her claim for lumbar strain and right lower leg contusion. OWCP paid wage-loss compensation and medical benefits.

Appellant returned to limited duty on April 8, 2010. She continued to receive medical treatment for low back pain. OWCP paid medical benefits and compensation for intermittent periods of wage-loss disability.

On June 13, 2010 appellant requested that OWCP approve Kenneth Counts, Ph.D., a clinical psychologist, as her physician for depression secondary to her January 29, 2010 back injury.

On August 16, 2010 appellant stopped work because the employing establishment was unable to accommodate her restrictions. OWCP paid wage-loss compensation for total disability. On December 28, 2010 appellant was placed on the periodic rolls.

Appellant received treatment for back pain from Dr. Scott M. Schlesinger, a Board-certified neurological surgeon. In an August 13, 2010 report, Dr. Schlesinger conducted a follow-up examination for her continued back pain. He noted tenderness in appellant's bilateral sacroiliac area and lower facet joints. Dr. Schlesinger stated that she could return to light duty if she had the ability to lie down periodically as needed. In an October 8, 2010 report, he observed tenderness over the right sacroiliac joint and recommended that appellant continue with light duty. In a February 1, 2011 report, Dr. Schlesinger related her complaints of continued pain in the right sacroiliac joint area and noted that her history and examination was relatively unchanged.

OWCP referred appellant to Dr. Lara F. Huffman, a Board-certified psychiatrist and neurologist, for a second-opinion examination to determine whether appellant sustained a diagnosed emotional condition as a result of her accepted conditions. In a January 13, 2011 report, Dr. Huffman accurately described the January 29, 2010 employment incident and related the medical treatment appellant received. Appellant stated that she was in constant pain and under stress because of her medical conditions. She explained that the combination of pain and stress began to wear on her until she became depressed. Appellant's symptoms included problems sleeping, frequent crying spells, difficulty concentrating, low motivation, sadness and a sense of helplessness. Dr. Huffman reviewed her psychiatric and social history and conducted a mental status examination. She diagnosed major depressive episode and reported that appellant had no significant psychiatric history prior to the current episode. Dr. Huffman explained that the pain and significant physical limitations following the injury and additional stress culminated in significant depressive symptoms. She opined that the depression was secondary to appellant's pain and stated that the depression would resolve fairly quickly if appellant's pain were to cease

and she could resume her previous level of physical activity. Dr. Huffman recommended ongoing aggressive treatment for appellant's depression.³

On April 12, 2011 appellant filed for disability retirement effective March 18, 2011.

On April 5, 2011 OWCP referred appellant to Dr. Thomas Rooney, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of her continuing employment-related residuals and disability. In an April 20, 2011 report, Dr. Rooney listed an accurate history of the January 29, 2010 employment injury and medical history. He stated that an April 15, 2010 magnetic resonance imaging (MRI) scan of the lumbar spine showed disc degeneration at L3-4 and L4-5 with no nerve compression and anterior spondylosis. An MRI scan of the thoracic spine revealed disc herniations at T5-6 and T6-7. Dr. Rooney also noted that x-rays of the pelvis and sacroiliac joints showed no abnormality. Upon examination, he observed normal curvatures in the cervical and lumbar spines and mild scoliosis convex to the left in the thoracic spine. Range of motion of the lumbar spine was full with pain in the buttock and posterior thigh. Dr. Rooney noted exquisite tenderness over the sacroiliac joint area on the right side but no spasm. Straight leg raise testing produced right sacroiliac, buttock and proximal thigh pain, which was aggravated by dorsiflexion of the foot.

Dr. Rooney reported that appellant's subjective complaints were out of proportion to the objective findings. He explained that the major pain was over the sacroiliac joint, but her tenderness was even to light pressure and this was not consistent with a disease originating from the sacroiliac joint. Dr. Rooney stated that her physical findings did not explain her performance in both of the functional capacity evaluation (FCE) studies. He diagnosed degenerative disc disease at L3-4, L4-5 and disc herniation at T5-6 and T6-7. Dr. Rooney reported that none of these diagnoses would explain appellant's subjective complaints with normal x-rays of the sacroiliac joints and that he did not know the etiology of her current diagnosis. He stated that the physical examination and diagnostic findings did not support that her accepted January 29, 2010 employment injuries were still active. Dr. Rooney opined that appellant was capable of returning to full duty.

On May 17, 2011 OWCP requested a supplemental report from Dr. Huffman. In a July 1, 2011 report, Dr. Huffman related appellant's complaints with lack of sleep, appetite, energy and concentration. She noted that appellant complained of palpitations with chest discomfort and increased blood pressure. Dr. Huffman reported that appellant denied problems with depression prior to the motor vehicle incident and that she developed symptoms of depression following the motor vehicle incident in response to the time spent trying to diagnose and treat the pain. She opined that the combination of pain and stress culminated in a major depressive episode. Dr. Huffman stated that appellant's depression problems persisted at the time and that her present problems with insomnia, poor concentration, short-term memory and anxiety would limit

³ On March 2, 2011 OWCP issued a preliminary determination that appellant received an overpayment in compensation in the amount of \$691.00 for the period November 1 to 5, 2010 because she simultaneously received compensation and sick leave payments from her employing establishment. On March 25, 2011 appellant requested a precoupment hearing on the issue of fault and a possible waiver of the overpayment. By decision dated May 3, 2011, an OWCP hearing representative remanded the case to OWCP for a termination of collection because the amount of overpayment fell below the threshold of debt collection.

her ability to work. She reported that appellant was capable of trying a part-time job if there was one she could perform with her physical limitations. Dr. Huffman concluded that appellant's depression was related to and subsequent to her work injury.

In a July 22, 2011 MRI scan of the lumbar spine, Dr. Andrew A. Finkbeiner, a Board-certified diagnostic radiologist, observed well maintained vertebral body heights and mild, leftward C-shaped curvature of the lumbar spine. He noted mild retrolisthesis, shallow disc displacement at the L3-4 and L4-5 levels and minimal disc displacement leftward at the L5-S1 level without compressive arthropathy. In a July 22, 2011 MRI scan of the cervical spine, Dr. Finkbeiner noted complete bony block fusion of the C6-7 level with metallic artifact and shallow mixed broad-based disc displacement.

Appellant continued to receive treatment from Dr. Schlesinger. In a May 23, 2011 report, Dr. Schlesinger opined that appellant sustained injuries to her lumbar spine and sacroiliac joint as a result of the January 29, 2010 employment injury. He explained that an MRI scan of the pelvis and sacrum indicated that she had continued there in addition to her lower back. In a July 22, 2011 report, Dr. Schlesinger stated that the MRI scan of appellant's cervical and lumbar spine and pelvis were unremarkable. He reported that from an objective standpoint there was nothing to give a disability rating for her lumbar spine and pelvis and that he could not do anything further from a surgical stand point. Dr. Schlesinger recommended that appellant undergo another FCE to determine her ability to return to work. In a September 2, 2011 report, he reported that the FCE was determined to be an unreliable effort and opined that appellant could do light-duty work.

In an October 17, 2011 report, Dr. Schlesinger noted appellant's diagnosis of degenerative disc condition. He reported that there were no objective findings that correlated with her subjective complaints. Dr. Schlesinger determined that there were no clinical or diagnostic findings that would relate appellant's current symptomology with the January 2010 work injury. He explained that she had three inconsistent efforts on functional past evaluations, and therefore, he was unable to arrive any conclusion that would limit her ability to return to her regular job. Dr. Schlesinger opined that there were no objective reasons for appellant to not be able to return to full duty as a rural carrier. He noted that she reached maximum medical improvement at the time of the September 2011 visit.

On December 29, 2011 OWCP issued a notice of proposed termination of appellant's medical and wage-loss compensation benefits based on Dr. Rooney's April 20, 2011 and Dr. Schlesinger's October 17, 2011 reports. Appellant was advised that she had 30 days to submit additional relevant evidence or argument if she disagreed with the proposed action.

In a January 16, 2012 statement, appellant disagreed with the proposed termination of benefits. She questioned why OWCP sent her to Dr. Huffman for a second-opinion examination and then disregarded those results. Appellant alleged that her depression was due to the back injury and work status. She explained that her depression had been an issue since the accident and that she still had back symptoms from the January 29, 2010 work injury. Appellant alleged that Dr. Rooney's report supported that she has significant back issues and depression issues that just will not go away.

In a January 6, 2012 report, Dr. Counts stated that there was no doubt that appellant suffered from chronic lumbar pain with some radicular pain into the lower extremities. He noted that an April 15, 2010 MRI scan revealed disc degeneration at L3-4 and L4-5 with anterior spondylosis at L3-4 and L4-5. Dr. Counts reported that the objective evidence made it very clear that appellant suffered from chronic pain. He further explained that research indicated that 65 to 75 percent of patients who suffered from chronic spinal pain also needed treatment for clinically significant depression. Dr. Counts concluded that appellant's treatment for depression was ongoing and continuous. He opined that she suffered from a debilitating depression secondary to her job-related injury.

By decision dated February 23, 2012, OWCP finalized the termination of appellant's compensation benefits effective February 22, 2012. It found that Dr. Rooney's April 20, 2011 report represented the weight of the medical evidence and established that her accepted lumbar and right lower limb conditions had ceased and that she no longer had any residuals or disability causally related to the accepted employment injuries. OWCP noted that since appellant's work-related injury had resolved it would not consider whether appellant sustained a consequential emotional condition due to the work-related condition.

On March 26, 2012 appellant requested an oral hearing which was held on July 10, 2012. Dr. Counts was present to testify for appellant. Appellant continued to have problems of lower back pain and depression. She noted that an MRI scan revealed shallow displacement at L3 and L4 and mild C-shaped curvature of the lumbar spine. Appellant explained that she did not have any problems with her back prior to her work injury and that she did not sustain any other injuries since the January 29, 2010 work injury. She noted that both Dr. Huffman and Dr. Counts agreed that she suffered from depression as a result of her work-related injury. Dr. Counts testified on behalf of appellant that he treated her for depression that was secondary to her back pain. He explained that it was not uncommon for people with chronic pain to suffer and end up being treated for clinically-significant depression. Dr. Counts noted that he reviewed Dr. Huffman's second-opinion report and agreed that it was a thorough evaluation. He reported that Dr. Huffman agreed that appellant had no prior history of depression and that it was unquestionably causal to the work accident.

In a February 22, 2012 report, Dr. Sean M. Foley, Board-certified in physical medicine and rehabilitation, related appellant's complaints that her back hurt all over. He provided an accurate history of the January 29, 2012 employment injury and reviewed the medical treatment she received. Dr. Foley noted that an MRI scan of appellant's cervical spine revealed bony fusion at C6-7 with no compressive arthropathy and an MRI scan of her lumbar spine showed mild curvature of the lumbar spine with main convexity to the left along with mild retrolisthesis with shallow disc displacement at L3-5. Upon examination, he observed decreased lumbosacral active range of motion in all planes secondary to reported pain and tenderness upon palpation. Deep tendon reflexes were 2+ in the bilateral lower extremities. Dr. Foley diagnosed chronic low back and mid-back pain along with a left L5 herniated nucleus pulposus. He recommended that appellant continue with chronic pain management.

In a decision dated October 17, 2012, an OWCP hearing representative affirmed the February 23, 2012 decision terminating appellant's medical and wage-loss compensation benefits. She found that Dr. Rooney's report represented the weight of the medical evidence and

established that the accepted lumbar and right lower limb conditions had ceased. Appellant no longer had any residuals or disability causally related to her accepted employment injuries. OWCP further found that since appellant's work-related injury had resolved her depression was secondary to an unrelated condition.

LEGAL PRECEDENT -- ISSUE 1

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.⁴ OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ 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.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that on January 29, 2010 appellant sustained a lumbar strain and right lower leg contusion in the performance of duty. It paid disability compensation and medical benefits. Appellant continued to be treated for her lumbar and leg conditions by Dr. Schlesinger. OWCP referred appellant to Dr. Rooney for a second-opinion evaluation to determine whether appellant still had residuals of the January 29, 2010 work injury.

In an April 20, 2011 report, Dr. Rooney accurately described the January 29, 2010 employment injury and reviewed her history. Upon examination, he observed normal curvatures in the cervical and lumbar spines and mild scoliosis convex to the left in the thoracic spine. Dr. Rooney noted exquisite tenderness over the sacroiliac joint area on the right side but no spasm. Straight leg raise testing produced right sacroiliac, buttock, and proximal thigh pain, which was aggravated by dorsiflexion of the foot. Based on these findings, Dr. Rooney determined that appellant's subjective complaints were out of proportion to the objective findings. He explained that the major pain was over the sacroiliac joint, but her tenderness to light pressure would not be consistent with a disease originating from the sacroiliac joint. Dr. Rooney diagnosed degenerative disc disease at L3-4, L4-5 and disc herniation at T5-6 and T6-7. He reported that none of these diagnoses would explain appellant's subjective complaints

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

with normal x-rays of the sacroiliac joints and that he did not know the etiology of her current diagnosis. Dr. Rooney concluded that the physical examination and diagnostic findings did not support that her accepted January 29, 2010 employment injuries were still active. He opined that appellant was capable of returning to full duty. Dr. Rooney provided an accurate history of the January 29, 2010 employment injury and evaluated the course of appellant's condition. He provided a review of the records and diagnostic tests and conducted a thorough physical examination. Dr. Rooney addressed the medical records and his own examination findings and found that there were no objective findings to support appellant's continued complaints of lumbar pain. He explained that her current diagnoses of degenerative disc disease and disc herniations, together with normal x-ray findings, did not support her subjective complaints. Dr. Rooney found no basis to support that appellant had injury residuals or work-related disability from the accepted lumbar strain and right lower leg contusion. The Board finds that Dr. Rooney's opinion is detailed, well rationalized and based upon a complete and accurate history. The Board also notes that Dr. Rooney's opinion is supported by Dr. Schlesinger's October 17, 2011 opinion that there were no clinical or diagnostic findings that would relate appellant's current symptomology with the January 2010 work injury.

Dr. Schlesinger, appellant's treating physician, reported on October 17, 2011 that there were no clinical or diagnostic findings that would relate appellant's current symptomology with the January 2010 work injury. He noted that her FCEs had shown three inconsistent efforts. Dr. Schlesinger concluded that there were no objective findings to explain why she should or could not return to her full-duty position.

The Board finds that OWCP properly determined that Dr. Rooney's second-opinion report and Dr. Schlesinger's October 17, 2011 report represented the weight of the medical evidence, and established that appellant no longer had residuals of the accepted employment-related conditions. The Board finds, therefore, that OWCP met its burden of proof to terminate appellant's medical and compensation benefits as the medical evidence established that her accepted January 29, 2010 lumbar and right lower leg conditions had resolved and that she was capable of returning to work.⁹

Following OWCP's decision terminating benefits, appellant submitted a January 6, 2012 report by Dr. Counts and a February 22, 2012 report by Dr. Foley, who described the January 29, 2012 employment injury and conducted an examination. Dr. Foley diagnosed chronic low back pain and mid-back pain. Although he noted appellant's complaints of pain and present back symptoms he provided no opinion on the cause of her symptoms. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ Similarly, Dr. Counts and the additional diagnostic reports also provided no opinion on the cause of appellant's current back pain and symptoms. Thus, these reports are of diminished probative value and insufficient to overcome the weight of Dr. Rooney's report or to create a medical conflict.

⁹ C.S., Docket No. 13-455 (issued April 16, 2013).

¹⁰ C.B., Docket No. 09-2027 (issued May 12, 2010); J.F., Docket No. 09-1061 (issued November 17, 2009); A.D., 58 ECAB 149 (2006).

On appeal, appellant contends that Dr. Rooney's opinion did not prove that her disability had lessened or ceased in any way. As previously stated, however, Dr. Rooney provided a well-rationalized opinion, based on an accurate history of injury and examination findings, that her accepted lumbar strain and right lower leg contusion had resolved. There is no objective evidence on record to support that appellant continues to suffer residuals of her January 29, 2010 employment injury. The Board finds that OWCP met its burden of proof to terminate her benefits effective February 22, 2012 on the grounds that her accepted conditions had ceased without residuals.

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.

LEGAL PRECEDENT -- ISSUE 2

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.¹¹ To establish a causal relationship between the condition claimed, as well as any attendant disability, and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.¹²

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause. The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.¹³

The medical evidence required to establish a causal relationship includes a physician's opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁴

¹¹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹² *Jennifer Atkerson*, 55 ECAB 317 (2004).

¹³ *Debra L. Dillworth*, 57 ECAB 516 (2006).

¹⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹⁵ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁶ Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner and to obtain an evaluation which will resolve the issue involved in the case.¹⁷

ANALYSIS -- ISSUE 2

OWCP referred appellant to Dr. Huffman to determine whether she sustained a diagnosed emotional condition as a result of her accepted January 29, 2010 employment injury. In a January 13, 2011 report, Dr. Huffman described the January 29, 2010 employment incident and reviewed appellant's medical treatment. She related that appellant was in constant pain and under stress. Dr. Huffman conducted a mental status examination and diagnosed major depressive episode. She explained that the pain and significant physical limitations following the injury and additional stress culminated in significant depressive symptoms. Dr. Huffman opined that the depression was secondary to appellant's pain and stated that the depression would resolve fairly quickly if appellant's pain were to cease and she could resume her previous level of physical activity. In a May 17, 2011 supplemental report, she again opined that the combination of pain and stress culminated in a major depressive episode. Dr. Huffman stated that appellant's depression problems persisted at the time and that her present problems with insomnia, poor concentration, short-term memory and anxiety would limit her ability to work. She concluded that appellant's depression was related to and subsequent to her work injury.

As noted, proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁸ While the claimant has the burden to establish an emotional condition as a consequence of her accepted injury, it shares responsibility to see that justice is done.¹⁹ Once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.²⁰

While the evidence in this case substantiates that appellant's accepted orthopedic conditions resolved by February 22, 2012, an issue remains as to whether appellant sustained an emotional condition due to the accepted motor vehicle accident. Dr. Huffman opined that appellant's emotional condition arose as a consequence of the accepted injury. Likewise, Dr. Counts testified at the July 10, 2012 hearing that appellant suffered from depression secondary to her January 2010 job-related conditions. The Board finds that these reports are consistent in indicating that she sustained an employment-related emotional condition, and are

¹⁵ *Vanessa Young*, 55 ECAB 575 (2004).

¹⁶ *Richard E. Simpson*, 55 ECAB 490 (2004).

¹⁷ *See Melvin James*, 55 ECAB 406 (2004); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

¹⁸ *Supra* note 16.

¹⁹ *Supra* note 17.

²⁰ *Supra* note 18.

not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between the claimed emotional condition and the January 29, 2010 employment injury.²¹ Accordingly, the case will be remanded to OWCP. After such development as deemed necessary, it shall issue an appropriate merit decision.²²

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits effective February 22, 2012 on the grounds that she no longer had residuals from her January 29, 2010 employment injury. The Board also finds that the case is not in posture for decision as to whether appellant's claim should be expanded to include an emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed, in part, and remanded in part. The case is returned for further proceedings consistent with this decision.

Issued: September 13, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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

²¹ *Richard E. Simpson*, 55 ECAB 490 (2004); *John J. Carlone*, 41 ECAB 354 (1989).

²² *See D.O.*, Docket No. 12-1889 (issued January 23, 2013).