

FACTUAL HISTORY

This case has previously been before the Board.² In an October 14, 2009 decision, the Board found that OWCP properly suspended appellant's compensation effective November 23, 2008 for failing to submit a Form EN1032, as requested. The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.

OWCP accepted that on March 30, 1981 appellant, then a 26-year-old deputy marshal, sustained employment-related low back derangement and degeneration of a lumbar and lumbosacral intervertebral disc when she slipped while exiting a vehicle. Appellant stopped work on the date of injury and did not return. OWCP paid compensation for total disability.

In an October 10, 2011 report, Dr. Ramon Alvarez, an attending anesthesiologist, stated that he had treated appellant's employment-related injuries for several years. He noted her complaint of back pain and provided a history of her medical, family and social background. Dr. Alvarez stated that appellant was not currently employed. He listed findings on physical and neurological examination and reviewed diagnostic test results. Dr. Alvarez assessed a chronic and persistent lumbar herniation and ordered updated diagnostic testing and physical therapy.

By letter dated November 29, 2011, OWCP requested that appellant submit a physician's report regarding her current condition to determine whether she was entitled to compensation benefits for continuing residuals and total disability. Appellant was afforded 30 days to submit the requested evidence. She did not respond.

By letter dated March 28, 2012, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Richard Steinfeld, a Board-certified orthopedic surgeon, for a second opinion. In a May 17, 2012 report, Dr. Steinfeld reviewed a history of the March 30, 1981 employment injuries and appellant's medical record. He noted her current complaint of intermittent low back pain primarily dull and sometimes sharp that radiated to both lower extremities. It was aggravated by prolonged sitting and associated with stiffness after periods of sitting. As a result of appellant's ongoing discomfort, she had difficulties with activities of daily living. On physical examination, Dr. Steinfeld reported that her skin and lymphatics of the upper and lower extremities were within normal limits. Appellant's back had no masses or lesions. She exhibited no significant palpable tenderness about the midline of the lumbar spine or within the paraspinal regions. Appellant had active forward flexion to approximately 90 degrees, extension to 0 degrees and lateral bend to 30 degrees bilaterally. Evaluation of her strength involving her iliopsoas, quadriceps, hamstrings, extensor hallucis longus and gastrosoleus was 5/5. Appellant's knee and ankle jerk and deep tendon reflexes were 2+ bilaterally and sensation was intact throughout both lower extremities. She had palpable posterior tibialis pulses bilaterally. Dr. Steinfeld advised that appellant had chronic low back pain and degenerative changes at L4-5 and L5-S1. He opined that there did not appear to be objective findings to support residuals from the compensable work-related injuries. Dr. Steinfeld advised that the accepted injuries appeared to have resolved. He further advised that appellant

² Docket No. 09-675 (issued October 14, 2009).

could perform her usual job with restrictions that were based on nonwork-related conditions. Dr. Steinfeld concluded that she had reached maximum medical improvement.

On June 5, 2012 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Steinfeld's medical opinion. Appellant was advised that she had 30 days to submit additional evidence in response to the proposed termination.

By letter dated June 29, 2012, appellant disagreed with OWCP's proposed action. She contended that she had consistent back pain which radiated down to her legs due to her 1981 employment injury. Appellant also experienced work-related hearing loss prior to her employment-related back injury.

In a July 11, 2012 decision, OWCP finalized the termination of appellant's compensation benefits effective that day. It found that the opinion of Dr. Steinfeld constituted the weight of the medical evidence.

On July 27, 2012 appellant requested an oral hearing before an OWCP hearing representative and submitted evidence. In an undated letter, she addressed her ongoing back pain and refusal to undergo surgery to treat her condition.

The record contains unsigned reports dated June 8, 17 and 24, 2009 with the printed name of Dr. Steven C. Chang, a Board-certified anesthesiologist. The reports address appellant's back conditions, which included back pain with intermittent left lower extremity pain with severe degenerative disc disease at L4-5.

In a June 17, 2009 report, Dr. Bruce A. Rodan, a Board-certified radiologist, advised that a magnetic resonance imaging scan of the lumbar spine demonstrated bulging discs at L3-4 and L5-S1, a desiccated disc with spondylotic change at L4-5 and mild dextroscoliosis.

In reports dated June 23 and September 22, 2010, Dr. Alvarez listed findings on physical and neurological examination. He noted appellant's worsening chronic lumbar herniation. Dr. Alvarez diagnosed degeneration of the lumbar or lumbosacral intervertebral disc and lumbago.

A December 17, 2010 report contained an illegible signature and provided drug screening test results.

In an April 9, 2013 decision, an OWCP hearing representative affirmed the July 11, 2012 termination decision. The medical evidence submitted was found insufficient to outweigh Dr. Steinfeld's May 17, 2012 medical opinion.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.³ It may not terminate compensation

³ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

without establishing that the disability ceased or that it was no longer related to the employment.⁴ The burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁷

ANALYSIS

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 11, 2012.

OWCP based its termination decision on Dr. Steinfeld's May 17, 2012 report. Dr. Steinfeld, an OWCP referral physician, provided a review of the March 30, 1981 employment injuries and appellant's medical history, and listed essentially normal findings on physical examination except for limited range of motion of the back. He diagnosed chronic low back pain and degenerative changes at L4-5 and L5-S1. Dr. Steinfeld opined that there did not "appear" to be objective findings to support residuals of the work-related injuries and as such, these injuries "appeared" to have resolved and appellant was able to perform her usual job as a marshal with nonemployment-related restrictions. The Board finds that Dr. Steinfeld's opinion is speculative in nature and of diminished probative value.⁸ As Dr. Steinfeld did not provide a fully reasoned opinion that appellant had no continuing residuals of her employment-related low back derangement and degeneration of the lumbar or lumbosacral intervertebral disc, the Board finds that OWCP did not meet its burden of proof to terminate her compensation benefits. The termination of appellant's wage-loss compensation and medical benefits will be reversed.⁹

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits effective July 11, 2012.

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁸ *L.R. (E.R.)*, 58 ECAB 369 (2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

⁹ In light of the disposition of this case, the Board will not address counsel's arguments on appeal.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2013 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 3, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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