

FACTUAL HISTORY

This case has previously been before the Board. In a November 23, 2011 decision, the Board vacated a February 3, 2011 OWCP merit decision and remanded the case to refer appellant, an updated statement of accepted facts, and the medical evidence of record to an appropriate Board-certified specialist for a rationalized opinion as to whether she sustained an injury on January 5, 2010 and, if so, if she had any concurrent disability for work on or after that date.³ The facts of the previous Board decision are incorporated herein by reference.

On December 16, 2011 OWCP referred appellant to Dr. R. Derry Crosby, a second opinion Board-certified osteopath specializing in orthopedic surgery.⁴ In a February 27, 2012 report, Dr. Crosby described the January 5, 2010 employment incident and appellant's complaint of intermittent pain and swelling to her upper back and cervical spine. He reviewed the medical record and noted that physical examination produced no strong radicular pain to the right or left upper extremities, with normal strength testing and reflexes, and no marked tenderness found on examination of paraspinal musculature. Dr. Crosby obtained x-rays of the cervical and thoracic spines, noting that they showed no spondylosis or foraminal canal encroachment. He advised that appellant probably sustained a cervical and thoracic strain on January 5, 2010 and had appropriate treatment for the conditions. Dr. Crosby noted that appellant was under treatment for a low back condition and that no medical treatment was indicated for her neck and thoracic region. He found that she had no disability or need for restricted duty as far as her neck or thoracic spine were concerned.

On April 4, 2012 OWCP asked Dr. Crosby to clarify his opinion, because he stated that appellant probably sustained cervical and thoracic strains on January 5, 2010. In a supplementary report dated April 19, 2012, Dr. Crosby stated that she did sustain cervical and thoracic strains on January 5, 2010 which had resolved at the time of his examination on February 27, 2012.

By decision dated May 11, 2012, OWCP denied the claim on the grounds that appellant did not sustain an injury in the performance of duty. On December 17, 2012 appellant requested reconsideration and submitted a January 18, 2012 report from Dr. Hoang Vu, a Board-certified physiatrist, who noted her complaint of low back pain. Dr. Vu diagnosed low back pain, refractory to current treatment, lumbar radiculopathy with a herniated disc at L4-5, lumbar postlaminectomy syndrome, possible depression, and myalgia-myositis with diffuse body, muscle pain. In a September 4, 2012 report, Dr. Christopher S. Rumana, a Board-certified neurosurgeon, noted a chief complaint of neck and right arm pain, low back and leg pain, and

³ Docket No. 11-1166 (issued November 23, 2011). On January 5, 2010 appellant, then a 49-year-old laundry supervisor, filed a traumatic injury claim when she lost her footing and fell to the floor at 10:30 a.m. that day. She returned to regular duty on March 1, 2010 and submitted claims for intermittent compensation beginning February 23, 2010. By decision dated April 30, 2010, OWCP denied the claim. In a September 28, 2010 decision, an OWCP hearing representative affirmed the April 30, 2010 decision. Following a November 2, 2010 reconsideration request, in a merit decision dated February 3, 2011, OWCP denied modification of the prior decisions. On September 8, 2005 OWCP had accepted aggravation of lumbar radiculopathy, adjudicated under file number xxxxxx606.

⁴ Dr. Crosby was asked to provide a narrative report, based on the statement of accepted facts, with supportive rationale, as to whether appellant sustained an injury on January 5, 2010 and, if so, did she have any disability on or after the January 5, 2010 fall.

reported that appellant had a slip and fall at work in 2010. On examination of the neck, Spurling's and Lhermitte's signs were negative. Dr. Rumana diagnosed thoracic myofascitis/sprain and neck pain, and noted that appellant could be having myofascial neck pain or right cervical radiculopathy. On October 16, 2012 Dr. Vu reiterated his diagnoses.⁵

On January 22, 2013 OWCP accepted that appellant sustained cervical and thoracic sprains. Appellant was advised to claim compensation using OWCP CA-7 forms. In a separate January 22, 2013 decision, OWCP noted that the claims examiner did not explain the basis for her May 11, 2012 decision. It accepted the claim based on the second opinion evaluation of Dr. Crosby, who advised that the sprains had resolved by the date of his examination on February 27, 2012. OWCP found that appellant was entitled to 33.25 hours of intermittent wage-loss compensation for the period March 2 through April 23, 2010. Appellant was paid wage-loss compensation for this period on January 22, 2013. She did not file additional claims for compensation.

By decision dated March 28, 2013, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 27, 2012, on the grounds that Dr. Crosby, OWCP's referral physician, advised that day that her neck and thoracic strains had resolved.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

OWCP procedures indicate that a pretermination is not required if a claimant has returned to work and has received compensation payments for less than one year.⁸ The procedures indicate that a notice is required if medical benefits are terminated based upon the opinion of a second opinion or referee examiner, as opposed to the treating physician.⁹

ANALYSIS

The Board finds that OWCP properly terminated appellant's wage-loss compensation effective February 27, 2012. In reports dated February 27 and April 19, 2012, Dr. Crosby, the referral physician, described the January 5, 2010 employment injury and appellant's complaint of intermittent pain and swelling in the upper back and cervical spine areas. He noted his review of the medical record and indicated that physical examination produced no strong radicular pain to

⁵ Appellant also submitted medical reports previously of record, reports from Dr. Joshua E. Ruhmeister, M.D., dated July 8 and 11, 2011 regarding her low back condition and an unidentified report dated December 19, 2011.

⁶ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1440.4.a(2), (3) (February 2013).

⁹ *Id.* at Chapter 2.1440.4.b(2) (February 2013).

the right and left upper extremities, with normal strength testing and reflexes, and no marked tenderness found on examination of paraspinal musculature. Dr. Crosby advised that x-rays of the cervical and thoracic spines showed no spondylosis or foraminal canal encroachment. While he advised that appellant sustained cervical and thoracic strains on January 5, 2010, he also indicated that she had had appropriate treatment for the conditions and that they had resolved at the time of his examination on February 27, 2012. Dr. Crosby concluded that no treatment was indicated for her neck and thoracic region and that she had no disability or need for restricted duty as far as the neck or thoracic spine were concerned.

Dr. Vu merely indicated that appellant had myalgia/myositis and diffuse body muscle pain but did not relate these conditions to the January 5, 2010 employment injury. 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

Dr. Rumana indicated on September 4, 2012 that appellant complained of neck and right arm pain, low back and leg pain, reported that she had a slip and fall at work in 2010. He performed physical examination, diagnosed thoracic myofascitis/sprain and neck pain, and indicated that appellant could be having myofascial neck pain or right cervical radiculopathy. Dr. Rumana, however, did not discuss whether appellant was disabled due to the diagnosed thoracic and neck pain. His opinion is therefore not probative on the issue of whether appellant would be entitled to wage-loss compensation due to the accepted neck and thoracic strains. As Dr. Crosby provided a comprehensive opinion in which he explained his conclusion that appellant had no residuals of neck and thoracic strains at the time of his examination, OWCP met its burden of proof to terminate appellant's wage-loss compensation effective February 27, 2012.

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, regarding this aspect of her case.

The Board, however, finds that OWCP did not meet its burden of proof to terminate medical benefits because a pretermination notice was required. The only compensation she claimed was for 37.25 hours of intermittent wage loss for the period February 23 through April 23, 2010, for medical and therapy visits. A pretermination notice was required prior to terminating her medical benefits. In the March 28, 2013 decision, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 27, 2012, based on the February 27, 2012 opinion of Dr. Crosby, the referral physician, who advised that day that appellant's neck and thoracic strains had resolved. It did not discuss the medical evidence submitted by appellant on December 17, 2012 that included Dr. Rumana's September 4, 2012 report. Dr. Rumana indicated that appellant had residuals of a thoracic sprain.

OWCP procedures clearly indicate that a notice is required if medical benefits are terminated based upon the opinion of a second opinion or referee examiner, as opposed to the treating physician.¹¹ OWCP therefore did not meet its burden of proof to terminate appellant's medical benefits, and the termination of medical benefits is reversed.

¹⁰ *Willie M. Miller*, 53 ECAB 697 (2002).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4.b(2) (February 2013).

As to appellant's assertion on appeal that she was treated in an unethical manner by OWCP personnel, while OWCP erred in denying her claim in its May 11, 2012 decision, it thereafter accepted her claim on January 22, 2013.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation effective February 27, 2012 and that OWCP did not meet its burden of proof to terminate appellant's medical benefits that day because a notice of proposed termination was required.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: August 4, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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