

FACTUAL HISTORY

On September 13, 2011 appellant, then a 67-year-old clerk, sustained a right ankle, back, left hip, hand and neck injury when his right foot caught on a safety bar causing him to fall on the concrete floor.

By decision dated December 22, 2011, OWCP accepted the claim for lumbar strain and left hip strain. Appellant stopped work following his injury and received wage-loss compensation.

Appellant initially sought treatment with Dr. David Weisband, a Doctor of Osteopathic Medicine. In medical reports dated November 15 and 29, 2011, Dr. Weisband reported that appellant was evaluated for injuries sustained on September 13, 2011 when he tripped and fell at work. Upon physical examination and review of x-rays, he diagnosed lumbar strain and sprain with myofascitis with right lumbar radiculopathy. Dr. Weisband noted that appellant's symptoms were out of proportion for the type of injury he sustained. He recommended a magnetic resonance imaging (MRI) scan of the lumbar spine noting possible aggravation of preexisting herniated lumbar disc. Appellant was deemed unfit for duty.

Appellant sought treatment with Dr. David Hassman, Board-certified in osteopathic manipulative medicine. In a January 24, 2012 report, he noted that appellant complained of neck, back, bilateral hand, left hip and right ankle pain. Dr. Hassman noted that the initial diagnosis was acute strain and sprain of the lumbosacral spine and strain and sprain of the left hip. Appellant continued to be symptomatic despite physical therapy and experienced an increase in his symptoms. Dr. Hassman recommended an MRI scan of the lumbar spine to rule out herniated nucleus pulposi. Upon physical examination, he diagnosed acute strain and sprain of the cervical and lumbosacral spine, paravertebral muscular spasm, strain and sprain of the left hip and strain and sprain of the right ankle. Based on appellant's history and physical examination, Dr. Hassman opined within a reasonable degree of medical certainty that the injuries set forth in his diagnoses were directly related to the accident that occurred on September 13, 2011. He concluded that appellant experienced persistent and increasing symptoms which significantly restricted his ability to perform many of his daily life activities and would require additional treatment.

Dr. Hassman referred appellant to Dr. Laura E. Ross, a Board-certified orthopedic surgeon. In a January 27, 2012 report, Dr. Ross noted that appellant fell at work on September 13, 2011 and twisted his ankle and body. Appellant stated that he hit his left hip and lower back on the floor, causing discomfort in his neck. Dr. Ross reviewed x-rays and found no evidence of fractures. Upon physical examination, she diagnosed lumbar sprain/strain, bilateral hip sprains, left trochanteric bursitis, right sartorius sprain, bilateral hand contusions and right ankle swelling and probable sprain. Dr. Ross stated that appellant could not return to work and recommended an MRI scan of the lumbar spine.

In a February 7, 2012 diagnostic report, Dr. Andrew H. Shaer, a Board-certified diagnostic radiologist, reported that an MRI scan of the lumbar spine revealed grade 1 spondylolisthesis at L4-5, multiple annular bulges, protruding disc herniations at L4-5 and L5-S1

and abnormal signal intensity within the right posterior paraspinal musculature. He stated that x-rays of the right and left hand revealed degenerative changes.

In a February 8, 2012 diagnostic report, Dr. Sachin Dheer, a Board-certified diagnostic radiologist, reported that an MRI scan of the right and left hip revealed labral degeneration in both hips and no evidence of acute abnormality.

On March 30, 2012 OWCP referred appellant, the case record, a statement of accepted facts (SOAF) and a series of questions to Dr. Stanley R. Askin, a Board-certified orthopedic surgeon, for a second opinion examination.

In a March 30, 2012 report, Dr. Askin reviewed the SOAF and medical record. He summarized the diagnostic reports and made findings on physical examination. Dr. Askin noted that on September 13, 2011 appellant caught his right foot on a safety bar and tripped on the floor. The claim was accepted for a lumbar strain and left hip strain which he found had completely resolved over one-half years. Dr. Askin noted no documentation of any fracture, dislocation, or other significant musculoskeletal disruption. There were no objective findings on examination referable to the reported occurrence. Dr. Askin stated that appellant had age-appropriate imperfections documented by imaging. He further found evidence of chronic venous insufficiency of his right lower extremity but noted that this condition predated appellant's injury. Dr. Askin found that appellant did not have any residuals of the injury and no other diagnoses need be considered. He found no clinical evidence of a continuing disability referable to the reported injury and opined that appellant could return to full-duty work. Dr. Askin further noted that there was no need for continued medical treatment or diagnostic testing as the condition healed with the passage of time. He concluded that a half year was sufficient to heal appellant's condition and that his other diagnoses were age-related imperfections.

Appellant submitted an April 20, 2012 report from Dr. Ross who diagnosed lumbar disc pathology with bilateral hip pain, bilateral hand contusions and sprains, right ankle sprain and right lower extremity radiculitis. Dr. Ross recommended an electromyogram (EMG) nerve conduction study of the lower extremities.

On May 24, 2012 OWCP notified appellant of a proposal to terminate his compensation benefits based on Dr. Askin's opinion that he had no residuals or disability related to the September 13, 2011 employment injury. Appellant was provided 30 days to submit additional information.

By letters dated June 8 and 27, 2012, counsel for appellant argued that the reports of Dr. Hassman and Dr. Ross established that appellant remained disabled from his work injury. Counsel argued that Dr. Askin's report created a conflict of medical evidence and that the matter should be referred to an impartial medical specialist.

By decision dated July 9, 2012, OWCP terminated appellant's compensation benefits effective that same date on the grounds that the weight of the medical evidence rested with Dr. Askin who found that appellant did not continue to experience residuals of his work-related injury.

By letter dated July 18, 2012, appellant, through counsel, requested an oral hearing before the Branch of Hearings and Review.

Medical reports dated February 24 to October 12, 2012 were submitted from Dr. Ross. On August 17, 2012 she indicated that appellant underwent an EMG and nerve conduction study of the lower extremities which revealed right L4 and L5 radiculopathies. On September 22, 2012 Dr. Ross reviewed and summarized the diagnostic test results, provided a history of the September 13, 2011 work injury and stated detailed findings regarding each of appellant's office visits beginning in January 2012. Upon physical examination, she diagnosed an L4-5 and L5-S1 disc herniations with L4-5 grade 1 spondylolisthesis, right lower extremity radiculopathy in L4 and L5 distributions, right ankle sprain and bilateral hand contusions. Dr. Ross reviewed Dr. Askin's March 30, 2012 report and disagreed with his findings. Dr. Askin asserted that appellant's condition had totally resolved and there was no documentation of any musculoskeletal disruption. Dr. Ross advised that appellant still suffered from neck, back and right ankle pain related to his injured areas. She also noted that Dr. Askin incorrectly reported no objective evidence referable to the reported occurrence. However, L4-5 and L5-S1 disc herniations, in addition to right L4 and L5 radiculopathies, were found on objective medical testing on the back and leg. Dr. Ross noted that, while physical examinations may differ, the objective evidence was irrefutable. She opined that appellant's injuries were sustained as a direct result of the accident that occurred on September 13, 2011. Dr. Ross concluded that appellant still suffered from these injuries, required further medical treatment and could not return to work.

A hearing was held on November 29, 2012. Appellant testified regarding his postal career and job duties, noting that he had no back or hip conditions prior to working for the postal service.

By decision dated March 13, 2013, OWCP affirmed the July 9, 2012 decision terminating medical and compensation benefits.

LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁴ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition

² *Bernadine P. Taylor*, 54 ECAB 342 (2003).

³ *Id.*

⁴ *Roger G. Payne*, 55 ECAB 535 (2004).

which require further medical treatment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁷ In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁸

ANALYSIS

OWCP accepted that appellant sustained a lumbar strain and left hip strain as a result of the September 13, 2011 work-related injury. The issue is whether it properly terminated his medical and wage-loss compensation benefits, effective July 9, 2012, as he no longer had any residuals of the September 13, 2011 injury. The Board finds that OWCP failed to meet its burden of proof to terminate appellant's medical and wage-loss compensation benefits effective July 9, 2012. A conflict exists in the medical opinion evidence as to whether appellant's accepted conditions have resolved, and whether appellant has other lumbar spine conditions causally related to the accepted injury.

Appellant submitted reports following his injury from Dr. Weisband, Dr. Hassman and Dr. Ross, his treating physicians. Dr. Hassman and Dr. Ross opined that appellant continued to have residuals of the accepted injury and was disabled as a result of the September 13, 2011 employment incident.

On March 30, 2012 OWCP obtained a second opinion from Dr. Askin, a Board-certified orthopedic surgeon, who opined that appellant no longer had injury-related residuals and could perform regular full-time duty. Dr. Askin stated that appellant's lumbar strain and left hip strain had completely resolved over the passage of time. He noted no objective findings referable to the reported occurrence and stated that appellant had age-appropriate imperfections documented by imaging. When asked by OWCP about appellant's other diagnosed conditions and how they related to the accepted employment-related conditions, Dr. Askin responded, "Regarding other diagnosis, it is possible to make an inventory of imperfections to which we are all prone as we age such, however, would be of solely academic interest." Dr. Askin went on to state that appellant did not have any lingering effects of the reported occurrence and no other diagnoses need be considered.

⁵ *Pamela K. Guesford*, 53 ECAB 726 (2002).

⁶ *T.P.*, 58 ECAB 524 (2007); *Furman G. Peake*, 41 ECAB 351 (1975).

⁷ 5 U.S.C. § 8123(a).

⁸ *Nathan L. Harrell*, 41 ECAB 402 (1990).

The Board also notes that Dr. Hassman's January 24, 2012 report diagnosed acute strain and sprain of the cervical and lumbosacral spine, paravertebral muscular spasm, strain and sprain of the left hip and strain and sprain of the right ankle. Dr. Hassman opined that within a reasonable degree of medical certainty that the injuries set forth in his diagnoses were directly related to the accident that occurred on September 13, 2011. Dr. Ross found L4-5 and L5-S1 disc herniations and right L4 and L5 radiculopathies based on objective medical testing on the back and leg. She opined that appellant's injuries were sustained as a direct result of the accident that occurred on September 13, 2011. Dr. Askin opined that appellant's lumbar strain and left hip strain had completely resolved through the passage of time from over a year and a half ago, noting no objective evidence. He concluded that appellant could return to full duty and no longer needed medical treatment.

The Board finds that the opinions of Dr. Ross and Dr. Hassman are of equal weight to the opinion of Dr. Askin. The physicians reached an opposite conclusion regarding whether the accepted lumbar strain and hip strain had ceased without residuals, thereby creating a conflict of medical opinion. When there is a conflict of opinion between the claimants attending physician and the physician performing an examination for the government, OWCP shall appoint a third physician to resolve the disagreement.⁹ As there exists an unresolved conflict in the medical evidence, OWCP did not meet its burden of proof to terminate his compensation benefits.¹⁰ The termination decision will be reversed.¹¹

CONCLUSION

The Board finds that OWCP improperly terminated appellant's medical and wage-loss compensation benefits effective July 9, 2012 as there was an outstanding conflict of medical opinion.

⁹ 5 U.S.C. § 8123(a).

¹⁰ *J.K.*, Docket No. 13-327 (issued August 7, 2013).

¹¹ *D.H.*, Docket No. 12-1975 (issued June 5, 2013).

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2013 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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