

involved in a motor vehicle accident (MVA) when the front of her long life vehicle hit a vehicle on the right hand side, while delivering mail. By decisions dated January 18 and April 9, 2012, OWCP accepted her claim for right contusion of the knee and lower leg, sprain of back thoracic region, sprain of back lumbar region and sprain of neck.

Appellant sought treatment with her treating physician, Dr. Brad Prybis, a Board-certified orthopedic surgeon. By letter dated September 19, 2012, OWCP provided him with questions regarding her injury and requested an updated report regarding her continued treatment. It noted that it had been 10 months since the injury and strains typically resolved within 6 to 8 weeks. No response was received from Dr. Prybis but progress notes were provided from nurse practitioners and physician's assistants *via* his office.

On October 29, 2012 OWCP referred appellant, the case record and a series of questions to Dr. Alexander Doman, a Board-certified orthopedic surgeon, for a second opinion examination.

In a December 10, 2012 report, Dr. Doman reviewed the statement of accepted facts (SOAF) and medical record. He noted that appellant was in an MVA on November 28, 2011 and also had a history of a 2009 work-related MVA. Dr. Doman reported that she complained of continued neck and low back pain. X-rays of the lumbar and cervical spine were taken, as well as nerve conduction studies of the upper right extremity. Diagnostic testing revealed cervical and lumbar degenerative disc disease. Dr. Doman stated that the thoracic sprain had resolved and that appellant had subjective complaints of cervical and lumbar pain consistent with a condition of degenerative disc disease of the cervical and lumbar spine. He reported that appellant no longer suffered from a strain of the cervical, thoracic and lumbar areas. Dr. Doman further stated that the degenerative disc disease developed over many years and was not related to the November 28, 2011 MVA. He concluded that appellant's mild degenerative disc disease of the cervical spine may have been aggravated by the MVA but was temporary in nature and would have ceased within three months.

On December 17, 2012 OWCP notified appellant of a proposal to terminate her compensation benefits based on Dr. Doman's opinion that she was not experiencing any residuals or disability connected to her November 28, 2011 employment injury as her conditions had ceased. It further noted that her current diagnosis of degenerative disc disease was not related to her November 28, 2011 injury. Appellant was provided 30 days to submit additional information.

Medical reports were submitted dated September 17, 2012 to May 9, 2013 from Dr. Prybis. In a November 9, 2012 medical report, Dr. Prybis reported that appellant's current diagnosis was cervical spondylotic pain, myofasciitis and radiculitis with objective findings. He reported that her current symptoms were related to the November 28, 2011 injury because she did not experience these symptoms prior to her injury. Dr. Prybis further noted that appellant's acute strain had resolved but she continued to have chronic myofasciitis involving the cervicothoracic region. In a February 6, 2013 report, he reported that her cervical strain and disc degeneration with neck and shoulder pain were due to cervical radiculitis. In a May 1, 2013 medical report, Dr. Prybis provided a diagnosis of cervical sprain, cervical radiculopathy,

cervical intervertebral disc degeneration, lumbar strain and lumbosacral spondylosis. He noted that appellant's symptoms were aggravated with lifting, twisting, sitting and neck movements.

In medical reports dated January 21 through May 8, 2013, Dr. Carlos Pulido, a Board-certified anesthesiologist, reported that appellant complained of pain beginning in 2011. Upon physical examination and review of diagnostic testing, he diagnosed cervical disc degeneration, cervical spondylosis without myelopathy, cervical facet arthropathy cervical radiculopathy and headache syndrome. Appellant was treated with steroid injections.

OWCP referred appellant, a SOAF, the case file, a medical conflict statement and a series of questions to Dr. Howard Krone, a Board-certified orthopedic surgeon, for an impartial referee medical examination to resolve the conflict between Dr. Prybis and Dr. Doman regarding whether appellant's accepted conditions had resolved.

In his April 10, 2013 medical report, Dr. Krone provided a summary of appellant's past medical reports, reviewed previously taken diagnostic studies and provided findings on physical examination. He noted that she was involved in an MVA on November 28, 2011 when she T-boned another vehicle. Appellant struck her right knee at the time and complained of pain in her neck, thoracic and lower back regions. She had a prior work-related MVA in 2009 for which she had mild low back pain and responded well to physical therapy. Dr. Krone noted that examination of the knees and neurologic examination of the left upper and lower extremities was normal. He noted preexisting degenerative osteoarthritic changes of the cervical spine, primarily at C6-7 and of the lumbar spine at L5-S1, which predated her work-related accident. Dr. Krone agreed with the opinion of Dr. Doman and found no objective findings of any disability related to the November 28, 2011 MVA. He opined that appellant did not continue to suffer from a strain to the cervical, thoracic or lumbar spine and that her symptoms should have resolved with treatment after 6 to 8 weeks. Dr. Krone further concluded that the November 28, 2011 incident did not aggravate the preexisting degenerative disc disease at C6-7.

In a June 11, 2013 diagnostic report, Dr. Darin Brummett, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of the cervical spine revealed small disc bulge osteophyte complexes C3-4, C4-5, C5-6 and C6-7, mild canal narrowing at C6-7, mild left C5-6 neural foraminal stenosis and mild right and moderate left C6-7 neural foraminal stenosis.

By decision dated June 19, 2013, OWCP terminated appellant's compensation benefits effective June 29, 2013 on the grounds that the weight of the medical evidence rested with Dr. Krone who found that she did not continue to experience residuals of her work-related injury. It noted that her current conditions were preexisting and not related to the November 28, 2011 work injury.

Appellant requested reconsideration of OWCP decision on July 29, 2013. In support of her request, she submitted a November 29, 2011 police accident report, third-party letters concerning her accident dated January 6, 2012 through February 8, 2013 and a July 30, 2013 report from Dr. Prybis.

In the July 30, 2013 report, Dr. Prybis reported that appellant's current condition was right C7 radiculopathy and that her current symptoms and condition were related to the November 28, 2011 work injury. He noted that she had this condition since November 28, 2011 with no preexisting symptoms of radiculopathy including no pain, numbness or weakness in her neck or arm. Dr. Prybis stated that appellant had stenosis which was degenerative at C6-7. Despite her degenerative MRI scan findings, appellant had no symptoms prior to her injury and continued to experience pain, numbness and weakness in the neck and arm and right C7 radiculopathy. Dr. Prybis concluded that her current conditions and symptoms were secondary to the November 28, 2011 work injury.

By decision dated August 14, 2013, OWCP affirmed the June 19, 2013 decision terminating compensation benefits. It noted that the weight of the medical evidence rested with Dr. Krone's report which had established that the injury and related residuals had resolved.²

LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ 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.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁵ 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.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

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.⁸ 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

² The Board notes that OWCP initially issued a decision affirming the June 19, 2013 decision terminating benefits on August 9, 2013. Because Dr. Prybis' July 30, 2013 report was not reviewed in the August 9, 2013 decision, OWCP reissued a decision on August 14, 2013 affirming the June 19, 2013 decision after review of the medical report.

³ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁴ *Id.*

⁵ *Roger G. Payne*, 55 ECAB 535 (2004).

⁶ *Pamela K. Guesford*, 53 ECAB 726 (2002).

⁷ *T.P.*, 58 ECAB 524 (2007); *Furman G. Peake*, 41 ECAB 351 (1975).

⁸ 5 U.S.C. § 8123(a).

sufficiently well rationalized and based on a proper factual background, must be given special weight.⁹

ANALYSIS

OWCP accepted that appellant sustained a right knee and leg contusion, thoracic back sprain, lumbar back sprain and neck sprain as a result of the November 28, 2011 work-related injury. The issue is whether it properly terminated her medical benefits effective June 29, 2013, as she was not experiencing any residuals or disability of the November 28, 2011 injury. The Board finds that OWCP properly terminated appellant's compensation benefits.

In a December 10, 2012 report, Dr. Doman, an OWCP second opinion physician, reported that x-rays of the cervical and lumbar spine revealed cervical and lumbar degenerative disc disease. He stated that appellant no longer suffered from a strain of the cervical, thoracic and lumbar areas and noted that her degenerative disc disease developed over many years and was not related to the November 28, 2011 MVA. Dr. Doman further stated that her mild degenerative disc disease of the cervical spine may have been aggravated by the MVA but was temporary in nature and would have ceased within three months.

In medical reports dated September 17, 2012 to May 9, 2013, Dr. Prybis disagreed with Dr. Doman's findings. He diagnosed appellant with cervical spondylotic pain, myofasciitis and radiculitis. Dr. Prybis noted that her current symptoms were related to the November 28, 2011 injury because she did not experience these symptoms prior to the work injury. He further noted that appellant's acute strain had resolved but she continued to have chronic myofasciitis involving the cervicothoracic region. Dr. Prybis reported that her cervical strain and disc degeneration with neck and shoulder pain were due to cervical radiculitis. In a May 1, 2013 medical report, he provided a diagnosis of cervical sprain, cervical radiculopathy, cervical intervertebral disc degeneration, lumbar strain and lumbosacral spondylosis. Dr. Prybis noted that appellant's symptoms were aggravated with lifting, twisting, sitting and neck movements.

OWCP found a conflict of medical opinion evidence between Dr. Doman, the second opinion physician, and Dr. Prybis, appellant's treating physician, regarding whether her accepted conditions had resolved. It referred appellant to Dr. Krone for an impartial medical examination to resolve the conflict, pursuant to 5 U.S.C. § 8123(a).

In his April 10, 2013 medical report, Dr. Krone noted a history of a 2009 work-related MVA. Following her November 28, 2011 work-related MVA, appellant complained of neck, thoracic and lower back pain. Dr. Krone noted that examination of the knees and neurologic examination of the left upper and lower extremities revealed normal. Upon review of diagnostic testing, he noted preexisting degenerative osteoarthritic changes of the cervical spine, primarily at C6-7 and of the lumbar spine at L5-S1, which predated appellant's work-related accident. Dr. Krone agreed with the opinion of Dr. Doman and found no objective findings of any disability related to the November 28, 2011 MVA. He opined that appellant did not continue to suffer from a strain to the cervical, thoracic or lumbar spine and that her symptoms should have resolved with treatment after six to eight weeks. Dr. Krone further concluded that the

⁹ *Nathan L. Harrell*, 41 ECAB 402 (1990).

November 28, 2011 incident did not aggravate the preexisting degenerative disc disease at C6-7. His opinion is sufficient to resolve the question of whether appellant continued to suffer from any residuals or disability causally related to her accepted November 28, 2011 injury.

The Board finds that, under the circumstances of this case, the opinion of Dr. Krone is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related conditions have ceased. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.¹⁰

The Board has carefully reviewed the opinion of Dr. Krone and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue in the present case. Dr. Krone reviewed the SOAF and provided detailed findings regarding appellant's prior medical treatment and test results.¹¹ He related his comprehensive examination findings in support of his opinions. Moreover, Dr. Krone found no objective basis for residuals from the condition of neck, thoracic and lumbar sprain. These findings were substantiated by Dr. Doman's report who noted subjective complaints of cervical and lumbar pain consistent with a condition of degenerative disc disease of the cervical and lumbar spine. As there were no objective findings related to appellant's neck, thoracic and lumbar sprain, Dr. Krone opined that her disability had ceased and that her preexisting degenerative osteoarthritic changes of the cervical and lumbar spine predated her work-related accident and were not aggravated as a result of the November 28, 2011 work injury. He provided medical rationale for his opinion by explaining that appellant's neck, thoracic and lumbar sprain would have ceased after 6 to 8 weeks of the November 28, 2011 injury. Dr. Krone provided support for his argument noting that she had a preexisting ongoing medical degenerative process, which was unaltered by the November 28, 2011 injury. His opinion is sufficiently probative, rationalized and based upon a proper factual background.¹² Dr. Krone's report is entitled to special weight as the impartial medical examiner and establishes that appellant is not entitled to continued benefits.

Subsequent to Dr. Krone's report, appellant submitted a July 30, 2013 medical report from Dr. Prybis, who argued that her current condition of right C7 radiculopathy and symptoms were related to the November 28, 2011 work injury. Dr. Prybis stated that she suffered from stenosis which was degenerative at C6-7. Despite her degenerative MRI scan findings, appellant had no symptoms prior to her injury and continued to experience pain, numbness and weakness in the neck and arm and right C7 radiculopathy. Dr. Prybis concluded that her current conditions and symptoms were secondary to the November 28, 2011 work injury.

The Board notes that Dr. Prybis' medical report was almost identical to his prior reports. While Dr. Prybis argued that appellant's right C7 radiculopathy was related to her work injury, he failed to provide a rationalized opinion that she remained disabled as a result of her accepted

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000). See 5 U.S.C. § 8123(a).

¹¹ See *Melvina Jackson*, 38 ECAB 443 (1987).

¹² *L.S.*, Docket No. 13-716 (issued June 4, 2013).

neck, lumbar or thoracic sprain.¹³ Though he generally supported that her continued symptoms were a result of the November 28, 2011 injury, his opinion on causal relationship was conclusory without any additional explanation as to how the conditions caused disability or remained symptomatic.¹⁴ Dr. Prybis only generally stated that appellant's condition was caused by her work injury because she did not have symptoms prior to November 28, 2011. This opinion is vague and speculative and fails to properly address the cause of her condition. Dr. Prybis briefly noted appellant's preexisting degenerative condition and failed to address its relation to her current complaints and symptoms. Moreover, he was on one side of the conflict that gave rise to the referral to Dr. Krone.¹⁵ Dr. Prybis' reports are insufficient to overcome the opinion of Dr. Krone or to create a new medical conflict.¹⁶

Thus, the Board finds that Dr. Krone's opinion constitutes the weight of the medical evidence. There is no other medical evidence contemporaneous with the termination of appellant's benefits which supports that she has any continuing residuals or disability related to her accepted work-related injuries.¹⁷ Thus, OWCP properly terminated her compensation benefits.¹⁸

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective June 29, 2013.

¹³ *J.H.*, Docket No. 12-1848 (issued May 15, 2013).

¹⁴ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁵ *C.B.*, Docket No. 12-1572 (issued February 21, 2013).

¹⁶ See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Hoover's report did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

¹⁷ *D.R.*, Docket No. 12-1697 (issued January 29, 2013).

¹⁸ *D.M.*, Docket No. 11-386 (issued February 2, 2012); *Marshall E. White*, 33 ECAB 1666 (1982).

ORDER

IT IS HEREBY ORDERED THAT the August 14 and June 19, 2013 decisions of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board