



lumbar sprain and right shoulder sprain and paid appropriate benefits. The record reflects under claim number xxxxxx290, that it accepted a lumbar sprain, a thoracic sprain, a cervical sprain and a right shoulder sprain for an August 6, 2006 work injury.

Appellant stopped work on June 13, 2010 and returned in a limited-duty capacity on June 21, 2010. She stopped work on July 5, 2010 and claimed a recurrence of disability. Appellant received continuation of pay and then compensation for wage loss.

Appellant received treatment from Dr. James M. Lee, a Board-certified orthopedic surgeon. In a September 7, 2010 report, Dr. Lee continued to diagnose cervical spasm, lumbosacral sprain and shoulder sprain. He noted that appellant underwent physical therapy for the last six months and has been out of work for at least three months. After reviewing the magnetic resonance imaging (MRI) scan reports and his clinical evaluation, Dr. Lee found that appellant's subjective findings did not correlate with the subjective complaints. He opined that appellant reached maximum medical improvement and that she should return to some type of employment, even if it was just light duty. Dr. Lee also recommended a second opinion examination.

OWCP referred appellant to Dr. Sean Lager, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her employment-related conditions. Appellant's medical record, a list of questions and a statement of accepted facts, which noted the accepted conditions under claim number xxxxxx290, were provided. In an October 6, 2010 report, Dr. Lager noted the history of appellant's work injuries and his review of records for the August 6, 2006 work injury and the current work injury. He set forth examination findings and noted that appellant presented with numerous complaints all stemming from the June 12, 2010 work incident. Dr. Lager noted that, while appellant did have a prior injury, she was asymptomatic immediately prior to the June 12, 2010 event. He stated that appellant consistently demonstrated pain out of proportion to the intensity of the examination and that certain physical examination test which normally elicited pain in certain areas produced pain in alternative areas. Dr. Lager found no focal shoulder pathology and noted that the MRI scan was negative. He noted that it was possible that appellant may have cervicalgia, but it was difficult to understand that based upon her examination. Dr. Lager noted that she demonstrated some difficulty with flexion and extension in her lumbar spine, but her MRI scan was negative. He opined that appellant did not have any disabling residuals of the accepted conditions and there were no other additional injuries. Dr. Lager noted that appellant has numerous complaints but there were no objective findings on examination and he did not believe she should be on disability. He opined that appellant could immediately return to work at the very least in a sedentary job and should be able to move through light duty into full duty. Dr. Lager noted that in the event that appellant does have cervical radiculopathy, an MRI scan of the cervical spine would be helpful. He noted that the 2008 MRI scan indicated discogenic changes at C5-6, which could possibly cause some of her right arm symptoms; however, it did not link to her low back symptoms. Dr. Lager further noted that a work-hardening program and a functional capacities evaluation may also be helpful.

In an October 26, 2010 addendum, Dr. Lager reiterated that appellant's condition has resolved and that she could return to work, at the very least, in a sedentary capacity. He stated that there was no focal shoulder pathology and the MRI scan was negative. Dr. Lager further

noted that when trying to test for acromioclavicular joint pathology, she complained of tricep pain which was completely inconsistent with that type of examination. In a January 19, 2011 addendum, he opined that appellant could return to work full time, full duty, immediately.

By decision dated February 10, 2011, OWCP terminated appellant's claim for wage-loss benefits effective February 10, 2011 as the weight of the medical evidence, as established by Dr. Lager's reports, established that there was no disability due to the work-related conditions of neck sprain and lumbar sprain.<sup>2</sup>

In a March 29, 2011 letter, received by OWCP on April 12, 2011, appellant's attorney requested reconsideration and presented arguments.

In a February 15, 2011 report, Dr. Lee stated that appellant was seen by a second opinion physician who felt the same way he did. Appellant did not have any objective findings to correlate with her subjective complaints. Dr. Lee released her back to light duty on March 1, 2011. In a February 24, 2011 report, he noted that appellant had moderate amount of pain in the neck and shoulder region with new complaints of numbness in the arm. Dr. Lee stated that she had good motor strength in the right shoulder with no pathological reflexes and minimal spasms in the cervical spine. He recommended that she return to work on March 1, 2011.

By decision dated July 8, 2011, OWCP denied modification of the February 10, 2011 decision.

On August 31, 2011 OWCP received a reconsideration request dated August 30, 2011 from appellant's attorney. He argued that Dr. Lager's reports were without rationale and were confusing.

In a June 16, 2011 report, Dr. Ruth Clark, a Board-certified psychiatrist, opined that appellant suffers from severe cervical and lumbar radiculopathy and persistent and chronic neck and back pain with radicular dysphemisms.

In an August 9, 2011 report, Dr. Lee indicated that appellant had weakness on full extension of the arms with lateral extension and a moderate amount of spasm in the thoracic and lumbar spines. He opined that appellant was totally disabled in regards to the cervical and lumbar myeloradiculopathies and referred to Dr. Clark's report. Dr. Lee opined that appellant reached maximum medical benefits and discharged her from his care.

In a November 21, 2011 decision, OWCP denied modification of the February 10, 2011 decision.

On October 2, 2012 OWCP received an October 1, 2012 request for reconsideration from appellant's attorney. In handwritten notes dated June 4, 2012, Dr. Clark stated that appellant

---

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(a) (March 1997). See also *id.* at Chapter 2.1440.6(c) (pretermination notice is not needed to end daily rolls payments if such payments have continued for less than a year). In this case, payments were made on the daily rolls for less than a year from August 26, 2010 through February 4, 2011.

suffers chronic neck and back pain and described her symptoms which included tingling in the hand, bilateral carpal tunnel syndrome, disc herniation of C4-5, pain spasm, hypertension, cervical radiculopathy, lumbar radiculopathy and right shoulder pain. She noted that appellant had difficulty with repetitive motions and recommended a neurological evaluation.

By decision dated December 28, 2012, OWCP denied modification of the prior decision finding that the weight of the medical evidence remained with Dr. Lager's opinion that she no longer has any disability or residuals of her August 12, 2010 work-related conditions.

On April 16, 2013 OWCP received a request for reconsideration from appellant's attorney. In a December 3, 2012 report, Dr. David Weiss, an osteopath, provided objective findings in regards to appellant's cervical spine, lumbar spine, right shoulder, right elbow and right hand. He diagnosed chronic post-traumatic cervical and lumbosacral strain and sprain, herniated nucleus pulposus C5-6 (protruding type), aggravation of preexisting age-related multilevel degenerative disc disease and osteoarthritis of the lumbar spine, chronic post-traumatic rotator cuff tendinopathy of the right shoulder, post-traumatic impingement syndrome to the right shoulder, aggravation of preexisting quiescent age-related joint arthropathy to the right shoulder, chronic post-traumatic medial and lateral epicondylitis of the right elbow and right carpal tunnel syndrome by clinical impression. Dr. Weiss opined that these conditions permanently and totally disable appellant from performing her job as a window distribution clerk.

By decision dated July 2, 2013, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to the claimant. To prevail, the claimant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after the termination of compensation benefits.<sup>3</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for lumbar sprain and right shoulder sprain. It terminated her wage-loss compensation benefits effective February 10, 2011 on the grounds that the accepted employment-related conditions had resolved without residuals based on the opinion of the second opinion examiner, Dr. Lager. The Board's jurisdiction is limited to decisions of OWCP issued no more than 180 days prior to notice of appeal to the Board, therefore the Board does not have jurisdiction to review the February 10, 2011 decision terminating appellant's compensation benefits.<sup>4</sup> The only issue before the Board is whether appellant has established continuing disability after February 10, 2011.

---

<sup>3</sup> *I.J.*, 59 ECAB 408 (2008).

<sup>4</sup> 20 C.F.R. § 501.3(e).

The Board finds that appellant submitted insufficient medical evidence to establish that she continued to be disabled or have residuals of her accepted lumbar sprain and right shoulder sprain conditions, after February 10, 2011.

In his February 15 and 24, 2011 reports, Dr. Lee released appellant to work light duty on March 1, 2011. However, he provided no reasons why she would be delayed in returning to work or only be able to perform light duty given the fact that he previously stated that there were no objective findings to support her subjective complaints. While Dr. Lee subsequently opined that appellant was totally disabled in his August 9, 2011 report due to the cervical and lumbar myeloradiculopathies, his opinion was based solely on Dr. Clark's report and not his own findings and contradicts his previous opinion that there were no objective findings to support appellant's subjective complaints. Additionally, he fails to provide a well-rationalized explanation to establish a spontaneous worsening of the work-related conditions without an intervening injury. Thus, Dr. Lee's reports are of diminished probative value and are insufficient to create a conflict with Dr. Lager's medical opinion.

Both Dr. Weiss, in his December 3, 2012 report, and Dr. Clark, in her June 16, 2011 and June 4, 2012 reports, indicated that appellant suffers from several medical conditions. However, Dr. Clark failed to provide any history of the employment injury and both physicians failed to provide a well-rationalized explanation as to how and whether these conditions, which have not been accepted, are causally related to the June 12, 2010 employment injury.<sup>5</sup> Therefore, their reports are of diminished probative value and are insufficient to cause a conflict with Dr. Lager's medical opinion.

On appeal, counsel contends that the termination decision should be reversed as OWCP failed to combine the current claim with appellant's previous claim under file number xxxxxx290, which was accepted for the same conditions. The issue before the Board however relates only to continuing residuals or disability after February 10, 2011. While counsel also contends that a conflict in medical evidence exists, for the reasons set forth above the opinions of appellant's treating physicians are insufficient to establish a conflict in medical opinion with that of Dr. Lager.

As appellant did not submit other relevant medical evidence, the Board finds that OWCP properly found that appellant failed to submit evidence sufficient to establish continuing disability.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish continuing disability.

---

<sup>5</sup> See *T.M.*, Docket No. 08-975 (issued February 6, 2009) (for conditions not accepted or approved by OWCP as being due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 2, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2014  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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