

**United States Department of Labor
Employees' Compensation Appeals Board**

K.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Bend, WA, Employer**

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**Docket No. 14-275
Issued: June 13, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 20, 2013 appellant filed a timely appeal from the October 8 and November 1, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP), which terminated her compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation; and (2) whether appellant met her burden to establish that she has residuals of the accepted medical condition.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 12, 2011 appellant, a 57-year-old rural carrier associate, sustained a traumatic injury in the performance of duty when she slipped and fell down steps during a residential delivery. OWCP accepted her claim for lumbar strain and right L4 radiculopathy. Appellant received compensation for temporary total disability on the periodic rolls.

Dr. Thomas B. Curtis, the attending Board-certified physiatrist, first saw appellant on November 22, 2011. He noted the history of an acute injury superimposed on chronic low back pain. Dr. Curtis described the mechanism of injury, her complaints and his findings on examination. He diagnosed a new lumbar strain, industrial and objective signs of right L4 radiculopathy.

On January 10, 2012 appellant did not indicate an L4 distribution of pain. Dr. Curtis found that earlier signs of L4 radicular symptoms were subsiding. By January 30, 2012 appellant was reporting that her pain did not radiate into her legs.

On March 28, 2012 Dr. Curtis found that appellant's physical examination showed a possible facet arthralgia or perhaps sacroiliac pain. "There might be stress phenomenon or a crack, possibly herniated disc. Symptoms have earlier behaved like discogenic etiology." Appellant had no objective signs of radiculopathy.

An imaging study on April 25, 2012 showed mild central canal stenosis at L4-5, worse compared to 2005 and multilevel degenerative changes. There was generalized disc bulging at L4-5, as well as ligamentum flavum and facet degenerative joint disease, but no discrete disc herniation or significant foraminal canal narrowing.

On May 17, 2012 Dr. Curtis advised that appellant's radicular pain had resolved. He continued follow up for lumbar degenerative disc disease.

On February 14, 2013 appellant complained that her pain became worse during the prior two months. She had bilateral leg pain that she believed was sciatica. Appellant felt it in the posterior thighs and calves but not in the feet. Straight leg raising was positive bilaterally, although she was vague in her description. Dr. Curtis noted that appellant did not show a clearly delineated radicular distribution.

On February 23, 2013 appellant reported that her pain worsened about one month earlier. It did not radiate into her legs or farther than her buttocks bilaterally. Appellant had no sensation deficits.

On July 16, 2013 appellant indicated pain over the lumbar spine, bilateral gluteal regions and bilateral posterior thighs.

Dr. Aleksander Curcin, a Board-certified orthopedic surgeon and second opinion physician, examined appellant on August 16, 2013. He noted the history of injury. Appellant related that she had a preexisting back injury, and the fall simply worsened her localizing mechanical back pain. She reported that she was 80 percent improved and overall felt good. Appellant had low back pain with prolonged sitting or excessive lifting. She occasionally had

lower extremity symptoms in a nonradicular fashion. Appellant described prolonged driving as an activity that produced some pain radiating into her legs.

Dr. Curcin reviewed appellant's medical record. A chart note from June 18, 2013 indicated that her back pain started in 2004. Appellant had many evaluations and procedures. She was diagnosed with chronic low back pain.

Dr. Curcin related his findings on physical examination, which were objectively normal. Palpation, percussion and axial loading did not produce any of her symptoms. Appellant could touch her toes, giving her 95 degrees of flexion, 20 degrees of extension and 20 degrees of lateral flexion. Extension of the lumbar spine was the most painful plane of motion. Straight leg raising was benign. Motor strength was full. Sensory responses to light touch were intact and symmetrical. Reflexes were 1+ patellar and Achilles bilaterally.

Dr. Curcin diagnosed appellant's current lumbar condition as chronic low back pain. Asked to list all lumbar spine conditions and their diagnostic codes related to the November 12, 2011 fall, he noted that the diagnostic code for the condition related to the November 12, 2011 fall was 847.2, lumbar sprain/strain.

Dr. Curcin found that appellant no longer had residuals of the November 12, 2011 injury, as that injury produced a lumbar sprain/strain and contusion, which would have been expected to resolve in a 10- to 12-week period of time. Appellant had no physical limitations or need for medical treatment resulting from the November 12, 2011 work injury.

In a report dated October 1, 2013, Dr. Curtis noted that appellant had chronic pain. Appellant had lumbar degenerative disc disease with low back pain. Dr. Curtis described her complaints. He acknowledged OWCP's proposal to terminate compensation for the November 12, 2011 work injury. Dr. Curtis stated that he did not have the opportunity to read Dr. Curcin's report. "The first thing I did today was counsel her that her compensation for time loss will end." Appellant indicated that she would like a graduated return to work but was vague in suggesting how it could be done. Dr. Curtis noted that it made sense for her to return to light duty, for which he had submitted numerous activity prescription forms, but appellant advised that the employing establishment would not work with her. He released her to full duty with no lifting over 30 pounds.

In a decision dated October 8, 2013, OWCP terminated appellant's compensation. It found that the weight of the medical evidence, was represented by the opinion of Dr. Curcin and established that she no longer had residuals of her November 12, 2011 injury.

Appellant requested reconsideration. She submitted the October 7, 2013 report of Dr. Curtis who reviewed Dr. Curcin's second opinion evaluation. Dr. Curtis noted that Dr. Curcin prescribed no limitation on lifting, carrying, pushing or pulling and therefore signed a markedly incomplete document. "[Dr. Curcin] was unaware of what he was signing."

Dr. Curtis thought he and Dr. Curcin probably saw things similarly, but there were points of difference. On a more probable than not basis, there had been some progression of degeneration caused by this particular fall "and therefore there are residuals, even if they are difficult objectively to measure." Also, Dr. Curtis believed that appellant's physical condition

had atrophied because she had been unable to return to work predominantly because the employing establishment would not work with her.

Dr. Curtis found that appellant was physically incapable of safely working a mail carrier position, which required lifting and carrying as much as 70 pounds between zero and three hours per day. He explained that he had a markedly different opinion from Dr. Curcin on whether appellant needed medical treatment or rehabilitation.

In a decision dated November 1, 2013, OWCP reviewed the merits of appellant's claim and denied modification of the October 8, 2013 decision. It found that Dr. Curtis noted a multilevel degenerative change with significant loss of anterior vertebral column height at L1-2, but did not discuss the accepted medical conditions. "[Dr. Curtis] has provided no objective findings to support a continuing work-related condition preventing you from performing your position you held at time of injury."

On appeal, appellant contends that she cannot work full unlimited duty. "I still suffer the residuals of my accepted condition which require restrictions."

LEGAL PRECEDENT -- ISSUE 1

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a traumatic injury in the performance of duty when she slipped and fell down some steps on November 12, 2011. It accepted her claim for lumbar strain and right L4 radiculopathy. Appellant had objective signs of the latter when she first saw her physiatrist, Dr. Curtis, on November 22, 2011. By January 2012, she was not indicating an L4 distribution of pain and it was not radiating into her legs. By the end of March 2012, appellant no longer had objective signs of radiculopathy. Dr. Curtis observed on May 17, 2012 that her radicular pain had resolved.

Based on this evidence, the Board finds that OWCP met its burden to terminate compensation for the accepted condition of right L4 radiculopathy. Appellant was no longer showing objective signs of the accepted condition, and the attending physician considered her

² 5 U.S.C. § 8102(a).

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

radicular pain to have resolved. The Board will therefore affirm OWCP's October 8, 2013 decision on the issue of right L4 radiculopathy.

Approximately a year after her radiculopathy subsided, appellant complained of bilateral leg pain in her posterior thighs and calves. Dr. Curtis found that she did not show a clearly delineated radicular distribution of pain. Dr. Curcin, the second opinion orthopedic surgeon, also noted that appellant occasionally had lower extremity symptoms in a nonradicular fashion. Whatever caused these late-appearing complaints, appellant has the burden to establish whether they are causally related to the November 12, 2011 work incident.

As for the accepted condition of lumbar strain, Dr. Curtis reported that appellant's November 12, 2011 work injury was superimposed on preexisting chronic low back pain. He initially diagnosed a new lumbar strain. In March 2012, Dr. Curtis noted that appellant's physical examination showed a possible facet arthralgia or perhaps sacroiliac pain. He considered the possibility of a stress phenomenon or crack, possibly a herniated disc. An imaging study in April 2012 showed mild central canal stenosis at L4-5 and multilevel degenerative changes. Dr. Curtis followed up with appellant for lumbar degenerative disc disease. There was no longer any mention of an injury-related lumbar strain or continuing soft tissue injury.

When appellant saw Dr. Curcin in August 2012, she reported that she was 80 percent improved and felt good. After objectively normal findings on physical examination, it was his opinion that appellant no longer suffered from the November 12, 2011 lumbar strain. Dr. Curcin explained that such a condition would be expected to resolve in 10 to 12 weeks. This is consistent with appellant's medical record and with her most recent physical examination. The Board finds that the weight of the medical evidence rests with Dr. Curcin on the issue of the accepted lumbar strain. The Board finds that OWCP met its burden to justify the termination of compensation for that particular medical condition. Accordingly, the Board will affirm OWCP's October 8, 2013 decision.

When OWCP issued its October 8, 2013 decision terminating appellant's compensation for the accepted medical conditions, there was no conflict between Dr. Curtis and Dr. Curcin. Dr. Curtis had earlier found appellant's radicular pain to have resolved, and he did not state that she continued to suffer from a two-year-old soft tissue injury. The weight of the medical evidence established that the accepted medical conditions had resolved.

LEGAL PRECEDENT -- ISSUE 2

Where OWCP meets its burden to justify the termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.⁵

⁵ *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the evidence,⁶ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁷

It is not sufficient for the claimant to establish merely that she has disability for work. She must establish that her disability is causally related to the accepted employment injury. FECA provides compensation only for as long as there exists a proven physical or related impairment attributable to the injury. The claimant must submit a rationalized medical opinion that supports a causal connection between her current disabling condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury, and must explain from a medical perspective how the current disabling condition is related to the injury.⁸

ANALYSIS -- ISSUE 2

After terminating compensation for the lumbar strain and right L4 radiculopathy appellant sustained on November 12, 2011, OWCP received an October 7, 2013 report from Dr. Curtis who had reviewed Dr. Curcin's evaluation and expressed some points of difference. Dr. Curtis did not conclude that appellant continued to suffer from the accepted medical conditions.

Dr. Curtis believed it was more probable than not that the November 12, 2011 work injury had caused some progression of appellant's degenerative condition: "therefore there are residuals, even if they are difficult objectively to measure." The Board notes that OWCP did not accept appellant's claim for a degenerative condition. Appellant has the burden to establish whether any such condition is causally related to the November 12, 2011 work injury.

Dr. Curtis' opinion is generally supportive of causal relationship, but of diminished probative weight because he did not support his opinion with sound medical reasoning.⁹ He did not point to any evidence in the medical record confirming that the incident had caused a material change in appellant's preexisting condition, and he did not otherwise explain how he came to his conclusion to a reasonable medical certainty. In the absence of convincing medical rationale, the Board finds Dr. Curtis' opinion speculative and insufficient to discharge appellant's burden of proof.¹⁰

⁶ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁹ Medical conclusions unsupported by rationale are of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹⁰ See *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal).

The Board finds that appellant has not met her burden to establish that she continues to suffer residuals of the November 12, 2011 work incident. The Board will therefore affirm OWCP's November 1, 2013 decision.

Appellant argues on appeal that she cannot work full unlimited duty, and that may be so. The question for determination, however, is whether this disability was the result of the November 12, 2011 work injury or the natural progression of her chronic preexisting condition. Appellant asserts that she still suffers residuals of her accepted condition, which require restrictions, but the issue is a medical one that must be addressed with a well-rationalized medical opinion.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation for lumbar strain and right L4 radiculopathy. The Board also finds that appellant has not met her burden to establish that she continues to suffer residuals of her November 12, 2011 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 1 and October 8, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 13, 2014
Washington, DC

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

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

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