United States Department of Labor
Employees' Compensation Appeals Board

S.K., Appellant	)	
and	)	**Docket No. 14-412**
	)	**Issued: June 12, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 16, 2013 appellant, through her attorney, filed a timely appeal from an August 19, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are whether: (1) OWCP met its burden of proof to terminate appellant's compensation benefits for her accepted injury effective May 30, 2012; and (2) appellant established that she had any continuing disability or residuals of her accepted conditions after May 30, 2012.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On September 24, 2011 appellant, then a 59-year-old transitional city carrier, was struck by a motor vehicle as she walked across a street while delivering her mail route. OWCP accepted the claim for contusion of the chest/left rib and bilateral ankle contusions. Appellant stopped work on September 24, 2011.

Appellant was treated by Dr. Ki Y. Park, a Board-certified physiatrist, from October 5, 2011 to January 25, 2012 for injuries to her neck, back and ankle sustained in the September 24, 2011 work-related accident. Dr. Park noted that her condition improved with physical therapy and acupuncture except for her right ankle pain. He noted mild to moderate tenderness of the upper trapezii, left cervical, bilateral lumbosacral paraspinals, left shoulder, right ankle and lower lateral chest wall. Dr. Park diagnosed post-traumatic cervical strain/sprain, bulging discs at C3-4, C4-5, C5-6, radiculopathy; post-traumatic lumbosacral strain, bulging discs at L4-5 and L5-S1, left shoulder pain secondary to strain and tendinopathy of the distal supraspinatus tendon, pain in the right ankle secondary to strain, right ankle peroneal tenosynovitis, Achilles tendinosis and pain in the lower lateral chest wall secondary to contusion and eighth rib fracture.

An October 10, 2011 x-ray of the ribs revealed a fracture of the left eighth rib. An October 10, 2011, magnetic resonance imaging (MRI) scan of the left shoulder revealed mild degenerative disease with hypertrophy of the acromioclavicular (AC) joint with impingement and tendinopathy of the distal supraspinatus tendon. An October 27, 2011 MRI scan of the right ankle revealed moderate talar dome marrow contusion through the neck without fracture, moderate tibiotalar and posterior subtalar joint effusions, mild peroneal tenosynovitis and minimal diffuse Achilles tendinosis. A November 3, 2011 MRI scan of the cervical spine revealed desiccation and central bulges at C3-4, C4-5 and C5-6 with impression on anterior dural sac. A November 10, 2011 lumbosacral spine MRI scan revealed desiccation central bulges and annular tears at L4-5 and L5-S1 discs.

On January 25, 2012 OWCP referred appellant to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a February 8, 2012 report, Dr. Sultan noted the history of injury and listed findings on examination. He observed no antalgia and intact heel to toe standing. Left rib cage examination revealed unimpaired inspiration and expiration maneuvers, anteroposterior and lateral compression test was negative. Bilateral ankle examination revealed no swelling, deformity or discoloration, no pain on palpation, normal range of motion and intact sensory examination. Dr. Sultan opined that the injury to appellant's chest, left ribs and contusion of both ankles was clinically resolved and she did not have any other conditions directly resulting from the work injury of September 24, 2011. He noted that no ongoing medical treatment was necessary for the accepted conditions. Dr. Sultan advised that appellant was able to perform her regular duties as a letter carrier. He opined that her left rib cage and bilateral ankle examination showed that she was at maximum medical improvement from the September 24, 2011 injury and required no additional treatment for her work injury.

On February 6 and 28, 2012 appellant was treated by Dr. Ji Han, a Board-certified anesthesiologist, for the neck, back and left shoulder injuries sustained on September 24, 2011 She reported pain radiating to the right shoulder, knees and right ankle, which limited her daily activities. Upon examination, appellant had normal range of motion of the lumbar and cervical

spine, tenderness and spasm in the paravertebrae and trapezius, normal upper and lower extremity strength, diminished senses at C6 dermatomal distribution and positive straight leg raises. Dr. Han diagnosed cervical and lumbar radiculopathy, cervical and lumbar spondylosis, myalgia and myositis and recommended physical therapy and epidural steroid injections. He noted that appellant had not worked since the accident and was temporarily totally disabled. In procedure notes dated February 15 and March 9, 2012, Dr. Han administered epidural steroid injections and advised that she was totally disabled.

On March 9, 2012 OWCP referred appellant to Dr. Sultan for a supplemental report. It requested that Dr. Sultan reexamine her and address whether she had any cervical or lumbar spine conditions causally related to the September 24, 2011 work injury and whether she was able to resume her regular employment.

In reports dated December 21, 2011 to March 28, 2012, Dr. Park noted a history of injury and advised that appellant's condition improved. He diagnosed post-traumatic cervical strain/sprain, bulging discs at C3-4, C4-5, C5-6 and radiculopathy, post-traumatic lumbosacral strain and bulging discs at L4-5 and L5-S1, left shoulder pain secondary to strain and tendinopathy of the distal supraspinatus tendon, right ankle pain secondary to strain, right ankle peroneal tenosynovitis and Achilles tendinosis, lower lateral chest wall pain secondary to contusion and eighth rib fracture. Appellant also submitted form reports pertaining to epidural steroid injections at C6-7 for neck pain relief.

In his follow-up March 26, 2012 report, Dr. Sultan reevaluating appellant and address her treatment since his prior examination. Left shoulder examination revealed no swelling, deformity or discoloration and no pain over the biceps tendon or AC articulation. There was no deltoid muscle atrophy and impingement test was negative. Range of motion was normal except for limited forward elevation. Bilateral ankle examination showed no swelling, deformity or discoloration or pain on palpation. Appellant had normal range of motion and intact sensation. Cervical spine examination showed good curvature, no paracervical spasm, no trigger points on palpation, normal motion, intact sensation, normal grip strength and symmetrically dull reflexes. Thoracolumbar examination revealed normal lordotic curvature, no active spasm, nontender sacroiliac joints, normal motion, negative straight leg testing bilaterally, intact sensation and equal and symmetrical reflexes without signs of antalgia. The left rib cage had intact inspiration and expiration maneuvers. Anterior, postural and lateral compression tests were negative.

Dr. Sultan stated that his examination of the cervical and thoracolumbar spine did not confirm any causally related orthopedic or neurological impairment or residuals from the injury of September 24, 2011. He advised that the cervical and thoracolumbar spine examination was unremarkable and he was unable to confirm any causal relationship between the spine and the September 24, 2011 accident. Dr. Sultan did not recommend treatment of the cervical or thoracolumbar spine. There was ongoing mild partial left shoulder impairment secondary to low grade motion restriction without impingement or instability. Dr. Sultan noted reviewing the October 10, 2011 left shoulder MRI scan, which revealed mild degenerative disease with hypertrophy of the AC joint and mild impingement and tendinopathy of the distal supraspinatus tendon. He opined that the MRI scan findings coupled with his examination confirmed that appellant's residual left shoulder low grade motion impairment was related to degenerative

changes and not the September 24, 2011 incident. Dr. Sultan opined that appellant reached maximum medical improvement and had no work restrictions.

Appellant submitted an electromyogram (EMG) dated November 16, 2011, which revealed left C5-6 radiculopathy.

On April 11, 2012 OWCP requested clarification from Dr. Sultan, asking that he review the MRI scan reports of the cervical and lumbar spine and the EMG studies to address whether appellant had a shoulder, lumbar or cervical spine condition related to the September 24, 2011 injury. In an April 17, 2012 report, Dr. Sultan noted reviewing MRI scan reports of the left shoulder dated October 10, 2011, the cervical spine dated November 2, 2011, the lumbar spine dated November 10, 2011 as well as a November 16, 2011 EMG. He stated that his orthopedic examination of the cervical and thoracolumbar spine did not confirm any residual functional impairment and that, clinically, there was no correlation between appellant's spinal examination and the described MRI scan readings. Dr. Sultan noted that the left shoulder examination revealed ongoing mild partial left shoulder impairment secondary to low grade motion restriction without any clinical signs of instability or impingement. His examination of appellant did not confirm any clinical correlation between the cervical spine EMG reading of November 16, 2011 and the unremarkable cervical spine examination. Dr. Sultan noted ongoing mild left shoulder impingement but the left shoulder condition did not appear to be severe enough to prevent appellant from working as a letter carrier. He noted that she was at maximum medical improvement and could resume her work as a letter carrier full time without restrictions.

On April 27, 2012 OWCP issued a notice of proposed termination of compensation benefits based on Dr. Sultan's reports.

On May 24, 2012 appellant provided a May 8, 2012 report from Dr. Park, who reviewed Dr. Sultan's report. Dr. Park noted that she complained of pain in her neck, low back, left lateral chest wall, left shoulder and both ankles since her work-related accident on September 24, 2011 which limited her ability to work. All of appellant's injuries were related to her injury of September 24, 2011 and it would be against her recovery process to terminate her treatment as she had begun to respond. Appellant also submitted reports previously of record.

In a decision dated May 30, 2012, OWCP terminated appellant's wage-loss and medical benefits based on Dr. Sultan's reports.

On May 16, 2013 appellant requested reconsideration. She asserted that a conflict of medical opinion arose between Dr. Park and Dr. Sultan as to whether she had residuals of her work injury. In a May 23, 2012 report, Dr. Han noted findings on examination and diagnosed cervical and lumbar radiculopathy, cervical and lumbar spondylosis, myalgia and myositis. He recommended physical therapy and epidural steroid injections. Dr. Han noted that appellant had not worked since her injury and was totally disabled.

In a March 1, 2012 report, Dr. Robert Donadt, a Board-certified orthopedic surgeon, noted that appellant reported being hit by a motor vehicle while working and injuring her left chest, right ankle, neck and left shoulder. He noted findings and diagnosed status post work-related injury, cervical spine sprain, possible radiculopathy, left shoulder sprain, possible rotator

cuff tear, left ankle contusion and left knee sprain and strain with possible meniscus tear. Dr. Donadt recommended arthroscopic surgery for the left shoulder and physical therapy for the cervical spine. An August 14, 2012 right ankle MRI scan revealed peritendinitis of the peroneal tendons and the posterior tibialis, superficial edema subadjacent to the retinacula of these tendons, abnormal osteophytic proliferation of the superior anterior calcaneal process, degenerative changes, osteochondral lesions of the talar dome laterally and medially. The medial lesion appeared unstable with fluid and cortical disruption. A March 5, 2013 right knee MRI scan showed grade 2 signal of the posterior horns of both menisci and prominent osteophyte of the superior patella.

In a June 6, 2013 report, Dr. Jeffrey Passick, a Board-certified orthopedic surgeon, related that appellant reported injuring her right ankle while working in September 2011 when she was struck by a van. He recommended surgery to prevent further deterioration and opined that the proposed surgery was causally related to the workers' compensation injury. Appellant also submitted reports previously of record.

In a decision dated August 19, 2013, OWCP denied modification of the May 30, 2012 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing 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. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[4]

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for work-related contusion of the chest/left rib and bilateral contusion of the ankles. Appellant stopped work on September 24, 2011 and did not return.

OWCP referred appellant to Dr. Sultan for a second opinion. In a February 8, 2012 report, Dr. Sultan provided an extensive review of appellant's medical history and reported his findings. He opined that the injury to her chest, left ribs and contusion of both ankles were clinically resolved and that she had no other conditions resulting from the September 24, 2011 work injury. Dr. Sultan noted that there were no ongoing treatments necessary for the accepted

[2] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[3] *Mary A. Lowe*, 52 ECAB 223 (2001).

[4] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

conditions and that appellant could perform her regular letter carrier duties. OWCP asked him to address the diagnosed lumbar and cervical spine condition and opine as to their relation to the work injury. On March 26, 2012 Dr. Sultan noted reexamining appellant and stated that findings for the left shoulder, bilateral ankles, cervical spine, thoracolumbar spine and left rib cage were unremarkable. He opined that he was unable to confirm any causal relationship between the spine and the September 24, 2011 accident. Dr. Sultan recommended no treatment of the cervical or thoracolumbar spine. Left shoulder examination revealed ongoing mild partial left shoulder impairment secondary to low grade motion restriction without impingement or instability. Dr. Sultan noted reviewing an October 10, 2011 left shoulder MRI scan, which revealed mild degenerative disease and opined that the MRI scan findings coupled with his examination confirmed that appellant's residual left shoulder low grade motion impairment was due to degenerative changes and not the September 24, 2011 injury. He opined that she could return to work without restrictions. OWCP further requested Dr. Sultan to review MRI scan and EMG reports and address whether appellant had any shoulder, lumbar or cervical spine conditions due to the September 24, 2011 injury. In an April 17, 2012 report, Dr. Sultan noted reviewing the diagnostic studies and noted that his examination of the cervical and thoracolumbar spine did not confirm any residual functional impairment and opined that there was no correlation between her unremarkable spinal examination and the test results. He noted that the left shoulder condition did not appear to be severe enough to prevent her from engaging in her work duties as a letter carrier. Dr. Sultan noted that appellant could resume work as a letter carrier without restrictions.

The Board finds that Dr. Sultan's reports represent the weight of the medical evidence and that OWCP properly relied on his report in terminating appellant's compensation benefits on May 30, 2012. Dr. Sultan's opinion is based on proper factual and medical history as he reviewed a statement of accepted facts and her prior medical treatment and test results. He also related that his comprehensive examination findings in support of his opinion that the accepted work-related conditions had resolved and that continuing symptoms were due to a degenerative condition that was not employment related. Dr. Sultan reported no basis on which to find that appellant had any continuing residuals of her accepted contusion of the chest/left rib and bilateral contusion of the ankles. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing residuals of the accepted contusions of the chest/left rib and bilateral contusion of the ankles.

Appellant disagreed with the proposed termination of benefits asserting that she had continued residuals of the work injury. She submitted a May 8, 2012 report from Dr. Park who reviewed Dr. Sultan's report and noted that all of her injuries were related to her September 24, 2011 work injury. Dr. Park opined that terminating benefits would hinder appellant's recovery as she had responded positively to treatment. He noted that she continued to have significant pain in her neck, low back and left shoulder that limits her ability to perform her work duties and would worsen without continued treatment. However, Dr. Park did not provide a sufficient explanation as to how any continuing condition was causally related to the September 24, 2011 work injury, accepted for contusion of the chest/left rib and bilateral contusion of the ankles. His reports are of limited probative value.[5] Dr. Park noted that appellant was involved in a work

[5] *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

accident on September 24, 2011 and injured her neck, back and ankle. He noted examination findings and diagnoses; he addressed conditions not accepted by appellant as causally related to the accepted injury. Dr. Park's reports do not address why any continuing residuals or disability were causally related to the September 24, 2011 accepted injury.[6] Rather, he attributed appellant's pain to cervical and lumbar herniated discs and left shoulder tendinosis, conditions not accepted as work related. Dr. Park did not otherwise provide medical reasoning to explain how the September 24, 2011 work injury contributed to a diagnosed condition.

Appellant submitted reports from Dr. Han dated February 6 and 28, 2012, who treated her for neck, back and left shoulder injuries sustained on September 24, 2011 when she was struck by a motor vehicle. Dr. Han noted positive findings upon examination and diagnosed cervical and lumbar radiculopathy, cervical and lumbar spondylosis, myalgia and myositis. He noted that appellant had not worked since the accident and was temporarily totally disabled. However, the Board notes that none of these reports specifically provide medical reasoning explaining why any continuing residuals or disability, contemporaneous with Dr. Han's reports, were due to the September 24, 2011 employment injury. Rather, Dr. Han appears to attribute appellant's pain to cervical and lumbar injuries, conditions not accepted as work related. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[7]

For these reasons, OWCP met its burden of proof to terminate appellant's benefits.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had continuing disability causally related to her accepted employment injury.[8] To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.[9]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her work-related contusion of the chest/left rib and bilateral contusion of the ankles.

After the termination of benefits on May 30, 2012 appellant submitted a May 23, 2012 report Dr. Han who noted findings and diagnosed cervical and lumbar radiculopathy, cervical and lumbar spondylosis, myalgia and myositis. Dr. Han noted that she had not worked since the

[6] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (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).

[7] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[8] *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

[9] *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

accident and was totally disabled. He did not clearly indicate that appellant had any continuing condition that was causally related to the September 24, 2011 work injury; rather, he attributed her pain to cervical and lumbar radiculopathy and spondylosis, conditions not accepted by OWCP as work related. Dr. Han did not explain the reasons why any particular condition was caused or aggravated by the September 24, 2011 work injury. Thus, his report is not sufficient to meet appellant's burden of proof.

Appellant submitted a March 1, 2012 report from Dr. Donadt, who noted a history of injury and diagnosed status post work-related injury, cervical spine sprain, possible radiculopathy, left shoulder sprain possible rotator cuff tear, left ankle contusion and left knee sprain and strain with possible meniscus tear. In a June 6, 2013 report, Dr. Passick noted treating appellant for a right ankle injury, which occurred on September 2011 when she was struck by a van while at work. He recommended surgery and opined that the proposed surgery was causally related to the workers' compensation injury. However, Drs. Donadt and Passick's reports fail to provide medical reasoning to explain how any continuing residual condition was causally related to the September 24, 2011 work injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[10] Other medical reports, such as reports of diagnostic testing, do not provide an opinion on whether appellant had continuing residuals causally related to the accepted injury. Appellant submitted no other current medical evidence supporting that her work-related conditions had not resolved.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related conditions. Consequently, appellant did not establish that she had any employment-related condition or disability after May 30, 2012.

On appeal, counsel asserts that Dr. Sultan's opinion was insufficient to meet OWCP's burden of proof and that OWCP should have found a conflict in the medical evidence. As explained, Dr. Sultan provided a comprehensive review of appellant's medical status and determined that she no longer had residuals of her accepted conditions. Furthermore, reports from appellant's physicians, as explained, are of limited probative value and insufficient to create a medical conflict.[11] Counsel further asserts that OWCP should have accepted additional conditions as being employment related. However, the Board has no jurisdiction over this matter as OWCP's August 19, 2013 did not address whether appellant had established that additional conditions were causally related to her employment injury.[12]

[10] *See Theron J. Barham*, 34 ECAB 1070 (1983).

[11] *See John D. Jackson*, 55 ECAB 465 (2004) (simple disagreement between two physicians does not establish a conflict; for a medical conflict, the opposing physicians' reports must be of virtually equal weight and rationale).

[12] *See* 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate benefits and that appellant failed to establish continuing disability due to her accepted condition beginning May 30, 2012.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 19, 2013 is affirmed.

Issued: June 12, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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