

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

C.M., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Edison New, Jersey, Employer)

**Docket No. 13-2178
Issued: March 6, 2014**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 30, 2013 appellant, through her attorney, filed a timely appeal from an April 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) that terminated her compensation and medical benefits. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation benefits effective October 19, 2012; and (2) whether appellant met her burden of proof to establish any continuing disability or medical residuals on or after October 19, 2012.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 10, 2011 appellant, then a 24-year-old mail carrier, filed a traumatic injury claim alleging that she developed low back pain that day while lifting a bucket of mail in the performance of duty. OWCP accepted her claim for a lumbar strain on October 28, 2011.

A magnetic resonance imaging scan obtained on November 8, 2011 demonstrated bulging discs at L4-5 and L5-S1.

In a report dated December 5, 2011, appellant's attending physician, Dr. Steven G. Dorsky, a Board-certified orthopedic surgeon, stated that appellant was currently totally disabled and required medication, physical therapy and epidural steroid injections.

Dr. Brett Gerstman, a Board-certified orthopedic surgeon, examined appellant on December 27, 2011. He reported a full range of motion of the lumbar spine, normal motor strength and decreased sensation to light touch along the left L5 dermatome. Dr. Gerstman recommended physical therapy and epidural steroid injections.

On January 2, 2012 Dr. Gerstman diagnosed lumbar radiculopathy. He recommended physical therapy and epidural steroid injections. Dr. Gerstman provided an injection on January 18, 2012. He completed a work restriction on January 23, 2012 and recommended that appellant return to sedentary work with lifting up to 10 pounds and primarily sitting with a small amount of standing and walking. In a note dated January 30, 2012, Dr. Gerstman recommended more advanced diagnostic testing to better evaluate whether she had underlying nerve damage. He stated that appellant could perform light-duty work, if available. On January 31, 2012 Dr. Gerstman advised that she could return to light duty lifting up to 20 pounds. On February 7, 2012 he found that electromyogram and nerve conduction velocity testing demonstrated evidence of an acute left-sided S1 radiculopathy. Dr. Gerstman recommended further steroid injections and medications. On February 17, 2012 he indicated that appellant could return to light work lifting up to 20 pounds as of February 20, 2012. Dr. Gerstman performed L5-S1 and L1-S1 transforaminal epidural steroid injections on February 29, 2012.

OWCP authorized compensation benefits from November 3, 2011 through February 21, 2012.

On March 1, 2012 Dr. Gerstman advised that appellant could return to light-duty work lifting up to 20 pounds for four hours a day, five days a week beginning March 1, 2012.

The employing establishment noted that appellant returned to part-time limited duty on February 22, 2012.

On March 2, 2012 Dr. Gerstman stated that appellant was cleared for part-time light duty. He completed a report on March 8, 2012 and stated that she was experiencing an acute exacerbation of her pain after being required to lift more than 20 pounds.

Dr. Dorsky completed a work restriction evaluation on March 16, 2012. He opined that appellant could return to full duty and that she had reached maximum medical improvement as of that date.

Appellant stopped work on March 16, 2012. In a narrative report dated March 19, 2012, Dr. Dorsky stated that she could return to work on a full and unrestricted basis, but that she had not yet reached maximum medical improvement.

On March 30, 2012 Dr. Gerstman noted that while appellant had returned to full-time work her current work load aggravated her back pain. He recommended additional medication. In a report dated April 10, 2012, Dr. Gerstman noted that appellant reported difficulties with her full-time work and recommended a functional capacity evaluation. He also increased her pain medication. Dr. Gerstman indicated that appellant could work full time without restrictions.

On April 17, 2012 Dr. Gerstman found that appellant could perform full-time work and that she had reached maximum medical improvement. In a report dated April 19, 2012, he noted that she had been misleading him regarding her work capacity. Dr. Gerstman believed that appellant was working since March 16, 2012, but that she confirmed that this was not the case. He stated that she continued to have symptoms secondary to left-sided S1 radiculopathy. Appellant had maximized conservative measures and there was no further treatment Dr. Gerstman could offer her as she was not a surgical candidate. Dr. Gerstman stated that she had reached maximum medical improvement and was cleared to return to work on a full-time basis without restrictions since March 16, 2012.

OWCP proposed to terminate appellant's medical benefits and wage-loss compensation on June 20, 2012. It found that Dr. Gerstman established that appellant's work-related medical condition and disability had ceased. Appellant did not submit any additional medical evidence.

By decision dated October 19, 2012, OWCP terminated appellant's medical and wage-loss benefits effective October 19, 2012.

Counsel requested an oral hearing before an OWCP hearing representative on October 29, 2012. Appellant testified at the oral hearing held on February 6, 2013 that she was unable to return to work due to her back injury.

In a decision dated April 30, 2013, OWCP's hearing representative found that OWCP met its burden of proof to terminate appellant's compensation benefits as of October 19, 2012. Appellant did not submitted sufficient evidence to establish continuing residuals or disability after that day.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify 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 Furthermore, the right to medical benefits for an

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

accepted condition is not limited to the period of entitlement for disability.⁴ 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.⁵

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for a lumbar sprain. Appellant sought medical treatment from Drs. Dorsky and Gerstman. The physicians supported her need for medical treatment and disability for work until April 17, 2012. Dr. Gerstman indicated on that date that appellant could perform full-time work and that there was no further treatment that he could provide her as she was not a surgical candidate. He found that she had reached maximum medical improvement and was cleared to return to work on a full-time basis without restrictions as of March 16, 2012.

There is no medical evidence of record to support appellant's continued medical residuals or disability after April 17, 2012. Appellant's physicians found that she could return to work at full time without restrictions and did not require further medical treatment. The Board finds that based on the medical evidence OWCP met its burden of proof to terminate appellant's compensation and medical benefits effective October 19, 2012.

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 disability causally related to her accepted employment injury.⁶ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ *George Servetas*, 43 ECAB 424, 430 (1992).

⁷ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS -- ISSUE 2

Appellant did not submit any medical opinion evidence after OWCP's October 19, 2012 termination decision which supported her need for further medical treatment or her disability for work on or after October 19, 2012. As she failed to submit the necessary medical opinion evidence, she failed to meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that the record does not establish that appellant has any continuing disability or medical residuals on or after October 19, 2012 causally related to her accepted employment injury. Thus, OWCP properly terminated wage-loss and medical benefits and appellant has failed to establish continuing employment-related disability or residuals.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2013 is affirmed.

Issued: March 6, 2014
Washington, DC

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

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

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