

FACTUAL HISTORY

On April 10, 2001 appellant, then a 47-year-old nurse practitioner, injured her right wrist and arm when she slipped on a wet spot on the floor. She stopped work. OWCP accepted appellant's claim for lumbosacral strain and paid disability compensation.

In an April 13, 2001 report, Dr. Steven D. Knight, a Board-certified family practitioner, stated that appellant slipped and fell on her back at work. He observed tenderness down the L5-S1 area, particularly in the right sacroiliac (SI) joint. Straight leg raise testing was positive on the right at 90 degrees and on the left at about 40 degrees. SI joint testing was negative. Dr. Knight diagnosed low back pain.

In an April 18, 2001 magnetic resonance imaging (MRI) scan report, Dr. P. Reddy Illuri, a radiologist, noted appellant's history of back strain. He found no evidence of herniated or ruptured disc or spinal stenosis. Dr. Illuri reported a normal MRI scan of the lumbar spine.

In a June 15, 2001 report, Dr. Lester Owens, Board-certified in physical medicine and rehabilitation, authorized appellant to return to work with restrictions. On September 4, 2001 appellant returned to limited duty. On December 7, 2001 she was released to full duty.

On February 12, 2003 OWCP combined this case with a traumatic injury claim (File No. xxxxxx734) for a September 12, 2002 back injury under master File No. xxxxxx168. (Appellant's claim was accepted for thoracic strain and disorders of the sacrum. She returned to limited duty. On December 1, 2002 appellant stopped work as the employing establishment could no longer accommodate her work restrictions. She was paid compensation for total disability and placed on the periodic rolls.

On July 15, 2003 appellant was referred to vocational rehabilitation. On October 23, 2006 she began working as a precertification nurse at a hospital. On January 22, 2007 OWCP reduced appellant's wage-loss compensation benefits based on her actual earnings as a precertification nurse under the wage-earning capacity determination she received \$334.54 per week.

In June 8 and July 10, 2012 reports, Dr. Knight related appellant's complaints of back pain radiating down both legs and reviewed her medications. Upon examination of appellant's spine, he observed tenderness over the lumbar and sacral vertebra and SI region. Straight leg raise testing was positive bilaterally at 15 degrees and SI joint testing was positive bilaterally. Dr. Knight also noted decreased range of motion but no swelling. He diagnosed low back pain and tobacco use disorder and recommended a functional capacity evaluation.

In a June 14, 2012 MRI scan report, Dr. Hisham T. Youssef, a Board-certified diagnostic radiologist, observed mild desiccation to the T12-L1 through L4-5 intervertebral discs without disc space narrowing and mild annular disc bulging L5-S1 with minimal annular disc bulging T12-L1 through L4-5. He diagnosed degenerative changes with multilevel disc bulging T12-L1 through L5-S1 resulting in mild circumferential spinal stenosis at the L4-5 level and small left paracentral broad-based disc protrusion at the L5-S1 level negative for nerve root impingement.

On July 2, 2012 appellant stopped work and requested compensation for total disability. On August 2, 2012 she filed a recurrence claim alleging that her original April 10, 2001 injury never resolved and that she continued to receive medical treatment.²

In a July 17, 2012 report, Dr. Franklin Hayward, a neurosurgeon, related appellant's complaints of back, buttock and leg pain. He reviewed her history and noted that she slipped on the floor in April 2001. Dr. Hayward advised that an MRI scan of the lumbar spine revealed degenerative changes with multilevel disc bulge and small left paracentral broad-based disc protrusion. He diagnosed SI joint pain and recommended appellant to a pain management physician to rule out SI joint dysfunction.

In August 13 and October 23, 2012 reports, Dr. Knight related that on April 10, 2001 appellant injured her low back and ruptured both of her SI joints when she slipped and fell on a concrete floor. Since that time, appellant experienced moderate-to-severe low back pain, extreme tenderness over her SI joints, weakness in both her lower extremities, burning sensation in her lower back, some numbness in the right calf area and tingling in both lower extremities. Dr. Knight related his medical treatment of her to the 2001 injury. He stated that appellant's condition was a direct result of her 2001 fall and that her condition was permanent in nature. Dr. Knight opined that she was not physically capable of performing her usual duties and could not be gainfully employed. He advised that appellant was totally disabled as of July 2, 2012 and would continue to suffer from long-term problems with her lower back and SI joints. Appellant submitted additional medical reports from Dr. Knight regarding treatment of her low back and SI joint pain.

By letter dated September 24, 2012, OWCP advised appellant that the evidence received was insufficient to establish her recurrence claim. It requested additional evidence to establish that she stopped work beginning July 2, 2012 as a result of her April 10, 2001 employment injury.

In an October 22, 2012 statement, appellant reported that since her April 10, 2001 injury she had significantly altered her lifestyle by changing her activities in order to tolerate her pain.

On January 3, 2013 OWCP referred appellant, together with a statement of accepted facts and the medical records, to Dr. Deborah St. Clair, a Board-certified orthopedic surgeon, for a second-opinion examination to determine the extent of her residuals and disability due to accepted medical conditions. In a March 26, 2013 report, Dr. St. Clair reviewed appellant's medical history, including the statement of accepted facts and provided an accurate history of the April 10, 2001 and September 12, 2002 employment injuries. She related appellant's complaints of pain in her SI joints and both lower extremities. Upon examination, Dr. St. Clair observed mild paraspinous spasm in the lumbar spine but no superficial tenderness in the lumbosacral gutter. Right hip rotated to 25 degrees and internal rotation was to 45 degrees. Dr. St. Clair noted that appellant was markedly tender over the trochanteric bursa. She reported that straight leg raise testing was difficult to evaluate as appellant complained that her SI joints hurt. Dr. St. Clair stated that appellant's injury was over 10 years old and opined that any sprain or strain was

² As OWCP has not issued a final decision regarding appellant's recurrence claim, the Board will not address this issue at this time. 20 C.F.R. § 501.2(c).

long past resolved since a lumbar or thoracic sprain generally ran its course over a few weeks. She noted that there was no medical way to connect the employment injury to her current symptoms. Dr. St. Clair concluded that appellant was capable of working as a registered nurse with physical restrictions.

OWCP found a conflict in medical opinion between Dr. St. Clair, the second-opinion examiner and Drs. Knight and Hayward, appellant's treating physicians, as to whether she had any continuing residuals or disability due to her accepted employment injuries. It referred appellant with a statement of accepted facts and the medical record, to Dr. Juan A. Carrillo, a Board-certified orthopedist, for an impartial medical examination.

In a July 17, 2013 report, Dr. Carrillo related appellant's complaints of back pain and spasms spreading into both lower extremities and a shorter right leg, which she attributed to an April 10, 2001 fall at work. He reviewed her medical record, which included over 400 pages, and noted that her claims were combined and accepted for lumbosacral strain, thoracic strain, strain of the sacral joint and disorder of sacrum. Upon examination, Dr. Carrillo observed a short limp gait favoring the right lower extremity but found no discrepancy in the length of either lower extremity. He noted that range of motion of both hips was limited in flexion at about 90 degrees mostly due to pain. Dr. Carrillo reported normal deep tendon reflexes at the patellar ankle reflexes and no evidence of decreased sensation in either lower extremity. Examination of appellant's back demonstrated no evidence of any scoliotic curvature of any lordotic or kyphotic curvatures in her spine. Range of motion of the spine was possible to about 30 degrees of flexion, 10 degrees of extension and lateral motion about 20 degrees. Dr. Carrillo opined that her April 2001 and September 2002 work injuries had resolved long ago and were no longer an issue. Based on a review of the record, there was no evidence of any massive injury, such as a subluxation or destruction of the sacroiliac joints, at the time of the April 2001 work incident. Dr. Carrillo stated that there was no evidence that appellant sustained anything more than a strain injury and that her recovery should have extended to just three to six weeks. The degenerative changes noted in the most recent MRI scan were a normal progression of her underlying condition, which was unrelated to the work injuries in question. Based on his examination findings, Dr. Carrillo found no reason why appellant could not continue to work as a nurse without restrictions.

On September 4, 2013 OWCP proposed to terminate appellant's medical and wage-loss compensation benefits finding that the weight of medical evidence established that she no longer had any residuals or disability causally related to her accepted injuries. It determined that the weight of medical evidence rested with Dr. Carrillo's July 17, 2013 impartial medical report. Appellant was advised that she had 30 days to submit additional relevant evidence or argument if she disagreed with the proposed action.

In an August 29, 2013 report, Dr. Fred Klug, Ph.D., a Board-certified clinical psychologist, described appellant's medical conditions and conducted an evaluation. He diagnosed pain disorder associated with psychological factors and a medical condition.

In a September 15, 2013 statement, appellant described her work-related injuries, medical treatment she received, the vocational rehabilitation she underwent and her work history. She noted that Dr. Knight informed her that she was no longer able to continue to work. Appellant

questioned Dr. St. Clair's second-opinion report because she was not provided with all her medical reports. She also questioned how Dr. Carrillo could disagree with 12 years of medical treatment after one assessment. Appellant contended that her medical condition continued to deteriorate over time and that even with the maximum dosage of medication she still had pain which made it more difficult to perform her job.

In a September 18, 2013 report, Dr. Steven D. Knight related appellant's complaints of continued low back pain. Upon examination, he observed back pain and tenderness over the lumbar and sacral vertebra. Dr. Knight noted decreased range of motion and muscle weakness. Straight leg raise testing was positive bilaterally.

By decision dated October 16, 2013, OWCP finalized the termination of appellant's medical and wage-loss compensation benefits effective October 16, 2013. It found that the special weight of medical evidence rested with Dr. Carrillo's impartial report.

LEGAL PRECEDENT

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.³ OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ 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.⁷

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.⁸ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁹ When there exists opposing medical reports of virtually equal weight and rationale and

³ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P.*, *id.*

⁸ 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

⁹ 20 C.F.R. § 10.321.

the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁰

ANALYSIS

OWCP accepted that on April 11, 2001 appellant sustained a lumbar strain in the performance of duty. It subsequently combined this injury with a September 12, 2002 back injury and expanded the claim to include thoracic strain and disorders of the sacrum. Appellant stopped work and received disability compensation. On October 23, 2006 she began work in a private sector job and OWCP reduced her wage-earning capacity accordingly. On July 2, 2012 appellant stopped work again. In a decision dated October 16, 2013, OWCP terminated her compensation benefits based on the July 17, 2013 report of the impartial medical examiner, Dr. Carrillo. The Board finds that it properly terminated appellant's medical and wage-loss compensation benefits effective October 16, 2013 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

OWCP found that a conflict in medical opinion existed between appellant's attending physicians, Drs. Knight and Hayward, who determined that appellant continued to suffer residuals from her work-related injuries and Dr. St. Clair, an OWCP referral physician, who found that appellant was not totally disabled due to her work-related injuries. It referred appellant to Dr. Carrillo to resolve the conflict. In his July 17, 2013 report, Dr. Carrillo provided an accurate history of injury and stated that he reviewed over 400 pages of appellant's medical records. He noted that hospital records from the April 11, 2001 injury indicated that she only sustained a lumbar strain. Upon examination of her back, Dr. Carrillo found no evidence of any scoliotic, lordotic or kyphotic curvatures in appellant's back. Range of motion of the spine was possible to about 30 degrees of flexion, 10 degrees of extension and lateral motion about 20 degrees. Examination of appellant's hip demonstrated normal deep tendon reflexes and no decreased sensation in either lower extremity. Range of motion was limited in flexion at 90 degrees due to pain. Dr. Carrillo opined that appellant's April 2001 and September 2002 work injuries had resolved long ago. He explained that there was no evidence of a massive injury, such as a subluxation or destruction of the SI joints, at the time of the April 2001 work incident. Dr. Carrillo reported that the most recent June 14, 2012 MRI scan demonstrated nothing regarding paraspinal soft tissue injuries. He stated that the degenerative changes of bulging discs and disc protrusions were a normal progression unrelated to appellant's work injury. Dr. Carrillo concluded that she could return to her normal work activities without restriction.

The Board finds that Dr. Carrillo's July 17, 2013 report is sufficiently detailed and well reasoned to constitute the weight of the medical opinion evidence. When there exists 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 sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹ Dr. Carrillo reviewed appellant's history and the statement of accepted facts. He

¹⁰ *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹¹ *Id.*

accurately described the April 11, 2001 employment injury and the subordinate September 12, 2002 injury. Dr. Carrillo conducted an examination and found that the evidence did not establish that appellant continued to suffer residuals or disability from her work-related injuries. The Board finds that his opinion represents the special weight of medical opinion evidence. Accordingly, Dr. Carrillo's opinion is sufficient to justify OWCP's termination of medical and wage-loss compensation benefits for the accepted conditions.

The Board further finds that the medical evidence submitted after Dr. Carrillo's independent medical evaluation report was insufficient to overcome the weight of this report or to create another conflict in medical evidence. In a September 18, 2013 report, Dr. Knight related appellant's complaints of low back pain and provided examination findings of decreased range of motion and tenderness. Because he was on one side of the conflict which Dr. Carrillo resolved this additional report is insufficient to overcome the weight accorded Dr. Carrillo's report as the impartial medical examiner or to create a new conflict.¹²

Appellant also submitted an August 29, 2013 psychological report by Dr. Klug, Board-certified in clinical psychology, noted appellant's medical conditions and diagnosed pain disorder. He does not, however, explain whether appellant's medical conditions were causally related to her accepted employment-related injuries. The Board has held that 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.¹³

On appeal, appellant alleges that her condition is permanent and that it deteriorated over time to the point that she is now 100 percent disabled. The Board has held, however, that to establish a causal relationship between her current condition and the employment injury she must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.¹⁴ An employee's belief of causal relation does not establish the fact of such medical question.¹⁵ The issue of causal relationship is a medical question that must be resolved by probative medical opinion from a physician.¹⁶ As appellant has not submitted such medical evidence in this case, the Board finds that Dr. Carrillo's opinion constitutes the special weight of medical opinion and supports OWCP's decision to terminate her compensation benefits.

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.

¹² *Dorothy Sidwell*, 41 ECAB 857 (1990).

¹³ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁴ *I.J.*, 59 ECAB 408 (2008).

¹⁵ *See Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁶ *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits effective October 16, 2013.

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 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