

May 31, 2012 while in the performance of duty. OWCP accepted the claim for an acute lumbar strain on June 13, 2012. Appellant stopped working and received compensation for wage loss.

The record contains a May 31, 2012 lumbar x-ray report from Dr. Gregory Berberian, a radiologist, stating that no acute fracture or malalignment was seen. By report dated June 21, 2012, attending physician, Dr. Thomas Hicks, Board-certified in family and occupational medicine, noted appellant had a prior history of "back pain/injury/surgery." He diagnosed acute lumbar strain and stated there was "no evidence of disc pathology. Probable muscular etiology."

In a report dated October 23, 2012, Dr. Hicks indicated that appellant continued to report low back pain. He reported that she should remain out of work.

OWCP prepared a statement of accepted facts and referred appellant to Dr. Steven Silver, a Board-certified orthopedic surgeon and second opinion physician. In a report dated November 29, 2012, Dr. Silver provided a history and results on examination. He opined that appellant had sustained a lumbosacral strain and a temporary exacerbation of her mild degenerative disc disease. Dr. Silver further opined:

"It is my opinion that the claimant does not continue to suffer from the residuals of the work-related injury. There is no clinical or radiological evidence to substantiate the basis for [appellant's] difficulties at the present time.

It is my opinion that a period of approximately three months of total disability from the time of [appellant's] initial injury would be termed as reasonable. It is my opinion this would have ceased on or about August 31, 2012.

It is my opinion the claimant is capable of returning to her job as a letter carrier on a gradual basis. I do not feel that she should be returned back to work immediately but should be returned gradually over the course of the next three months."

Dr. Silver stated that he had no further recommendations for treatment and reiterated that appellant did not have residuals of an employment-related condition.

In a letter to Dr. Hicks dated December 18, 2012, OWCP requested that he advise it as to whether he concurred with Dr. Silver. The record indicates that appellant began receiving treatment from a chiropractor, Dr. Leeann Berard, as of January 23, 2013. In a report of that date, Dr. Berard indicated that x-rays had been taken and she diagnosed lumbosacral joint disorder, lumbar disc degeneration, lumbar region sUBLuxation and sacrum/illium sUBLuxation.² A January 28, 2013 report from him indicates appellant complained of right hip pain.

² There is a separate January 23, 2013 report, prepared by a nurse, which contains a history of the May 31, 2012 injury and notes x-rays were taken.

By report dated April 2, 2013, Dr. Silver stated that his recommendation that appellant return to work over a three-month period was a result of her not having worked over a long period of time. He stated that he felt she was probably deconditioned from not working.

In an attending physician's form report (Form CA-20) dated April 24, 2013, Dr. Hicks diagnosed chronic low back pain and chronic pain in the right hip and groin. He checked a box "yes" that the conditions were employment related.

In a report dated April 29, 2013, Dr. Berard indicated that appellant continued to report right sacral and hip pain. She completed an attending physician's report (Form CA-20) dated April 29, 2013, with a history that appellant was rear-ended in a motor vehicle accident. The diagnoses were lumbosacral joint disorder, lumbar intervertebral disc disorder with myelopathy, lumbar disc degeneration and subluxation of the sacrum/illium. Dr. Berard checked a box "yes" the conditions were causally related to employment.

By letter dated June 6, 2013, OWCP advised appellant that it proposed to terminate her compensation for wage-loss and medical benefits based on the reports of Dr. Silver. Appellant was advised to submit evidence or argument within 30 days if she disagreed with the proposed termination.

In a letter dated June 19, 2013, appellant stated that she had not recovered from her work injury and disagreed with Dr. Silver. She stated that she disagreed with the x-rays dated May 31 and August 21, 2012, as these were "horizontal" x-rays and it had been proven that "vertical" x-rays taken while standing are more accurate. Appellant discussed her medical treatment and argued that she did have medical evidence showing a work-related injury/disability. She submitted treatment reports from Dr. Berard through May 31, 2013.

By decision dated July 17, 2013, OWCP terminated compensation for wage-loss and medical benefits effective July 28, 2013. It found the weight of the evidence was represented by Dr. Silver.

Appellant requested a hearing before an OWCP hearing representative, which was held on November 20, 2013. In a statement dated December 6, 2013, she indicated that she remained in constant pain. Appellant submitted reports dated June 26, July 9 and 26, 2013 from Dr. Kenneth Harling, a chiropractor and associate of Dr. Berard, who diagnosed piriformis syndrome. In a brief report dated August 29, 2013, Dr. Sabitha Gopalswamy, an internist, stated that an electromyogram was normal except for mild prolonged reflex on the left suggestive of possible S1 pinched nerve. In a brief report dated November 26, 2013, he stated that appellant was diagnosed with S1 radiculopathy.

By decision dated February 5, 2014, an OWCP hearing representative affirmed the termination of compensation. He found the weight of the evidence was represented by Dr. Silver.

LEGAL PRECEDENT

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ OWCP may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.⁴ The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁵

The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶ Medical rationale is a medically sound explanation for the opinion offered.⁷

ANALYSIS

In the present case, OWCP terminated compensation for wage-loss and medical benefits effective July 28, 2013. The accepted condition was acute lumbar strain. It is OWCP's burden of proof to establish that the accepted condition had resolved. OWCP referred appellant to Dr. Silver for a second opinion examination with respect to a continuing condition or disability causally related to the May 31, 2012 MVA. Dr. Silver provided a complete report that reviewed the history, medical records and provided results on examination. He found that the MVA had resulted in a lumbar strain and temporarily aggravated an underlying lumbar degenerative disc disease. Dr. Silver opined that appellant no longer had residuals of the employment injury and she could return to work at her date-of-injury position. While he initially stated in his November 29, 2012 report that she should return gradually over three months, he explained in his April 2, 2013 that this was a prophylactic measure due to her long absence from work.

The Board finds that Dr. Silver provided an opinion based on a complete background that appellant no longer had any employment-related residuals. As to the reports from attending physicians, none of these reports provide probative medical evidence establishing a continuing employment-related condition. Dr. Hicks provided an opinion in a form report dated April 24, 2013 that chronic low back pain, right hip and groin pain were employment related. These are not accepted conditions and it is appellant's burden of proof to establish any additional

³ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁵ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁶ *Gary R. Sieber*, 46 ECAB 215 (1994).

⁷ See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound and logical).

conditions as employment related.⁸ The checking of a box “yes” is of little probative value on causal relationship without additional explanation.⁹ OWCP had asked Dr. Hicks for a narrative report addressing Dr. Silver’s report, but it does not appear that Dr. Hicks responded. The Board finds that Dr. Hicks’ reports are of diminished probative value on the issue presented.

As to the reports from the chiropractor, Dr. Berard, the Board notes under FECA the term “‘physician’ ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.”¹⁰ OWCP found in its proposed termination letter that Dr. Berard was not a physician because the May 31 and August 21, 2012 x-rays showed no subluxations. The prior x-rays do not preclude a finding that Dr. Berard was a physician. Dr. Berard indicated that x-rays were taken at the time of the January 23, 2013 initial evaluation, and she diagnosed subluxations. The evidence therefore supports a finding that she is a physician under FECA. The Board notes, however, that any opinion relating the subluxations to the MVA would have to discuss the prior x-rays in order to be a rationalized medical opinion based on a complete background. Dr. Berard did not provide a report that included an accurate medical and factual background and a rationalized medical opinion on causal relationship between a subluxation and the employment incident. The April 29, 2013 form report checking a box “yes” is, as noted above, of little probative value. This is particularly true in the present case, which includes a history of prior back problems and x-ray reports that did not show “disc pathology” as noted by Dr. Hicks in his June 21, 2012 report.

Appellant did submit reports from another chiropractor, Dr. Harling, that were dated prior to the termination of benefits on July 28, 2013. The reports diagnosing a piriformis condition are of no probative value since, as noted above, a chiropractor is a physician under FECA only to the extent of diagnosing a subluxation as demonstrated by x-ray.

For the above reasons, the Board finds the weight of the medical evidence was represented by Dr. Silver, who provided a complete, rationalized medical opinion that appellant had no continuing residuals of the May 31, 2012 employment injury. OWCP met its burden of proof in this case.

On appeal, appellant discussed the medical evidence and stated that she still has an employment-related condition and she disagrees with Dr. Silver. The issues on appeal are medical issues that must be resolved by the probative medical evidence. The Board has reviewed the medical evidence of record and finds OWCP met its burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits clearly warranted on the basis of the evidence the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant

⁸ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

¹⁰ 5 U.S.C. § 8101(2).

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.¹¹

ANALYSIS -- ISSUE 2

As the Board has affirmed the July 17, 2013 termination decision, the burden now shifts to appellant to establish an employment-related condition or disability. The reports from Dr. Gopalswamy are very brief and of little probative value. The August 29, 2013 report notes a possible pinched nerve. The November 26, 2013 report simply states that appellant was diagnosed with an S1 radiculopathy. Dr. Gopalswamy does not provide a history, results on examination or a medical opinion supported by sound medical rationale on the issue presented.

The Board accordingly finds that appellant has not established an employment-related disability after July 28, 2013. 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 OWCP met its burden of proof to terminate compensation effective July 28, 2013. Appellant did not establish a continuing employment-related condition or disability after July 28, 2013.

¹¹ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 5, 2014 is affirmed.

Issued: November 13, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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