United States Department of Labor
Employees' Compensation Appeals Board

B.J., Appellant	)	
and	)	**Docket No. 14-821**
	)	**Issued: November 3, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Merrifield, VA, Employer	)	

Appearances:
Debra Hauser, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 28, 2014 appellant, through her attorney, filed a timely appeal from a September 5, 2013 decision of the Office of Workers' Compensation (OWCP) Programs terminating her compensation benefits. 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.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's compensation benefits for her accepted cervical and lumbar injury effective September 5, 2013.

FACTUAL HISTORY

On February 14, 2012 appellant, then a 37-year-old motor vehicle driver, injured her back while pushing an all-purpose container. OWCP accepted her claim for lumbar and cervical

[1] 5 U.S.C. §§ 8101-8193.

sprain. Appellant stopped work on February 15, 2012 and returned to light-duty work on March 14, 2012. Thereafter, she worked intermittently and received wage-loss compensation for the hours that she did not work.

Appellant submitted a February 14, 2012 x-ray of the thoracic spine which revealed mild scoliosis of the thoracolumbar spine with no fracture or segmentation. She came under the treatment of Dr. Tasha Dickerson, a Board-certified internist, from February 23, 2012 to February 20, 2013, for the back injury sustained on February 14, 2012. A June 21, 2012 magnetic resonance imaging scan of the cervical spine revealed no disc herniations. Dr. Dickerson diagnosed lower back strain and migraines and recommended physical therapy. In a January 19, 2013 duty status report, she noted that appellant returned to light-duty work on February 22, 2012, eight hours a day, with restrictions. In return to work slips dated February 20 and March 6, 2013, Dr. Dickerson advised that appellant became completely disabled on February 6, 2013. Concurrently, she made a psychiatric referral appellant.

On February 19, 2013 OWCP referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, to determine if the accepted conditions had resolved. In a March 7, 2013 report, Dr. Hanley reviewed the medical records provided and examined appellant. Appellant had pain over the left trapezius and parascapular musculature without spasm, unrestricted range of shoulder motion, tenderness in the left paraspinal muscles without spasm, full lumbar range of motion, active and equal reflexes, intact strength and no sensory loss with tenderness over the parascapular musculature. Dr. Hanley diagnosed a history of a musculoligamentous strain injury to the neck and back with residual myofascial discomfort. He found that there were no objective findings on examination that the myofascial pain syndrome arose as a consequence of direct work exposure. Dr. Hanley opined that appellant failed medical treatment and further intervention would not be of any value. He noted that her condition had a psychophysiologic basis and would not resolve until she was so motivated. Dr. Hanley did not believe that appellant was totally disabled and opined that she could work full-time regular duties. He noted that she continued to express subjective complaints but they were not objective residuals of the work injury as the accepted injury had long since resolved. In a March 7, 2013 work capacity evaluation, Dr. Hanley noted that appellant could return to work regular duty.

Appellant submitted return to work slips from Dr. Dickerson dated March 20 and 29, 2013. Dr. Dickerson found that appellant was totally disabled. In a report dated April 12, 2013, she noted that appellant's condition improved with physical therapy and spinal injections; but when appellant returned to work, her job activities and a long commute to work exacerbated her condition and she developed migraine headaches. Dr. Dickerson noted that appellant was totally disabled as of February 6, 2013. In a duty status report dated April 12, 2013, she reiterated that appellant remained totally disabled.

On April 24, 2013 OWCP proposed to terminate appellant's compensation benefits finding that Dr. Hanley's report established no continuing residuals of her work-related conditions.

Appellant submitted reports from Dr. Cletus C. Aralu, a Board-certified neurologist, dated January 2 to May 20, 2013, who treated her for chronic headaches and neck and back muscle spasms. Dr. Aralu noted a history of appellant's injury on February 14, 2012 and

diagnosed chronic post-traumatic stress disorder, tendinitis, anxiety disorder, dizziness, myofascial pain syndrome, muscle disorder, muscle weakness, cervical syndrome, major depression, thoracolumbar disorder, chronic post-traumatic headaches. He stated that the conditions were directly caused by her accepted work injury. Dr. Aralu opined that, when appellant returned to work, her accepted conditions became aggravated. Appellant submitted reports from Dr. Albert Jones, Jr., a Board-certified orthopedic surgeon, from February 7 to May 30, 2013, who diagnosed work-related strain of the cervical and lumbar spine with myofascial pain and performed a series of trigger point injections.

Appellant also submitted return to work slips from Dr. Dickerson dated April 24 and May 8, 2013, which advised that she was totally disabled until June 19, 2013. In an undated report, Dr. Dickerson opined that appellant's condition was exacerbated by her long commute to work, her modified job assignment, which consisted of repetitive use of the injured areas and not receiving treatment for all injured areas from the initial injury. She reviewed Dr. Hanley's report and disagreed with his findings. Dr. Dickerson opined that appellant was not medically cleared to return to work until her work restrictions were addressed by the employing establishment and her driving ability improved.

On June 4, 2013 appellant filed a Form CA-2a, notice of recurrence of disability, alleging disability causally related to her work injury on March 25, 2012. She submitted physical therapy reports dated July 24, 2012 to March 1, 2013. Appellant submitted a June 20, 2013 report from Dr. Jones, who performed a shoulder girdle trigger point injection. She also submitted reports and disability slips from Dr. Dickerson dated March 20 to July 10, 2013. Dr. Dickerson diagnosed neck sprain and strain, migraines and depressive disorder. She noted that appellant remained totally disabled.

Reports from Dr. Aralu dated May 23 to June 26, 2013, diagnosed chronic post-traumatic stress disorder, tendinitis, anxiety disorder, dizziness, myofascial pain syndrome, muscle disorder, muscle weakness, cervical syndrome, major depression, thoracolumbar disorder and chronic post-traumatic headaches. He opined that these conditions were directly related to appellant's work injury. Dr. Aralu opined that her accepted injuries were aggravated when she returned to work and she remained totally disabled.

OWCP found a conflict of medical opinion arose between Dr. Dickerson and Dr. Aralu, who found that appellant had residuals of her work-related injuries and was totally disabled and Dr. Hanley, who determined that her accepted conditions had resolved and she could return to work full-time regular duty.

On July 1, 2013 OWCP referred appellant to Dr. William K. Fleming, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a July 31, 2013 report, Dr. Fleming noted reviewing the record, including the history of her work injury and examining her. He noted soreness in the lumbar paraspinal muscle group toward the trapezius on the left side and neck area. Forward bending was 85 degrees. Appellant was unable to touch her chin to her chest. She had intact muscle strength in the arms with no atrophy and reflexes were symmetrical in both the upper and lower extremities. Appellant could toe and heel walk and had no atrophy in her legs. Dr. Fleming opined that she improved from her work-related injury of neck and back sprain and she had no residuals that were documented medically in the records or

on examination that were causally related to the initial injury. He advised that appellant sustained no permanent injury as a result of the February 14, 2012 work accident. Dr. Fleming opined that her present condition of neck and back pain was not causally related to the 2012 injury as there was no documented medical condition that required a prolonged recovery period. He found no evidence of myofascial pain syndrome and noted that appellant simply had complaints of neck and back pain without physical findings to substantiate her symptoms. Dr. Fleming found no other conditions that were consequential to the injury of February 14, 2012. He opined that appellant could return to her date-of-injury position as a truck driver and that no surgery, medication or chiropractic care was indicated. Dr. Fleming noted that she had no limitations in her ability to take supervision, cooperate with others or work under deadlines. He advised that light duty could be a starting point but he did not believe part-time work was necessary or beneficial. Dr. Fleming indicated that the past period of total disability was based on the judgment of the treating physicians but he found no medical evidence which would support a prolonged period of disability for the accepted condition of neck and back sprain. In an August 22, 2013 work capacity evaluation, he noted that appellant was capable of performing her usual job and that maximum medical improvement was reached. Dr. Fleming noted limitations on twisting, bending/stooping, squatting and kneeling to one hour.

In a decision dated September 5, 2013, OWCP terminated appellant's medical and compensation benefits effective that day, finding that the weight of medical opinion established that she had no continuing residuals of her accepted conditions.

LEGAL PRECEDENT

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

OWCP accepted appellant's claim for lumbar and neck sprain. It found that a conflict in medical opinion existed between Drs. Dickerson and Aralu, appellant's physicians who indicated that appellant had residuals of her work injuries and was totally disabled and Dr. Hanley, a second opinion physician who found that her accepted conditions had resolved and she could work full time without restrictions. Consequently, OWCP referred appellant to Dr. Fleming to resolve the conflict.

[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).

The Board finds that, under the circumstances of this case, the opinion of Dr. Fleming is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight. Dr. Fleming's report establishes that disabling residuals of appellant's work-related conditions have ceased. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[5]

In a July 31, 2013, report, Dr. Fleming reviewed appellant's history, noted findings and determined that appellant had no objective complaints or findings due to the accepted conditions. He opined that she improved from her work-related injury of neck and back sprain and she had no documented residuals that were causally related to the initial injury. Dr. Fleming noted that appellant sustained no permanent injury due to the February 14, 2012 work injury. He opined that her present condition of neck and back pain was not causally related to the 2012 injury as there was no documented medical condition that would require a prolonged recovery period. Dr. Fleming found no evidence of myofascial pain syndrome and noted that appellant simply had complaints of neck and back pain without physical findings to substantiate her symptoms. He found no other conditions which were consequential to the February 14, 2012 injury. Dr. Fleming opined that appellant could return to her date-of-injury position as a truck driver and that no further treatment was required. He determined that appellant was able to take supervision, cooperate with others and work under deadlines. Dr. Fleming noted that light duty could be a starting point but he did not believe that part-time work was necessary or beneficial. He indicated that the past period of temporary total disability was based on the judgment of the treating physicians but he found no medical evidence which would support a prolonged period of disability for the accepted conditions. In a work capacity evaluation dated August 22, 2013, Dr. Fleming noted that appellant was capable of performing her usual job and that maximum medical improvement was reached. Although he noted limitations on twisting, bending/stooping, squatting and kneeling, he did not attribute this to the accepted conditions.

The Board finds that Dr. Fleming had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Fleming is a specialist in the appropriate field. He did not indicate that there was a work-related reason for disability or treatment. Dr. Fleming's opinion as set forth in his report of July 31, 2013 is found to be probative evidence and reliable. The Board finds that his opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of wage-loss and medical benefits for the accepted conditions.

Subsequent to Dr. Fleming's July 31, 2013 report, appellant did not submit additional medical evidence prior to the termination of benefits. There are no other medical reports of record, following his resolution of the medical conflict providing a reasoned opinion supporting that she has a continuing work-related condition or disability.

On appeal, appellant asserted that she continued to have residuals of her accepted work-related condition that OWCP improperly terminated her compensation benefits as Dr. Fleming's report was not based on an accurate history. As noted, the Board finds that his opinion

[5] *Solomon Polen*, 51 ECAB 341 (2000). *See* 5 U.S.C. § 8123(a).

constitutes the weight of the medical evidence and is sufficient to support the termination of wage-loss and medical benefits for the accepted cervical and lumber sprain conditions. Dr. Fleming's report reflects that he reviewed the record and there is no evidence that he had an inaccurate history.

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 benefits effective September 5, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 5, 2013 is affirmed.

Issued: November 3, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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