

the performance of duty.² She submitted an undated report (Form CA-20) from Dr. Christopher Belletieri, an osteopath, who reported that she slipped on ice and fell on her back, bracing with her right hand. Dr. Belletieri diagnosed a lumbar strain/sprain, bilateral knee sprain/strain with altered gait, right hand strain/sprain and coccyx contusion.

By decision dated December 29, 2010, OWCP denied the claim for compensation.

Appellant requested a hearing before an OWCP hearing representative, which was held on April 13, 2011. In a report dated November 4, 2010, Dr. Belletieri provided results on examination and diagnosed lumbar sprain/strain, coccyx contusion, bilateral knee pain secondary to altered gait, right hand sprain/strain with right arm radiculitis. Appellant also submitted an April 27, 2011 report from him, who described the work injury and stated that on March 8, 2010 x-rays were ordered and proved negative. Dr. Belletieri stated that she fell on ice in a parking lot and landing on the ice resulted in ongoing complaints of low back, bilateral knee and right hand pain.

In a decision dated July 5, 2011, the hearing representative affirmed the December 29, 2010 denial of the claim. She found that the medical evidence did not include contemporaneous examination results or an adequate medical opinion on causal relationship between the diagnosed conditions and the employment incident.

On February 6, 2012 appellant requested reconsideration of her claim. She submitted a November 4, 2011 report from Dr. Belletieri, stating that on March 8, 2010 she had called his office, but was not examined at that time. Dr. Belletieri advised that x-rays were obtained and appellant did not initially seek treatment as she hoped the pain would resolve. He stated that this was not unusual and it remained his opinion that injuries to the low back, knees and right upper extremity were the direct result of the fall at work on February 26, 2010.

In a decision dated May 4, 2012, OWCP accepted the claim for coccyx contusion. It found that the medical evidence with respect to the other diagnosed conditions was not sufficient to establish causal relationship.

Appellant submitted a Form CA-7 (claim for compensation) on July 10, 2012 claiming intermittent compensation from February 26 to June 29, 2012.

OWCP prepared a statement of accepted facts and referred appellant to Dr. Robert Smith, a Board-certified orthopedic surgeon. In a report dated September 14, 2012, Dr. Smith reviewed a history and results on examination. He stated that lumbar imaging studies from December 2010 and July 2012 showed degenerative disc disease and spondylosis associated with a mild L5-S1 disc protrusion. Dr. Smith found that this was consistent with appellant's age and there was no mention of a coccygeal problem. He determined that she had no residuals of the coccyx contusion and her lumbar pain was due to the nonindustrial degenerative disc disease. Dr. Smith opined that there were no additional injuries related to the February 26, 2010 employment injury.

² Appellant indicated on the claim CA-1 form that her job title was a clerk, but the record indicates that on the date of injury she was working as a mail carrier.

By letter dated September 27, 2012, OWCP issued a notice of proposed termination. It advised appellant that the medical evidence from Dr. Smith did not establish any continuing employment-related disability or condition.

In a report dated October 17, 2012, Dr. Belletieri reviewed the medical history and results on examination. He diagnosed L5-S1 disc herniation, bilateral leg radiculopathy (left greater than right and coccyx contusion. Dr. Belletieri opined that all of the diagnosed conditions were related to the February 26, 2010 slip and fall. He noted that the only accepted condition was coccyx contusion, but reiterated that other injuries were sustained. As to a lumbar condition, Dr. Belletieri stated that appellant had no prior history of lumbar problems and it stood to reason that when she fell her lumbar spine would have been injured.

OWCP found that a conflict in medical opinion between Dr. Belletieri and Dr. Smith. It referred appellant to Dr. Roy Lefkoe, a Board-certified orthopedic surgeon, selected as a referee physician. The record contains an ME023, appointment schedule notification, dated November 26, 2012 and screen shots that two physicians were bypassed in the selection process.³

In a report dated April 3, 2013, Dr. Lefkoe reviewed the history of injury and medical treatment. He also set forth results on examination. Dr. Lefkoe provided the following diagnoses:

- “1. Contusion coccyx, resolved.
- “2. L4-5 degenerative disc disease with bulging disc, preexisting and not related.
- “3. L5-S1 degenerative disc disease with bulging disc and left paracentral disc protrusion with annular fissure and mild left neural foraminal narrowing, preexisting and not related.
- “4. Mild degenerative arthritis both knees, preexisting and not related.
- “5. Bilateral median and ulnar neuropathy by electrodiagnostic studies, not related.
- “6. Obesity.
- “7. Right heel spur, not related.”

Dr. Lefkoe discussed the medical evidence and stated that the reports of Dr. Belletieri dated April 27 and November 4, 2011 were conjectural and his explanation of why appellant did not seek immediate treatment was unusual. He also stated that Dr. Belletieri’s explanation as to how all of her other body parts related to the employment injury were not supported by any facts. Dr. Lefkoe concluded that the coccyx contusion had long since resolved, that appellant’s low back symptoms were caused by her underlying degenerative disc disease that was not related to

³ One of the physicians was bypassed as he did not treat spinal injuries and a second had moved and did not respond to telephone calls.

the employment injury. He found that she could return to her preinjury position without restrictions.

By decision dated April 16, 2013, OWCP terminated appellant's compensation benefits as of April 16, 2013. It found that the weight of the medical evidence rested with Dr. Lefkoe.

Appellant requested a hearing before an OWCP hearing representative, which was held on August 22, 2013. Appellant's representative argued that Dr. Lefkoe had not been properly selected as a referee physician and his report was of limited probative value.

By decision dated November 12, 2013, the hearing representative affirmed the April 16, 2013 decision. She found that the weight of the medical evidence rested with Dr. Lefkoe.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.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

Pursuant to 5 U.S.C. § 8123(a), when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁶ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to a referee physician, to resolve the conflict in the medical evidence.⁷ It is well established that when a case is referred to a referee specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁸

ANALYSIS

OWCP accepted that appellant sustained a coccyx contusion on February 26, 2010. As to wage-loss compensation, the Board notes that while she has claimed intermittent compensation, the record does not reflect that any wage-loss compensation had been paid. The decision on appeal makes a finding that appellant was not entitled to either wage-loss compensation or medical benefits after April 16, 2013.

⁴ *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

⁵ *Furman G. Peake*, 41 ECAB 361 (1990).

⁶ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁷ *William C. Bush*, 40 ECAB 1064 (1989). See also 20 C.F.R. § 10.321, providing that a referee or impartial examination will be performed by a physician with no prior connection to the case.

⁸ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

OWCP found that a conflict in the medical evidence arose between the attending physician, Dr. Belletieri, and the second opinion physician, Dr. Smith. Dr. Belletieri opined that appellant continued to have an employment-related condition, while Dr. Smith found that the accepted condition had resolved and she did not sustain any other employment-related conditions. OWCP selected Dr. Lefkoe to perform a referee examination. Appellant argued that the selection was improper, but the Board finds no evidence of an improper selection in this case.⁹ When the record contains an ME023 along with documentation, such as screen shots, showing the reason any physician was bypassed in the selection process, the Board has found no basis for error in the selection process.¹⁰ The record in this case includes the ME023 and screen shots providing explanations as to why two physicians were bypassed prior to the selection of Dr. Lefkoe, who had no prior connection with the case. The Board finds that Dr. Lefkoe was properly selected as the referee physician.

With respect to the April 3, 2013 report from Dr. Lefkoe, the Board finds that it is a well-rationalized medical report that is entitled to special weight. Dr. Lefkoe provided a complete history and reviewed the medical evidence. He provided an unequivocal opinion that the accepted coccyx contusion had resolved. Dr. Lefkoe also found that appellant had no continuing employment-related conditions causally related to the employment injury. With respect to a lumbar condition, he indicated that an MRI scan dated December 8, 2010 showed only chronic degenerative changes at L4-5 and L5-S1, which were not related by history or any other reason to the employment injury. Dr. Lefkoe stated that lumbar degenerative disc disease with bulging discs and facet joint arthrosis would be expected in a woman of appellant's body habitus and was not related to any injury.

On appeal, appellant argues that Dr. Lefkoe did not explain why he felt the lumbar condition was preexisting. As noted Dr. Lefkoe discussed his findings and diagnostic studies to support his opinion that she did not have an employment-related lumbar condition. Appellant also argues that, although he stated that she could return to her preinjury position, it was not clear whether he was referring to a clerk position or a letter carrier position. It is clear from his report, however, that Dr. Lefkoe found no continuing employment-related condition and found no employment-related work restrictions.

The Board has held that medical rationale is a medically sound explanation for the opinion offered.¹¹ Dr. Lefkoe provided a medical report that was based on a complete factual and medical background and offered an opinion supported by medical rationale. The Board finds that it is entitled to special weight and represents the weight of the medical evidence in this case.

⁹ As noted in OWCP procedures, the Medical Management Application has replaced the Physicians Directory System as the method for selecting a referee physician. Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.5 (May 2013).

¹⁰ See *K.S.*, Docket No. 12-184 (issued September 11, 2012).

¹¹ 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).

CONCLUSION

The Board finds that OWCP properly determined that appellant was not entitled to wage-loss compensation or medical benefits as of April 16, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 12, 2013 is affirmed.

Issued: November 6, 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