

the performance of duty. OWCP accepted the claim for lumbar sprain on December 20, 2011 and converted his claim to an occupational disease claim based on his indication that work events over the course of more than one shift had caused his condition.

In a record of a telephone conversation dated December 16, 2011, an OWCP claims examiner noted that appellant had been released to limited duty, but was not working and asked whether the employing establishment had been able to accommodate his restrictions. The employing establishment responded that he was hired as project worker with a “not to exceed” date and that since he was not able to perform any of the project work and his physician was not going to release him to full duty before his appointment ended, they did not have anything for him to do. The employing establishment noted that appellant’s last day at work was November 24, 2011. The record indicates that he received wage-loss compensation benefits through May 7, 2012.

The medical evidence of record substantiates that an x-ray of the lumbosacral spine on September 15, 2011, performed by Dr. Thomas Mahon, a Board-certified radiologist, revealed lateral subluxation of L3 to the right side of seven millimeters, osteophytes at the intervertebral disc space, loss of height of the L4-5 disc space and no evidence of fracture.

On September 15, 2011 Dr. John R. Hannon, a Board-certified orthopedic surgeon, diagnosed appellant with strain of the lumbar region and sciatica. He noted that appellant’s history of injury and his current complaints of pain radiating down the lateral aspect of his right leg to the ankle level, which was worse with prolonged walking and intermittent numbness in a similar distribution. On examination, Dr. Hannon noted a slight right paravertebral muscle tenderness of the lumbar spine with slight spasm; and mild right sciatic notch tenderness. He stated that appellant would be at maximum medical improvement in eight weeks and opined that his injury was work related.

In a report dated September 23, 2011, Dr. Julia Crawford, a family physician, noted that appellant visited with a chief complaint of back pain.² On examination, she noted that he had mild lumbosacral paraspinal musculature tenderness without mass, a painful and reduced range of motion and a negative straight leg raise at 90 degrees bilaterally. Dr. Crawford stated her opinion that appellant’s conditions were work related. On November 17, 2011 she noted that appellant’s magnetic resonance imaging scan revealed a severe right neuroforaminal encroachment at L4-5, a multilevel degenerative joint and disc disease and ligamentum flavum hypertrophy. Dr. Crawford recommended work restrictions

On January 4, 2012 OWCP requested that Dr. Crawford provide a report addressing appellant’s current diagnoses.

Dr. Crawford responded to OWCP by letter dated January 17, 2012. She stated that appellant’s current diagnosis was symptomatic lumbar disc disease with right severe L4-5 right neuroforaminal encroachment. Dr. Crawford stated that decreased sensation in the right lower extremities supported the presence of this condition. She noted that appellant experienced an

² Dr. Crawford’s current Board accreditation status could not be confirmed with the American Board of Medical Specialties, the American Board of Family Medicine or the American Osteopathic Association.

aggravation of underlying diastolic dysfunction and degenerative joint disease and that historical information supported that these conditions were asymptomatic. Dr. Crawford stated that he had not returned to preinjury status, but that any permanent aggravation could not yet be determined. She noted that medical findings of reduced range of motion in the lumbosacral spine and impaired sensation in the right lower extremities supported that appellant could not return to full duties, but that he had been released to limited duty.

On January 17, 2012 Dr. Crawford examined appellant and stated that he was still on limited duty. She noted that he had severe pain with prolonged sitting, standing and driving, that the pain radiated to the right calf and foot and that he had a burning sensation in his right heel with a prolonged stationary posture. On examination, Dr. Crawford noted that appellant had a normal gait, mild lumbosacral paraspinal musculature tenderness without mass, painful and reduced range of motion, a positive straight leg raise at 60 degrees on the right and decreased sensation of the right posterior calf. She diagnosed him with lumbar disc process with radiculopathy.

In an attending physician's report dated January 28, 2012, Dr. Hannon stated that appellant had a period of partial disability from September 15 through 30, 2011 and that he was able to resume light work on September 15, 2011. He checked a box indicating that appellant was expected to have permanent effects as a result of his accepted injury, but did not describe further.

In a report dated February 21, 2012, Dr. Crawford reported no changed symptoms on examination, but stated that appellant continued to have pain with attempts to lift and that he was still on limited duty. Appellant visited her on June 12, 2012 to consult regarding spinal surgery and she noted no change in symptoms on this date.

On May 10, 2012 OWCP referred appellant to Dr. Steven A. Kaneshiro, a Board-certified orthopedist, for a second opinion examination opinion to determine if the accepted conditions had resolved. Appellant did not attend the examination with Dr. Kaneshiro and his benefits were suspended.

On February 20, 2013 OWCP referred appellant to Dr. John L. Howard, a Board-certified orthopedic surgeon, for a second opinion examination to determine if the accepted conditions had resolved. Appellant did not keep his scheduled appointment with Dr. Howard on March 15, 2013. The appointment was rescheduled to March 25, 2013.

In a March 25, 2013 report, Dr. Howard indicated that he reviewed the records provided and examined appellant. He noted that appellant had no antalgia, although he appeared to favor his left leg. On examination of appellant's back, he noted that appellant stood erect with his shoulders and pelvis level. The Romburg's test was normal. Appellant stood with a slight lift of his spine to the left, but with average lateral curves. Dr. Howard noted no scoliosis or increased lumbar lordosis or kyphosis. He stated that appellant's range of voluntary back motion movements were carried out with minimal discomfort and accompanying minimal tenderness along the right lumbar paraspinal muscles extending into the posterior gluteal muscles without point of localization or spasms. Dr. Howard noted no cysts, nodules, areas of induration, trigger points or sciatic notch tenderness. Appellant balanced well on his heels and toes and carried out

a full deep knee bend without pain. The Patrick, Flip, cram, Lasegue, straight leg raising, sitting and supine tests were normal at 90 degrees. There was no positive pelvis or sciatic compression tests. Dr. Howard stated that appellant's reflexes were as follows: biceps, triceps and patellar reflexes were 2+/2+ and Achilles reflex 1+ on the right and 2+ on the left. He diagnosed appellant with lumbar sprain without radiculopathy and a status post sciatica of the right lower extremity. Dr. Howard stated that appellant had sustained temporary aggravation of his underlying degenerative arthritis of the spine, which had resolved. He noted that while appellant continued to complain subjectively of low back pain, it was not associated with any positive neurological findings, as appellant demonstrated a full and complete normal range of lumbar back motion and an absence of any positive neurological tests with the exception of 2+ ankle jerks. Dr. Howard stated that appellant had minimal factors of disability, which were primarily subjective, with an essentially normal orthopedic back examination. He noted that he believed that appellant was not in need of any special treatment for his residual back symptoms in the absence of localizing objective findings and that appellant had no need for continued therapy. Dr. Howard completed his report by stating that appellant no longer had an active form of sciatica or any significant neurological findings and that he may be allowed to return to work on a transitional basis progressing from his current limitations to full work over the period of six weeks. He did not recommend back surgery. Dr. Howard recommended work limitations for this period of no kneeling or climbing; no more than one hour sitting, walking, standing, bending/stooping and operating a motor vehicle; no more than five hours of squatting; and no more than 20 pounds of pushing, pulling or lifting. On the form OWCP-8c, he stated that these restrictions would apply indefinitely and that maximum medical improvement had been reached.

On May 20, 2013 OWCP proposed to terminate all benefits, finding that Dr. Howard's March 25, 2013 report established no continuing residuals of his work-related conditions.

In a decision dated July 10, 2013, OWCP terminated appellant's medical and wage-loss benefits effective on that date, finding that the medical evidence established that he had no continuing residuals of his accepted conditions.

On July 15, 2013 appellant, through his attorney, requested a telephonic hearing before an OWCP hearing representative.

Prior to the hearing, appellant submitted a report from Dr. Crawford dated June 20, 2013. Dr. Crawford noted that she had last seen him one-year prior and that he reported increased work activity at home and improved tolerance of activity. On examination, she found no local tenderness or mass in the lumbosacral spine area; a full and painless lumbosacral range of motion; a negative bilateral straight leg raise; normal deep tendon reflexes, motor strength and sensation; palpable peripheral pulses; full range of motion of the hips and knees; and no abdominal tenderness, mass or organomegaly. Dr. Crawford diagnosed appellant with lumbar disc aggravation and recommended full duty with no follow up and stated that he was at maximum medical improvement.

The hearing was held on December 18, 2013. At the hearing, appellant stated that he could not work, because if he worked for half an hour he would have to sit down for 15 to 20 minutes. He stated that he told his physician that he would try to go back to work, but that he could not go back. The hearing representative told appellant that, in order to overturn the

termination decision, he would have to submit a report from a physician indicating why Dr. Howard's report was incorrect and why he still had signs and symptoms of his accepted injury. He kept the record open for 30 days to give appellant time to submit such a report. Appellant did not submit a report.

By decision dated February 12, 2014, the hearing representative affirmed the decision of July 10, 2013. OWCP stated that Dr. Howard had clearly opined that appellant's lumbar strain had resolved, as had a temporary aggravation of underlying disc disease. It afforded greater weight to Dr. Howard's opinion than Dr. Crawford's, noting her June 20, 2013 report was devoid of clinical findings indicating that appellant's condition continued to have residuals.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ 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.⁴ 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.⁵

ANALYSIS

OWCP accepted appellant's claim for work-related lumbar sprain. It referred him for a second opinion evaluation by Dr. Howard.

In his March 25, 2013 report, Dr. Howard provided an extensive review of appellant's medical history and reported examination findings. He stated that appellant had sustained temporary aggravation of his underlying degenerative arthritis of the spine, which had resolved. Dr. Howard noted that, while appellant continued to complain subjectively of low back pain, it was not associated with any positive neurological findings, as appellant demonstrated a full and complete normal range of lumbar back motion and an absence of any positive neurological tests with the exception of 2+ ankle jerks. He stated that appellant had minimal factors of disability, which were primarily subjective, with an essentially normal orthopedic back examination. Dr. Howard noted that he believed that appellant was not in need of any special treatment for his residual back symptoms in the absence of localizing objective findings and that he had no need for continued therapy. He stated that appellant no longer had an active form of sciatica or any significant neurological findings and that he may be allowed to return to work on a transitional basis progressing from his current limitations to full work over the period of six weeks. Dr. Howard did not recommend back surgery.

³ *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001); *Alice J. Tysinger*, 51 ECAB 638, 645 (2000).

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

⁵ *Id.*; *Leonard M. Burger*, 51 ECAB 369, 369 (2000).

The Board finds that Dr. Howard's report represents the weight of the medical evidence and that OWCP properly relied on his report in terminating appellant's compensation benefits on July 10, 2013. Dr. Howard's opinion is based on proper factual and medical history as he reviewed a statement of accepted facts and appellant's prior medical treatment and diagnostic test results. He also related his comprehensive examination findings in support of his opinion that the accepted lumbar strain had resolved and that continuing symptoms were subjective or due to preexisting factors, the aggravation of which had resolved. Dr. Howard reported no basis on which to find that appellant had any continuing residuals of his accepted lumbar strain. He recommended transitioning to full-time work as a precaution for a six-week period. The Board notes that the effective date of the termination of benefits was July 10, 2013, more than six weeks following Dr. Howard's March 25, 2013 examination. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing residuals of the accepted lumbar sprain or any other work-related condition.

Dr. Crawford's report of examination on June 20, 2013 found no local tenderness or mass in the lumbosacral spine area; a full and painless lumbosacral range of motion; a negative bilateral straight leg raise; normal deep tendon reflexes, motor strength and sensation; palpable peripheral pulses; full range of motion of the hips and knees; and no abdominal tenderness, mass or organomegaly. She diagnosed appellant with lumbar disc aggravation and recommended full duty with no follow up and stated that he was at maximum medical improvement. Although Dr. Crawford suggested that he had continuing symptoms *via* her diagnosis of lumbar disc aggravation, her report does not explain how she arrived at this diagnosis despite the lack of objective, clinical symptoms.⁶ Furthermore, she also related that appellant could return to work at full capacity as of June 20, 2013. As such and as Dr. Crawford's June 20, 2013 was the only report other than Dr. Howard's contemporaneous with OWCP's proposal to terminate compensation, OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation.

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 has met its burden of proof to terminate benefits effective July 10, 2013.

⁶ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 12, 2014 is affirmed.

Issued: September 18, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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