United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 14-1880**
	)	**Issued: April 8, 2015**
DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK, Employer	)	

Appearance:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 26, 2014 appellant filed a timely appeal from a May 28, 2014 Office of Workers' Compensation Programs' (OWCP) merit decision. 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 this case.

ISSUE

The issue on appeal is whether OWCP met its burden of proof to terminate appellant's compensation benefits effective September 22, 2013.

FACTUAL HISTORY

On July 5, 2012 appellant, then a 44-year-old production controller, injured her back, when she reached down to pick up a pen that she dropped while sitting at her work desk. She

[1] 5 U.S.C. § 8101 *et seq.*

indicated that she felt an excruciating pain in her back and she fell out of her chair onto the floor injuring her left knee. Appellant stopped work on the date of injury. OWCP accepted the claim for aggravation of preexisting displacement of lumbar intervertebral disc without myelopathy, aggravation of preexisting thoracic or lumbosacral neuritis or radiculitis, lumbar sprain, and left leg and knee sprain. Appellant received appropriate benefits.

In a July 13, 2012 report, Dr. Stephen Wilson, a physiatrist and orthopedic surgeon, noted examining appellant for injuries sustained in a July 5, 2012 incident. Appellant reported continued lumbar spine and left knee pain with shooting pain into both legs. Dr. Wilson advised that she had a lumbar spine injury on May 19, 2012 and that a magnetic resonance imaging (MRI) scan taken on June 8, 2012 showed degenerative disc disease and a broad-based bulge at L4-5 with mild impression on the anterior thecal sac. He stated that pain from this injury was ongoing at the time of the July 5, 2012 fall. X-rays showed degenerative disc disease most prominent at L5-S1. Left knee x-rays showed mild medial joint space narrowing and decreased spacing of the patellofemoral joint. Dr. Wilson diagnosed lumbar spine sprain, left knee sprain, and aggravations of lumbar spine disc bulge and radiculopathy. He opined that appellant was totally disabled.

On December 28, 2012 OWCP referred appellant for a second opinion evaluation to Dr. Dennis Foster, a Board-certified orthopedic surgeon. In a January 16, 2013 report, Dr. Foster noted appellant's history, including her preexisting lower back condition and seizure disorder. He noted that lumbar spine x-rays were normal. Dr. Foster examined appellant's lower back and found minimal complaints of discomfort on deep palpation at the lumbosacral region. His findings included that he found no spasm of the musculature, good range of motion, negative straight leg raise and no neurological deficits. Dr. Foster explained that appellant had no evidence of neuropathy or neurological deficit, no significant lumbar spine pain, normal range of motion, and no evidence of any disabling problem relative to her lower back. He advised that she stopped work on July 5, 2012 and that the aggravations of her lumbar disc displacement had resolved. Dr. Foster opined that the accepted conditions of aggravation of lumbar disc displacement, aggravation of lumbar neuritis/radiculitis, and lumbar and left knee sprain had resolved. He found appellant capable of performing her regular duties and released her to full duty.

In a January 17, 2013 addendum, Dr. Foster advised that the period of aggravation of appellant's preexisting lumbar radiculitis caused by the work injury had resolved. He explained that he could find no evidence of any lumbar radiculitis, and while he could not specify the exact period when it ceased, "there was no evidence of any continuing lumbar radiculitis at this point in time."

In a letter dated January 23, 2013, OWCP requested that the treating physician, Dr. J. Arden Blough, Board-certified in family medicine and an associate of Dr. Wilson, review the report of Dr. Foster and provide an opinion with regard to whether he agreed with the findings.

In a January 31, 2013 report, Dr. Blough responded that he did not agree with the findings and advised that appellant's condition had not resolved and she was unable to return to full duty. He diagnosed: lumbar sprain, lumbar disc displacement, and lumbar radiculopathy.

Dr. Blough opined that a functional capacity evaluation was needed to determine appellant's work capabilities and work restrictions.

In a February 1, 2013 report, Dr. Scott C. Robertson, a Board-certified neurosurgeon to whom appellant was referred by Dr. Blough, advised that her lumbar problems were preexisting and they may have been aggravated by her work but were not caused by her work. He advised that physical examination of the lumbar spine revealed no obvious deformities and no acute distress. On February 4, 2013 Dr. Blough examined appellant, noted diagnoses, and opined that she was totally disabled.

In a February 8, 2013 report, Dr. Blough responded to OWCP's January 23, 2013 letter. He disagreed with Dr. Foster regarding whether there were objective findings on examination. Dr. Blough advised that his physical examination of the lumbar spine revealed tenderness to palpation over the paravertebral musculature with palpable trigger points, decreased range of motion in all planes, positive straight leg raising on both sides, loss of sensation to monofilament testing in the bilateral legs, and weakness demonstrated with resisted bilateral hip, knee, and ankle flexion and extension, left greater than right.

Dr. Blough provided findings for the left knee which revealed: decreased range of motion with flexion and extension, tenderness to palpation over the joint with crepitus and mild active joint effusion, and negative Drawer and McMurray's tests. He also disagreed with Dr. Foster's finding that the period of aggravation of lumbar spine displacement had resolved. Dr. Blough explained that appellant continued to suffer from low back pain and disability.

Regarding left knee sprain resolution, Dr. Blough advised that appellant continued to improve and was approaching maximum medical improvement. However, additional treatment was warranted. Dr. Blough found appellant capable of some form of light-duty work activities, but it was difficult to determine her functional capacity. He continued to treat her and provide progress reports which indicated that she was disabled.[2]

On April 10, 2013 OWCP referred appellant, along with a statement of accepted facts and the medical record, to Dr. Sami R. Framjee, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict in opinion between Drs. Blough and Foster regarding the resolution of her accepted condition and work restrictions.

In a May 17, 2013 report, Dr. Framjee noted appellant's history of injury and treatment. Appellant informed Dr. Framjee that in May 2012 she had low back pain with pain in both legs. She sought treatment and received an epidural steroid injection. On examination of the lumbar spine, findings included normal lumbar lordosis, no acute tenderness on palpitation, negative straight leg raise, and no neurological deficits on sensory examination. Dr. Framjee found a marked show of effort when requested to undergo range of motion. Examination of the left knee

[2] On February 19, 2013 appellant had lumbar discogram performed by Dr. Darryl Robinson, a Board-certified physiatrist. In a March 1, 2013 report, Dr. Robertson reviewed her MRI scan results and x-rays and found some mild early lumbar spondylosis and disc degeneration with an annular tear at L4-5. No significant compromises of the spinal canal or nerve root impingement was noted. Dr. Robertson recommended physical therapy and an L4-5 anterior lumbar interbody fusion. On April 4, 2013 Dr. Martin Lopez, a Board-certified anesthesiologist, performed a left lumbar facet injection at L4-5 and L5-S1.

was essentially normal. Appellant had a negative Apley's and McMurray's test as well as full extension to 130 degrees flexion. Dr. Framjee reviewed diagnostic testing and explained that the discogram revealed the presence of degenerative disc disease at L2-3, L3-4, L4-5, and L5-S1 levels. He determined that appellant had a chronic history of low back pain that predated the July 5, 2012 incident and found no evidence of any anatomical injury to the lumbar spine secondary to the accident of July 5, 2012. Dr. Framjee found that the knee was normal on examination. He opined that appellant's symptoms were nonspecific in nature and that there were no radicular symptoms on examination. Dr. Framjee explained that his examination of the lumbar spine revealed good range of motion, a negative straight leg raise, no neurological deficits of the right or left lower extremity, and the MRI scan of the lumbar spine was normal and age-appropriate. He determined that the accepted aggravation of the preexisting lumbar disc displacement, the aggravation of the preexisting lumbar radiculitis, and the accepted conditions of lumbar strain/sprain and left knee sprain had resolved. Dr. Framjee opined that the lumbar sprain should have resolved within three weeks postaccident, with the aggravation resolving by that time and that the left knee sprain should have resolved within one week postaccident. He further explained that appellant's ongoing symptoms and treatment postaccident were not suggestive of any new injury, but rather were primarily symptoms in continuity. Dr. Framjee found that her continuing medical management was due to her preexisting low back condition. He advised that no further medical care was needed.

On June 24, 2013 OWCP proposed to terminate appellant's compensation as the weight of the medical evidence, as represented by the report of Dr. Framjee, established that the residuals of the work injury had ceased.

In a July 15, 2013 report, Dr. Blough advised that he disagreed with Dr. Framjee. He opined that appellant's low back, bilateral lower extremity radicular symptoms, and lumbar spine symptoms would not improve substantially with additional treatment or surgery. Dr. Blough explained that he had referred her for an updated lumbar MRI scan on July 10, 2013 which revealed not only the previous posterocentral disc bulge at L4-5, but also an annular tear present at the same level in addition to a new disc bulge at L3-4 with early left foraminal narrowing. He opined that these new physical findings confirmed his opinion that appellant's lumbar spine injury was worsened resulting in a permanent aggravation of her previous lumbar bulge at L4-5 as well as the presence of a new disc bulge at L3-4 after her fall on July 5, 2012. Dr. Blough explained that she was on pain medications that would cause a significant impediment while performing her work-related duties. He found appellant unable to perform any type of work requiring her to lift more than five to 10 pounds on a repetitive basis. Dr. Blough explained that she was able to tolerate only 40 minutes of sitting, 20 minutes of standing, or 30 minutes of walking, before developing increasing pain in her low back with radicular symptoms requiring a rest period. He opined that her condition would continue for the next 12 months and recommended medical retirement.

On August 14, 2013 OWCP requested clarification from Dr. Framjee with regard to the MRI scan of July 10, 2013.

In an August 26, 2013 addendum, Dr. Framjee explained that the findings from the July 10, 2013 lumbar MRI scan were not indicative of any injury secondary to the accident of July 5, 2012 but rather primarily indicative of nonspecific, minor degenerative changes. He

explained that appellant's history, physical examination, review of medical records, and MRI scan report did not suggest any evidence of any anatomical injury to the lumbar spine secondary to the accident of July 5, 2012. Dr. Framjee explained that the work incident did not produce the MRI scan findings as described in the July 10, 2013 report. He advised that a discogram was an extremely controversial test and the mere presence of a concordant test did not constitute an injury process secondary to the July 5, 2012 accident. Dr. Framjee opined that, based upon appellant's history and his physical examination and review of studies, it was his opinion that, based on the accepted employment conditions, she could return to her normal work.

In a September 17, 2013 decision, OWCP terminated appellant's compensation benefits, effective September 22, 2013, based on the opinion of Dr. Framjee, which established that she no longer had residuals of the accepted conditions.

On September 25, 2013 appellant's representative requested a telephonic hearing, which was held on March 13, 2014. In a January 3, 2014 report, Dr. Blough repeated his opinion that appellant remained temporarily totally disabled and unable to work.

By decision dated May 28, 2014, the hearing representative affirmed the September 17, 2013 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[3] Having determined that, an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[4]

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[5] In situations where there exist 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.[6]

ANALYSIS

OWCP accepted that appellant's claim for aggravation of preexisting displacement of lumbar intervertebral disc without myelopathy, aggravation of preexisting thoracic or

[3] *Curtis Hall*, 45 ECAB 316 (1994).

[4] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[5] 5 U.S.C. § 8123(a).

[6] *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

lumbosacral neuritis or radiculitis, lumbar sprain, and left leg and knee sprain. Appellant received appropriate benefits.

OWCP determined that there was a conflict in the medical opinion between Dr. Foster, an OWCP referral physician, and Dr. Blough, an attending physician, regarding whether appellant continued to have residuals of her July 5, 2012 work injury.[7] In order to resolve the conflict, it properly referred her, pursuant to section 8123(a) of FECA, to Dr. Framjee for an impartial medical examination.[8]

In his May 17, 2013 report, Dr. Framjee advised that the left knee examination was essentially normal. He noted diagnostic testing, which revealed lumbar degenerative disc disease, and opined that appellant had a chronic history of low back pain that predated the incident of July 5, 2012. There was no evidence of any anatomical injury to the lumbar spine secondary to the July 5, 2012 injury. Dr. Framjee advised that appellant's symptoms were nonspecific in nature as she had no radicular symptoms on examination. He found good range of motion of the lumbar spine, a negative straight leg raise, no neurological deficits in either leg, and that an MRI scan of the lumbar spine was normal and age-appropriate. Dr. Framjee opined that the accepted aggravation of the preexisting lumbar disc displacement, the aggravation of the preexisting lumbar radiculitis and the accepted conditions of lumbar strain/sprain and left knee sprain had resolved. He explained that the lumbar sprain should have resolved within three weeks postaccident and that the left knee sprain should have resolved within one week postaccident. Dr. Framjee further explained that her ongoing symptoms and treatment postaccident were not suggestive of any new injury but rather were primarily symptoms in continuity of preexisting conditions. He advised that no further medical care was needed.

After OWCP proposed to terminate her benefits, appellant submitted a July 15, 2013 report from Dr. Blough, who repeated his opinion that she remained disabled due to her work injury. Dr. Blough referenced a July 10, 2013 lumbar MRI scan on which he found a new annular tear and a new disc bulge at L3-4 with early left foraminal narrowing. He opined that these new physical findings confirmed his opinion that the work injury appellant's lumbar spine permanently aggravated condition.

On August 14, 2013 OWCP requested a supplemental report from Dr. Framjee with regard to the MRI scan of July 10, 2013.[9] On August 26, 2013 Dr. Framjee explained that the findings from the July 10, 2013 MRI scan were not indicative of any injury secondary to the accident of July 5, 2012. He advised that it was primarily indicative of nonspecific, minor degenerative changes. Dr. Framjee explained that appellant's history, physical examination,

[7] On January 16 and 17, 2013 reports Dr. Foster indicated that appellant's accepted conditions had resolved. In contrast, Dr. Blough indicated in January 31 and February 8, 2013 reports that he did not agree with Dr. Foster's conclusions and that appellant's accepted conditions had not resolved and remained disabling.

[8] *See supra* note 5.

[9] *Roger W. Griffith*, 51 ECAB 491(2000) (when OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report).

review of medical records and MRI scan report did not suggest any evidence of anatomical injury to the lumbar spine secondary to the accident of July 5, 2012. He further advised that the mere presence of a condition on a discogram did not show an injury process secondary to the accident of July 5, 2012. Dr. Framjee opined that, based upon appellant's history and his examination and review of studies, it was his opinion that, based on the accepted work condition, she could return to her normal work.

The Board finds that Dr. Framjee's opinion is well rationalized and represents the weight of the medical evidence regarding appellant's accepted conditions. Dr. Framjee provided a thorough factual and medical history and accurately summarized the relevant medical evidence.[10] Because appellant no longer has residuals or disability related to her accepted employment condition, OWCP properly terminated entitlement to wage-loss compensation and medical benefits effective September 22, 2013. Accordingly, OWCP's decision to terminate her compensation and medical benefits shall be affirmed.

OWCP received a January 3, 2014 report from Dr. Blough, who merely reiterated previously stated findings and conclusions regarding appellant's condition. As Dr. Blough had been on one side of the conflict in the medical opinion, this report is insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.[11]

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 appellant's benefits effective September 22, 2013.

[10] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

[11] *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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