United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 14-1703**
	)	**Issued: February 13, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Odessa, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 1, 2014 appellant, through her attorney, filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) decision dated June 27, 2014. 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.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation benefits as of July 19, 2013 and; (2) whether appellant has established that she had continuing disability caused by residuals of her accepted cervical, thoracic, lumbar, and bilateral shoulder myositis, aggravation of lumbar degenerative disc disease hematuria and liver, and kidney contusion conditions following the termination of her compensation benefits.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This is the second appeal before the Board. On June 20, 2008 appellant, then a 48-year-old distribution clerk, was injured when her foot became caught on the shrink wrap surrounding a packet of newspapers, causing her to fall to the ground landing on her tailbone, hand, and wrist. She filed a claim for benefits, which OWCP accepted for injury to kidney with open wound into cavity, hematoma with rupture of capsule, injury to liver with open wound into cavity, hematuria, myalgia and myositis, degeneration of lumbar or lumbosacral intervertebral disc, and other affections of left shoulder region, and bilateral shoulder myositis.

Appellant returned to part-time modified work in August 2009 and then full-time modified work in December 2009. She stopped working again in July 2010, as the employing establishment was unable to accommodate her medical restrictions.

On November 24, 2009 OWCP issued a notice of proposed termination of compensation to appellant. It found that her accepted lumbar and cervical conditions had ceased and that she had no work-related residuals stemming from these conditions.

By decision dated January 4, 2010, OWCP terminated wage-loss compensation and medical benefits for appellant's cervical, lumbar, bilateral shoulder myositis, and aggravation of lumbar degenerative disc disease conditions.

By decision dated July 26, 2010, an OWCP hearing representative affirmed the January 4, 2010 decision.

On March 2, 2011 appellant underwent a left shoulder arthroscopy to repair a left shoulder labral tear, with partial rotator cuff tendon impingement.

OWCP prepared a statement of accepted facts on July 13, 2011, which incorporated observations made by the United States Postal Service Office of Inspector General on April 16 and 17, 2009. The statement of accepted facts noted that on April 16, 2009 appellant was videotaped returning to her residence in a vehicle which pulled a trailer carrying a boat. She was videotaped picking up and handing fishing rods over the side of the boat to a person on the ground, carrying boat floats, untying and rolling up rope, hosing/spraying down, and cleaning the inside of the boat, climbing up into the boat, and over the side to the trailer, leaning and bending over the side of the boat, sitting and twisting sideways to look underneath the console, leaning while seated in a chair inside the boat, stepping over items in the boat, bending repeatedly to reach things on the floor of the boat, stooping to the boat deck to put items into a storage compartment, squatting, stretching forward to reach a rope tied at the front top of the boat deck, and reaching overhead. The next day she was observed driving to a casino and three hours later driving home.

In a September 23, 2011 order,[2] the Board reversed OWCP's July 26, 2010 termination decision. The Board found that its November 24, 2009 notice of proposed termination was improper because it did not inform appellant of all the conditions under consideration for termination and allow her an opportunity to respond prior to the termination of her compensation

[2] Docket No. 10-2226 (issued September 23, 2011).

benefits, as mandated by OWCP procedures. The Board therefore found that OWCP failed to meet its burden of proof to terminate compensation and reversed the July 26, 2010 decision.

In an October 24, 2011 report, Dr. Rudy Panganiban, appellant's treating physician and a specialist in anesthesiology and pain management, stated that appellant had complaints of neck, shoulder, and lower back pain. He advised that she was returning for ongoing medication management of severe, worsening pain which she rated as a 10 on a scale of 1 to 10.

In order to determine appellant's current condition and ascertain whether she continued to suffer residuals from her accepted conditions, OWCP referred her for a second opinion examination with Dr. Jonathan Black, Board-certified in orthopedic surgery. A copy of the statement of accepted facts was provided to Dr. Black. In an October 2, 2012 report, Dr. Black stated that the results of diagnostic tests of appellant's left shoulder, lumbar, and cervical spine, including magnetic resonance imaging (MRI) scans and discograms, were essentially normal. He advised that none of the objective studies revealed any evidence of significant neurologic compromise. Dr. Black stated that appellant displayed considerable exaggerated pain response and hypersensitivity to palpation along the entire course of the cervical, thoracic, and lumbar spines. He further advised that, although she described severe pain and limitation in range of motion of the shoulders, she was able to move her shoulders quite well. Dr. Black concluded that appellant did not continue to suffer residuals from her June 20, 2008 employment injury and that he had no recommendations for further medical treatment and that she had reached maximum medical improvement on April 16, 2009, the day she had been observed performing tasks on her boat, without apparent difficulty. He stated that she did not have any current physical limitations as a result of her work-related injury. Dr. Black opined that from an orthopedic standpoint there was no clinical evidence that the June 20, 2008 employment injury precluded appellant from returning to gainful employment in any capacity.

In a November 26, 2012 report, Dr. Panganiban stated that appellant presented with complaints of neck, back, and left shoulder pain, which she described as burning, cramping, and deep. Appellant rated the pain as a 6 on a scale of 1 to 10. Dr. Panganiban advised that on examination she had decreased flexion in the cervical spine with moderate tenderness at C5-7 and no evidence of subluxation. He also noted decreased flexion and pain in the lumbar spine. Dr. Panganiban diagnosed peripheral neuropathy, thoracic/lumbar radiculopathy/myelopathy, myofascial/fibromyalgia, and unspecified cervical radiculopathy. He recommended intermittent traction, myofascial release, physical therapy, and continuation of current pain medication regimen.

Dr. Panganiban submitted numerous progress reports in which he essentially reiterated his previous findings and conclusions.

On January 4, 2013 OWCP found that there was a conflict in the medical evidence between Dr. Panganiban and Dr. Black, the second opinion physician, as to whether appellant continued to have residuals from her accepted conditions and referred her to Dr. Fred Ferderigos, Board-certified in orthopedic surgery for a referee examination. In a report dated February 27, 2013, after stating findings on examination, reviewing the medical history and statement of accepted facts, Dr. Ferderigos opined that appellant's accepted lumbar, cervical, and bilateral shoulder conditions stemming from the June 20, 2008 work injury had all resolved. He advised

that her subjective complaints were much more severe than her objective findings. Dr. Ferderigos noted that appellant displayed considerable exaggerated pain with mild touching of the cervical spine and lumbar spine without any appreciable, severe muscle spasm, he was not able to explain these severe subjective complaints. He stated that he had no recommendations for any additional treatments and did not believe that any further treatment would alter her severe subjective complaints. Dr. Ferderigos concluded that appellant had no physical limitations from an orthopedic standpoint as a result of her work-related conditions and no objective findings that would preclude her from doing any gainful employment due to the June 20, 2008 injury.

In a supplemental March 21, 2013 report, Dr. Ferderigos indicated that he was not trained to opine whether appellant's accepted conditions of kidney contusion, liver contusion, and hematuria had resolved from an orthopedic standpoint. He reiterated that her cervical, low back, and left shoulder conditions had resolved and that she had no residuals from these conditions.

In order to determine whether appellant had any residuals from her accepted conditions of kidney contusion, liver contusion, and hematuria, OWCP referred her to Dr. Leonard Y. Cosmo, Board-certified in critical care medicine, for a second opinion examination. In an April 29, 2013 report, Dr. Cosmo stated that her prognosis was good and that no further medical treatment was indicated. He noted that appellant had sustained some type of kidney laceration but that the prognosis was good because there was a lack of any serious or significant sequelae or permanent impairments. Dr. Cosmo opined that she should be able to return to normal work activities without any restrictions. He asserted that appellant had demonstrated an ability to perform various body movements and physical activities with no apparent sign of discomfort.

In an April 25, 2013 report, Dr. Panganiban stated that appellant had complaints of aching, jabbing, sharp and stabbing neck and back pain which she rated as a 6 to 7 on a scale of 1 to 10. Appellant related that the pain reduced her ability to stand up straight and sit comfortably; it was worsened by sitting and standing, twisting, and rotational movements. Dr. Panganiban advised that the pain was relieved by medication. Appellant also experienced mood changes and had difficulty concentrating. On examination of the cervical spine she displayed paravertebral tenderness at C5-7; on examination of the lumbar spine she showed decreased flexion and extension with pain but no tenderness. Dr. Panganiban diagnosed peripheral neuropathy, cervical radiculopathy, and myofascial fibromyalgia and recommended psychotherapy and a continuation of her current medication regimen.

In a supplemental report dated June 2, 2013, Dr. Cosmo opined that there was a lack of objective medical documentation indicating that there were ongoing problems with kidney contusion, liver contusion mid hematuria. He advised that there was no objective documentation of abnormalities in blood work or imaging studies, or urinalysis to suggest ongoing issues with hepatic or renal contusion or hematuria.

On June 6, 2013 OWCP issued a notice of proposed termination of compensation to appellant. It found that Dr. Ferderigos' impartial opinion established that appellant's accepted conditions of cervical, thoracic, and lumbar myositis, left shoulder impingement, and temporary aggravation of lumbar degenerative disc disease had ceased; and that based on Dr. Cosmo's opinion her kidney contusion, liver contusion, and hematuria conditions had ceased and that she had no work-related residuals stemming from these conditions.

By decision dated July 18, 2013, OWCP terminated appellant's compensation for wage loss and medical benefits, finding that Dr. Ferderigos' impartial opinion and Dr. Cosmo's referral opinion represented the weight of the medical evidence.

In an August 4, 2013 report, received by OWCP on October 21, 2013, Dr. Constantine Z. Zaharis, a specialist in emergency medicine, stated that appellant had complaints of chronic lower back pain dating back five years and had sustained an acute exacerbation on that date. He advised that she was experiencing moderate, "achy" pain which was exacerbated by movement. Appellant had associated symptoms of hematuria which she had experienced for the past five years she, however, did not note any new symptoms. Dr. Zaharis administered x-ray testing of the lumbar spine which showed no acute fractures or dislocations. In addition, he advised that appellant had provided urine test results which did not provide any concern for a renal stone.

In a report dated August 26, 2013, Dr. Andreas C. Tomac, a specialist in neurosurgery, stated that appellant complained of cervicalgia, left upper extremity pain and weakness, low back pain, and bilateral lower extremity radiculopathy. Appellant's symptoms are worse with virtually all activity including standing, walking, sitting, and bending. Dr. Tomac advised that she had been treated conservatively with physical therapy, injections, and medications, none of which provided relief. Appellant denied symptoms consistent with cervical myelopathy. Dr. Tomac diagnosed thoracic, lumbosacral neuritis, radiculitis, degeneration of lumbar or lumbosacral intervertebral disc, and cervical neuritis or radiculitis. He advised that x-rays of appellant's cervical spine and MRI scans of her cervical and lumbar spine did not reveal any significant pathology that would explain her symptoms and, therefore, scheduled her for new cervical and lumbar MRI scans.

In an August 29, 2013 report, received by OWCP on September 19, 2013, Dr. Tomac reviewed the results of cervical and lumbar MRI scans appellant underwent on August 26, 2013. He stated that the cervical MRI scan showed a bulging disc at C5-6 with no interval change. Dr. Tomac stated that the previously seen annular tear was not visualized and concluded that the study was otherwise unremarkable. The lumbar MRI scan showed a paracentral disc protrusion at the T11-12 level, with the T12-L1 level stable; there was a mild disc bulge at L5-S1 and no interval change, and straightening of the lumbar lordotic curvature suggesting muscle spasm, and musculoligamentous strain. Dr. Tomac stated that appellant's neck and pain had recently increased in severity, frequency, and duration; she rated her pain as a 10 on a scale of 1 to 10 and stated that it interfered with activities of daily living. He diagnosed degeneration of lumbar or lumbosacral disc, degeneration of cervical or intervertebral disc, cervical neuritis or radiculitis, and thoracic or lumbosacral neuritis or radiculitis.

Dr. Tomac advised that appellant had neck, back, and bilateral leg pain. He stated that the cervical MRI scan showed a C5-6 disc bulge which was nonsurgical and that the lumbar MRI scan showed bulging discs at L2-3 and L5-S1, with stable thoracic disc bulges at T11-12 and T12-L1. Dr. Tomac asserted that he would refer appellant for a discogram in order to evaluate her for discogenic pain syndrome and for her return-to-work status.

In a report dated September 12, 2013, Dr. Panganiban essentially reiterated his previous findings and conclusions.

By letter dated March 27, 2014, appellant requested reconsideration.

In a report received by OWCP on April 1, 2014, Dr. Panganiban advised that appellant was experiencing pain which she rated as a 6 to 7 out of 10 on a scale of 1 to 10; occasionally the severity of the pain rose to a level 10 out of 10. He advised that he had prescribed medication but she had not achieved lasting relief. Appellant had also developed anxiety as a result of her recurrent, enduring pain. Dr. Panganiban diagnosed myofascial fibromyalgia/spasms, thoracic and lumbar radiculopathy, peripheral neuropathy, depression, and anxiety. He asserted that appellant's disability could be permanent as long as she believed that her ability to function had declined; he opined, however, that she might be able to do partial, sedentary work. Dr. Panganiban advised that she would need to obtain a psychological evaluation for her depression and anxiety, as well as a functional capacity evaluation to evaluate her current level of functionality and durability. He asserted that, although appellant's initial injury did cause damage and a decline in her ability to function she did continue to work; she now had a chronic condition that could be self-limiting with a decline in functionality and with deficits. Dr. Panganiban concluded that her injuries had been chronic and required maintenance in the form of medications, physical therapy, and interventional treatment.

By decision dated June 27, 2014, OWCP denied modification of the July 18, 2013 termination decision.

LEGAL PRECEDENT -- ISSUE 1

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[3] Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[4] After it has determined that an employee has disability causally related to federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[5] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[7] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[8]

[3] 5 U.S.C. § 8102(a).

[4] *See Harold S. McGough*, 36 ECAB 332 (1984).

[5] *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

[6] *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

[7] *See T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[8] *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

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.[9]

ANALYSIS -- ISSUE 1

OWCP properly determined that a conflict existed between Dr. Panganiban, her treating physician, and Dr. Black, OWCP's second opinion physician, as to whether appellant continued to be disabled due to residuals of her accepted orthopedic conditions. In this regard Dr. Panganiban continued to report that, upon examination, appellant had decreased flexion in the cervical and lumbar spine, while Dr. Black found that the results of diagnostic tests of appellant's left shoulder, lumbar and cervical spine were essentially normal and concluded that she did not continue to suffer residuals of her June 20, 2008 employment injury.

OWCP thereafter referred appellant for an impartial medical evaluation to determine whether she continued to be disabled due to residuals of her accepted orthopedic conditions. It relied on the opinion of Dr. Ferderigos, the impartial medical specialist, in its July 18, 2013 decision, finding that appellant had no continuing disability or impairment causally related to her accepted conditions of cervical, thoracic, lumbar, and bilateral shoulder myositis, left shoulder impingement, and temporary aggravation of lumbar degenerative disc disease had ceased and that she had no work-related residuals stemming from these conditions.

With regard to appellant's accepted kidney contusion, liver contusion, and hematuria conditions, as there was no conflict in the medical evidence, OWCP referred her to Dr. Cosmo, a critical care specialist, to evaluate whether she had any residuals from these conditions. Dr. Cosmo stated in his June 2, 2013 report that there was no objective medical documentation to indicate that the presence of any ongoing problems with kidney contusion, liver contusion mid hematuria. He stated that there was no objective documentation showing abnormalities in blood work, imaging studies, or urinalysis to indicate that appellant had any ongoing issues with hepatic, renal contusion, and hematuria.

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits.

Dr. Ferderigos, the impartial medical specialist, conducted a full examination of appellant, reviewed her medical history and the statement of accepted facts. He thereafter concluded that her accepted lumbar, cervical, and bilateral conditions, which arose from the accepted injury, had all resolved. Dr. Ferderigos based his conclusion upon his examination of appellant, during which he found that her subjective complaints were of exaggerated pain, even with mild touching of the cervical or lumbar spine, but without any appreciable muscle spasm. He stated that there was no explanation for her complaints. Dr. Ferderigos noted that there was no further medical treatment that would alter appellant's stated complaints. He concluded that she had no physical limitation from an orthopedic standpoint.

[9] 5 U.S.C. § 8123(a).

The Board finds that Dr. Ferderigos' report represents the special weight of the medical evidence regarding appellant's orthopedic conditions. The Board finds that he had full and accurate knowledge of the relevant facts and properly examined appellant. Dr. Ferderigos concluded, with supporting medical rationale, that appellant had no residuals from the accepted conditions. OWCP properly gave special weight to the opinion of the impartial medical examiner and terminated appellant's compensation benefits pertaining to her orthopedic conditions.

Regarding appellant's other accepted conditions of kidney contusion, liver contusion, and hematuria, the Board also finds that OWCP met its burden of proof to terminate benefits.

OWCP referred appellant to Dr. Cosmo for a second opinion examination regarding these conditions. In his April 29, 2013 report, Dr. Cosmo related that there was no evidence of significant sequela or permanent impairment from these conditions. He concluded that no further medical treatment was necessary, and that appellant could return to work without any restriction. In his supplemental report dated June 2, 2013, Dr. Cosmo further explained that there was no objective documentation of abnormalities in her blood work, imaging studies, or urinalysis that would relate to continued hepatic or renal contusion, or hematuria.

The Board concludes that the report of Dr. Cosmo was fully rationalized and explained with objective findings why appellant no longer had residuals of the accepted kidney and liver conditions. Dr. Cosmo's opinion was not contradicted by any medical evidence of record, and it was therefore entitled to the weight of the medical evidence. OWCP properly terminated benefits for these accepted conditions based upon his report.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[10] Following termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to the claimant. To prevail, the claimant must establish by the weight of the reliable, probative, and substantial evidence that she had an employment-related disability, which continued after the termination of compensation benefits.[11] To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[12] Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[13]

[10] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[11] *See I.J.*, 59 ECAB 408 (2008).

[12] *See Jennifer Atkerson*, 55 ECAB 317 (2004).

[13] *See Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

ANALYSIS -- ISSUE 2

In support of her claim of continuing disability, appellant submitted reports from Drs. Zaharis, Tomac, and Panganiban. In his August 4, 2013 report, Dr. Zaharis noted complaints of chronic lower back pain, with a recent acute exacerbation of pain. He asserted that appellant had moderate lower back pain which was exacerbated by movement. Dr. Zaharis also noted that she had associated symptoms of hematuria which she had experienced for the past five years, but was not experiencing any new symptoms. He advised that lumbar x-ray tests showed no acute fractures or dislocations and that urine test results did not indicate the presence of a renal stone. Dr. Zaharis however offered no opinion as to whether appellant had any continuing disability causally related to the accepted injury. His report merely chronicled her pain complaints.

Dr. Tomac noted complaints of cervicalgia, left upper extremity pain and weakness, low back pain, and bilateral lower extremity radiculopathy in his August 26 and 29, 2013 reports. He had appellant undergo cervical and lumbar MRI scans and stated in his August 29, 2013 report that the cervical MRI scan showed a bulging disc at C5-6 with no interval change; otherwise the study was unremarkable. Dr. Tomac advised that the lumbar MRI scan showed a paracentral disc protrusion at the T11-12 level, with a mild disc bulge at L5-S1 and no interval change. While he stated that appellant's neck pain had recently increased in severity, frequency, and duration and rated her pain as a 10 on a scale of 1 to 10, he indicated that the MRI scan results did not demonstrate any severe spinal abnormality. Dr. Tomac noted her subjective complaints, but also noted that while previous x-rays and MRI scans of her cervical spine and lumbar spine did not reveal any significant pathology that would explain her symptoms, new scans of August 26, 2013 showed bulging discs at cervical, thoracic, and lumbar levels. He offered no explanation however as to how these new findings were related to the accepted injury and would cause continuing disability.

Dr. Panganiban, appellant's treating physician, opined that appellant's injuries had been chronic and required maintenance in the form of medications, physical therapy, and interventional treatment. He advised that she was experiencing pain which she rated as a 6 to 7 out of 10 on a scale of 1 to 10, although the pain level occasionally rose to a level 10 out of 10, which caused depression and anxiety. Dr. Panganiban stated that appellant's disability could be permanent as long as she believed that her ability to function had declined. He opined that she nevertheless might be able to do partial, sedentary work. Dr. Panganiban concluded that, although appellant's 2008 work injury caused damage, a chronic condition that could be self-limiting and a decline in her ability to function, she continued to work. The Board notes that he was the treating physician on one side of the medical conflict that the impartial medical specialist resolved. Subsequent reports from a physician who was on one side of a medical conflict that an impartial specialist resolved are generally insufficient to overcome the weight accorded to the report of the impartial medical specialist, or to create a new conflict.[14]

The reports submitted by Drs. Zaharis, Tomac, and Panganiban noted complaints of pain, stated findings on examination and displayed results of diagnostic tests which showed mild

[14] *Supra* note 4.

degeneration of the cervical and lumbar spine, but did not provide a well-reasoned and sufficiently supported opinion that would support a finding of continuing disability causally related to the accepted injury and vitiate OWCP's July 18, 2013 determination that appellant did not have any employment-related disability or residuals stemming from her accepted cervical, lumbar, bilateral shoulder myositis, aggravation of lumbar degenerative disc disease, and liver and kidney contusion conditions. Thus, the Board will affirm OWCP's June 27, 2014 decision.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits and she has not established continuing disability causally related to her June 20, 2008 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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