

FACTUAL HISTORY

On December 14, 2007 appellant, then a 50-year-old tax examining technician, filed a traumatic injury claim alleging that on that date she injured her back and spine when the arms broke on her chair, she fell backwards out of the chair, hit her spine on the chair's arms, and banged her leg when her arm got stuck in the chair. OWCP accepted the claim for a lumbar sprain/strain, back contusion, and right knee contusion. Appellant stopped work on December 14, 2007 and returned to light duty working four hours a day on April 28, 2008. OWCP accepted her claim for a recurrence of disability beginning May 28, 2008 and subsequently placed her on the periodic rolls for temporary total disability.

On December 12, 2012 OWCP referred appellant to Dr. Andrew J. Gelman, a Board-certified orthopedic surgeon, to resolve a conflict in medical opinion between Dr. Stuart J. Gordon, an OWCP referral physician, and Dr. William L. Chollak, an attending physician, to clarify the cause and extent of her accepted employment injury and whether there continued to be any residuals or disability.

In a January 23, 2013 report, Dr. Gelman, based upon a review of the medical evidence, statement of accepted facts, medical history, and physical examination, concluded that appellant no longer had any residuals or disability due to the accepted lumbar sprain/strain, back contusion, and right knee contusion. A physical examination revealed a morbidly obese individual, lower back paravertebral musculature superficial discomfort complaints, negative sciatic tension testing, negative straight leg raise, negative Laseque's test, no right knee instability, crepitance with right knee passive manipulation, and right knee range of motion from 10 to 85 degrees. Dr. Gelman noted that appellant exhibited symptoms of right knee osteoarthritis and low back pain, which were unrelated to the December 14, 2007 employment injury. He related that from the history and her description that she sustained a minor trauma from the December 14, 2007 employment injury, which had resolved. Dr. Gelman opined that appellant's current medical treatment was due to the degenerative disease process which was not caused or aggravated by the accepted employment injury based on the medical reports and objective evidence. In a work capacity evaluation form (Form OWCP-5c), he indicated that she was capable of performing her date-of-injury position with no restrictions.

On April 11, 2013 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits based on Dr. Gelman's opinion that she no longer had any residuals or disability due to her accepted employment injuries. Appellant was given 30 days to respond to the proposed termination.

In a May 15, 2013 report, Dr. Chollak reiterated that his opinion that appellant continued to be totally disabled due to her accepted December 14, 2007 employment injury. He opined that her landing on her back and right knee after her chair broke caused a significant injury to her right knee and back as it aggravated her underlying arthritis. Dr. Chollak related that increased activity causes appellant increased pain. In concluding, he opined that he did not believe she was capable of tolerating full-time work even in a sedentary job.

By decision dated June 6, 2013, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 30, 2013. It found that the opinion of Dr. Gelman, an

impartial medical examiner, that appellant no longer had any residuals or disability due to her accepted December 14, 2007 injury, was entitled to the special weight of the evidence.

On June 20, 2013 appellant requested a telephonic hearing before an OWCP hearing representative. The hearing was held on November 19, 2013.

In a January 27, 2014 decision, the hearing representative affirmed the June 6, 2013 decision terminating appellant's wage-loss compensation and medical benefits.

In a letter dated March 12, 2014, counsel requested reconsideration. In support of her request, appellant submitted a February 27, 2014 report by Dr. Chollak, who stated that she has been his patient for years and diagnosed her current condition as right knee degenerative arthritis and lumbar/back spine with intermittent sciatic radiation. Dr. Chollak related that she continued to suffer from severe symptoms sustained as a result of the December 14, 2007 employment injury. Appellant complained of constant pain no matter what position she is in. Dr. Chollak noted that prior to her December 14, 2007 employment injury she had no symptoms and worked with minimal discomfort. Currently appellant was doing no activity or work to keep her pain within a reasonable range. Dr. Chollak noted that her right knee problems aggravate her back problems and *vice versa*. He noted that due to appellant's constant pain complaints she is unable to stand or sit for any length of time without her pain increasing. In concluding, Dr. Chollak opined that the December 14, 2007 injury was the cause of her intermittent sciatica, continuous back pain, and escalating right knee degenerative arthritis. He opined that appellant was totally disabled from any type of work.

By decision dated July 21, 2014, OWCP denied modification.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's 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 Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ To terminate authorization for medical treatment, OWCP must

² *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁵ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁶

Section 8123(a) provides that, 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.⁷ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 30, 2013. The accepted conditions are lumbar sprain/strain, back contusion, and right knee contusion. OWCP properly determined that a conflict in medical evidence had been created between the opinions of appellant's treating physician, Dr. Chollak, and Dr. Gordon, an OWCP referral physician, regarding the cause and extent of her accepted condition and whether the conditions had resolved with no residuals. It referred appellant to Dr. Gelman, Board-certified in orthopedic surgery, for an impartial medical evaluation.

Dr. Gelman conducted an impartial medical examination on June 3, 2010 as well as reviewing appellant's history of injury and medical history. He diagnosed lumbar contusion and congenital genu valgus. Dr. Gelman performed an extensive review of the medical records which led him to opine that appellant's accepted injury had resolved and that her low back pain and right knee osteoarthritis were unrelated to the accepted December 14, 2007 employment injury. In support of this conclusion, he related that she sustained a minor trauma on December 14, 2007 based on review of her medical history prior to the injury and medical reports from the date of injury. Dr. Gelman concluded that there was no objective evidence supporting any disability and that appellant's preexisting conditions had not been aggravated by the December 14, 2007 injury. He found that her current medical condition and disability were due to a nonemployment-related degenerative disease condition. Dr. Gelman further concluded that appellant could return to her date-of-injury job without restrictions resulting from the December 14, 2007 employment injury.

The Board finds that Dr. Gelman's report was entitled to the special weight of the medical evidence. Dr. Gelman provided a detailed report reviewing the medical and employment injury history, medical records, and physical examination findings. He explained why he determined that appellant's current condition was not due to her employment as the initial injury was a minor trauma which would not have permanently aggravated her preexisting conditions and that the objective evidence did not support any continuing residuals or disability.

⁶ *Kathryn E. Demarsh, id; James F. Weikel*, 54 ECAB 660 (2003).

⁷ 5 U.S.C. § 8123(a). See *S.R.*, Docket No. 09-2332 (issued August 16, 2010); *Y.A.*, 59 ECAB 701 (2008); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

⁸ *A.R.*, Docket No. 09-1566 (issued June 2, 2010); *M.S.*, 58 ECAB 328 (2007); *Bryan O. Crane*, 56 ECAB 713 (2005).

Dr. Gelman opined that her current medical condition was due to the preexisting degenerative disease process, which had not been caused or aggravated by the December 14, 2007 employment injury. As his report is based on a proper factual history, provided findings and included medical reasoning, supporting his conclusions, the Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, the burden shifted to her to establish disability causally related to her accepted injury.⁹

ANALYSIS -- ISSUE 2

Following OWCP's June 6, 2013 termination of appellant's compensation and medical benefits effective June 30, 2013, which was affirmed by an OWCP hearing representative on January 27, 2013, counsel requested reconsideration and submitted additional new evidence consisting of an additional report from Dr. Chollak.

Dr. Chollak submitted an additional February 27, 2014 report of appellant's claim for total disability and medical residuals following the termination of her compensation benefits. He reiterated that his findings and opinion that she continued to be totally disabled as a result of the injuries sustained on December 14, 2007. Dr. Chollak opined that the December 14, 2007 injury caused a permanent aggravation of appellant's preexisting right knee degenerative arthritis, intermittent sciatic radiation, and lumbar/back condition. As he was on one side of a conflict which was resolved by Dr. Gelman and his report does not otherwise provide new findings or medical rationale, Dr. Chollak's February 27, 2014 report is insufficient to establish there were any continuing conditions or residuals due to the accepted July 29, 2009 work injury.¹⁰ Moreover, OWCP has not accepted the conditions of right knee degenerative arthritis or intermittent sciatic radiation.¹¹ Where a claimant claims that a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the injury through the submission of rationalized medical evidence.¹² Dr. Chollak has not provided any supporting rationale explaining how appellant's condition was a result of her accepted employment injury beyond noting that the injury was the cause of her current conditions. The Board has held opinions unsupported by rationale are entitled to little probative value.¹³ For the reasons set forth above, Dr. Chollak's February 27, 2014 report is insufficiently rationalized to create a conflict of medical opinion with

⁹ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

¹⁰ See *I.J.*, 59 ECAB 408 (2008); *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

¹¹ *Charles W. Downey*, 54 ECAB 421 (2003); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹² *M.D.*, Docket No. 11-1737 (issued April 3, 2012); *F.H.*, Docket No. 10-1267 (issued March 7, 2011); *JaJa K. Asaramo*, 55 ECAB 200, 214 (2004).

¹³ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

Dr. Gelman. Appellant has failed to meet her burden of proof to establish continuing residuals or disability due to her accepted conditions.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds the attorney's arguments are not substantiated.

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).

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits and that she has failed to meet her burden of proof to establish any continuing disability or medical residuals on or after June 30, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 21, 2014 is affirmed.

Issued: February 10, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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