

FACTUAL HISTORY

On July 19, 2003 appellant, then a 52-year-old transportation security screener, filed a traumatic injury claim alleging that on that day he injured his lower back while lifting heavy bags and boxes from the conveyer belt. OWCP accepted the claim for lumbar strain/sprain, which was expanded to include aggravation of lumbar radiculopathy and aggravation of degenerative disc disease. By letter dated September 14, 2005, appellant was placed on the periodic rolls for temporary total disability.

On August 13, 2012 OWCP referred appellant for a second opinion evaluation with Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, to determine his current medical status.

In an August 31, 2012 report, based upon a physical examination, statement of accepted facts, occupational history, and review of the medical evidence, Dr. Obianwu diagnosed resolved lumbar sprain, resolved degenerative disc disease aggravation, resolved lumbar radiculopathy aggravation, and chronic degenerative lumbar disc disease. A physical examination revealed a surgical scar on appellant's back, no tightness of the lumbar spine muscles, ability to get up from the examining table, no atrophy of the lower extremities, and tenderness localized at the L4 spinous process. Dr. Obianwu stated that appellant arrived with a cane and displayed excessive pain behaviors on examination. He found no concrete evidence of lumbar radiculopathy on his examination. The straight leg testing was negative but there was evidence of symptom magnification.

As to the lumbar spine, Dr. Obianwu concluded that the employment injury caused a temporary aggravation based on the increased pain appellant complained of following the 2003 injury. He noted that appellant's preexisting lumbar degenerative disc disease would worsen with age and his current condition was unrelated to the accepted employment injury. Dr. Obianwu recommended electrodiagnostic testing to determine if appellant had true radiculopathy. He found appellant disabled from performing his date-of-injury position, due to his age-related lumbar spine changes.

In an October 19, 2012 supplemental report, Dr. Obianwu diagnosed resolved lumbar sprain, resolved degenerative disc disease aggravation, resolved lumbar radiculopathy aggravation and chronic degenerative lumbar disc disease. A review of electrodiagnostic tests performed on October 2, 2012 revealed lower extremity peripheral neuropathy, but no evidence of lumbar radiculopathy. Dr. Obianwu found no medical evidence supporting aggravation of lumbar radiculopathy or aggravation of degenerative disc disease continues. Thus, he concluded that appellant no longer had any residuals or disability due to the accepted employment injuries. Dr. Obianwu noted appellant's current problem was his lumbar degenerative disc disease, which was not employment related.

On January 8, 2013 OWCP issued a notice proposing to terminate appellant's compensation benefits based upon Dr. Obianwu's opinion that appellant's accepted employment conditions had resolved.

Appellant disagreed with Dr. Obianwu's opinion in a January 16, 2013 letter and advised that he was currently being seen by Dr. Louis N. Radden, an osteopathic Board-certified orthopedic surgeon.

By decision dated February 12, 2013, OWCP finalized the termination of appellant's compensation benefits effective that date.

Appellant's counsel requested reconsideration on December 21, 2013 and submitted reports from Dr. Radden.

In a November 14, 2012 report, Dr. Radden noted appellant's medical and employment injury history. Diagnoses included lumbar strain, lumbar facet syndrome and lumbar disc degeneration. A physical examination revealed a normal gait, positive posterior midline lower and positive right and left paramedian lumbar spine tenderness. Dr. Radden reported positive bilateral straight leg raising, normal hip range of motion, and decreased lumbar spine range of motion by 50 percent. A review of x-ray interpretation revealed lumbar spondylosis.

Dr. Radden, in a January 23, 2013 report diagnosed lumbar sprain, lumbar disc herniation, lumbar facet syndrome, and L4-5 symptomatic disc bulge based on a clinical examination and April 14, 2011 magnetic resonance imaging (MRI) scan. He reviewed Dr. Obianwu's August 31, 2012 report and noted his disagreement with Dr. Obianwu's opinion that appellant's condition had resolved and that there was symptom magnification. Dr. Radden opined that appellant's L4-5 disc bulge was causally related to the accepted July 2003 employment injury either by direct causation or by aggravation of a preexisting condition. With respect to the negative electromyography test, he agreed with Dr. Obianwu that the diagnostic test showed peripheral neuropathy and no radiculopathy. Despite these findings, Dr. Radden opined that appellant's radiculopathy had not resolved as the diagnostic testing is used to determine the extent of any nerve damage.

In a June 3, 2013 report, Dr. Radden conducted a physical examination which showed symptoms and signs of lumbar degenerative disc disease. He recommended a core exercise program for appellant.

By letter dated January 6, 2014, OWCP advised appellant and counsel that it could not communicate with the counsel as no authorization form signed by appellant had been submitted. Appellant was given 30 days to provide the requested signed authorization form. No signed authorization form was submitted.²

On March 10, 2014 OWCP dismissed the December 21, 2013 reconsideration request by counsel as no signed authorization form had been received by OWCP.

² The record reveals that on January 9, 2014 OWCP found a conflict in the medical opinion evidence between Dr. Radden, for appellant, and Dr. Obianwu, an OWCP second opinion physician, and recommended that appellant be seen by an impartial medical examiner. However, OWCP did not notify appellant's representative of this as no attorney authorization was of record.

On March 18, 2014 OWCP received a signed authoration form, a March 18, 2013 reconsideration request, the December 21, 2013 reconsideration request, and medical evidence that was submitted with the December 21, 2013 request for reconsideration.

By decision dated June 16, 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.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 OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ 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.⁷

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for lumbar strain/sprain, aggravation of lumbar radiculopathy, and aggravation of degenerative disc disease. It terminated his compensation benefits effective February 12, 2013 on the grounds that the accepted employment-related conditions had resolved without residuals based on the reports of Dr. Obianwu, a Board-certified orthopedic surgeon and second opinion physician. The issue to be determined is whether OWCP met its burden to terminate appellant's compensation benefits.

The Board finds that OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits based on the August 31 and October 19, 2012 reports of Dr. Obianwu who reviewed his medical history, examined him, and found no objective evidence of ongoing employment-related residuals or disability due to the accepted conditions of lumbar strain/sprain, aggravation of lumbar radiculopathy, and aggravation of degenerative disc disease. Dr. Obianwu reviewed the statement of accepted facts and the medical record. He found no concrete evidence of lumbar radiculopathy on his examination as the straight leg testing was negative and there was evidence of symptom magnification. As to the lumbar spine conditions, Dr. Obianwu concluded that appellant had a temporary aggravation based on the increased pain appellant complained of following the employment injury. He noted that appellant had

³ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *Kathryn E. Demarsh*, *supra* note 6; *James F. Weikel*, 54 ECAB 660 (2003).

preexisting lumbar degenerative disc disease which would worsen with age and any aggravation caused by the employment injury had resolved. Dr. Obianwu concluded that appellant had recovered from the accepted employment conditions, but was disabled from working his date-of-injury job due to his preexisting degenerative disc disease. In the October 19, 2012 supplemental report, he diagnosed resolved lumbar sprain, resolved degenerative disc disease aggravation, resolved lumbar radiculopathy aggravation and chronic degenerative lumbar disc disease based on the findings of the October 2, 2012 electrodiagnostic test, which revealed lower extremity peripheral neuropathy, but no evidence of lumbar radiculopathy.

The Board finds that, as Dr. Obianwu's reports are well rationalized and based upon a complete and accurate history, his opinion is sufficient to represent the weight of the medical evidence in this case. There was no contrary medical evidence at the time of the referral to Dr. Obianwu or when OWCP terminated his compensation benefits. Therefore, the Board finds that OWCP properly terminated appellant's wage-loss and medical compensation benefits effective February 12, 2013, as the weight of the competent medical evidence established that the accepted July 19, 2003 lumbar strain/sprain, aggravation of lumbar radiculopathy, and aggravation of degenerative disc disease had resolved without residuals.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had any disability causally related to his accepted injury.⁸

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.⁹ 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.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision on the issue of whether appellant established that he has continuing residuals and disability due to his accepted July 19, 2003 employment due to an unresolved conflict in medical opinion evidence.

As discussed above, the weight of the medical evidence at the time of the termination rested with Dr. Obianwu, who concluded that appellant no longer had any residuals due to his accepted employment injuries. Based on his physical findings and review of the medical and factual evidence, Dr. Obianwu determined that appellant's current disability and condition was

⁸ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

⁹ 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).

¹⁰ *A.R.*, Docket No. 09-1566 (issued June 2, 2010); *M.S.*, 58 ECAB 328 (2007); *Bryan O. Crane*, 56 ECAB 713 (2005).

due to his preexisting degenerative disc disease and aggravation caused by the natural process of aging.

In support of his request for reconsideration, appellant's counsel submitted reports from Dr. Radden, appellant's treating physician, who diagnosed lumbar strain, lumbar facet syndrome and lumbar disc degeneration. Dr. Radden reported a normal gait, positive posterior midline lower and positive right and left paramedian lumbar spine tenderness, positive bilateral straight leg raising, normal hip range of motion, and decreased lumbar spine range of motion by 50 percent. A review of x-ray interpretation revealed lumbar spondylosis. Based on an April 14, 2011 MRI scan and clinical findings, Dr. Radden diagnosed an L4-5 symptomatic disc bulge. He reviewed Dr. Obianwu's report and noted his disagreement with Dr. Obianwu's opinion that appellant's condition had resolved and that there was symptom magnification. Dr. Radden opined that appellant's L4-5 disc bulge was causally related to the accepted July 2003 employment injury either by direct causation or by aggravation of a preexisting condition. With respect to the negative electromyography test, he agreed with Dr. Obianwu that the diagnostic test showed peripheral neuropathy and no radiculopathy. However, Dr. Radden opined that appellant's radiculopathy had not resolved as the diagnostic testing is used to determine the extent of any nerve damage.

The Board finds a conflict in medical opinion between Dr. Obianwu and Dr. Radden, with respect to whether appellant continues to have any disability or residuals due to the accepted July 19, 2003 employment injury. Therefore, the case will be remanded to refer appellant to an impartial medical examiner to resolve the conflict, pursuant to 5 U.S.C. § 8123(a). Following this and any further development of the medical evidence, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that OWCP met its burden to terminate appellant's compensation benefits effective February 12, 2013. The Board further finds that this case is not in posture for decision as to whether appellant has established continuing residuals and disability due to an unresolved conflict in the medical opinion evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 16, 2014 is affirmed with respect to the termination of appellant's compensation benefits and remanded for consideration of continuing residuals as set forth in the decision above.

Issued: January 26, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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