

**United States Department of Labor
Employees' Compensation Appeals Board**

C.H., Appellant)
and) Docket No. 15-0735
DEPARTMENT OF THE ARMY, NATIONAL) Issued: July 23, 2015
GEOSPATIAL-INTELLIGENCE AGENCY,)
Springfield, VA, Employer)

)

Appearances:
Appellant, pro se
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 February 2, 2015 appellant filed a timely appeal from the January 14, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 is whether OWCP met its burden of proof to terminate appellant's compensation benefits effective February 8, 2015 as she had no residuals of the accepted conditions or continued disability from work.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 18, 2013 appellant, then a 39-year-old intelligence specialist, filed a traumatic injury claim alleging that on June 10, 2013 she sustained a left foot injury in the performance of duty when she slipped on a wet floor at the employing establishment resulting in a sprained left foot. She stopped work that day and returned on June 18, 2013. Thereafter, appellant stopped work again on September 19, 2013 and did not return. OWCP accepted the claim for sprained left foot and sprain of the lumbar region. It began paying wage-loss compensation on October 29, 2013.

Initial x-ray reports of the left foot revealed that appellant had no evidence of fracture, dislocation, or acute osseous abnormality, and x-ray reports of the lumbar spine were unremarkable. A magnetic resonance imaging (MRI) scan of the lumbar spine revealed a mild disc bulge at L5-S1 without associated neural foraminal or central canal narrowing. In a September 18, 2013 report, Dr. Roy Bands, a Board-certified orthopedic surgeon, assessed disc herniation at L5-S1, degenerative disc disease at L5-S1, and left lumbar radiculopathy. He noted that appellant's symptoms began after she fell at work on June 10, 2013. Dr. Bands continued submitting reports indicating that she remained symptomatic. A December 11, 2013 electromyography (EMG) study found no radiculopathy.²

In a December 4, 2013 report, Dr. Susan Zimmerman, a Board-certified physiatrist, advised that appellant complained of lumbar pain radiating to the posterior lower extremity with swelling in the left foot. On physical examination she noted that there was no limited range of motion, localized joint stiffness, lumbosacral tenderness on palpation, muscle spasm, or pain elicited by motion. Dr. Zimmerman assessed lumbar sprain and noted that findings were consistent with sacroiliitis.

On January 17, 2014 OWCP referred appellant, together with the medical record and a statement of accepted facts to Dr. Robert Smith, a Board-certified orthopedic surgeon, for a second opinion regarding her status and whether she had residuals of her accepted conditions.

In a February 18, 2014 report, Dr. Smith advised that appellant had injured her back and left foot when she slipped on a wet floor. He noted that she currently complained of low back pain radiating into the left leg down to the foot. On examination of the left foot, Dr. Smith noted normal bone and soft tissue structures with a normal arch, normal and complete range of motion of the ankle and subtalar joints, no instability, no calf atrophy, and normal motor strength. Examination of the back revealed no spasm, atrophy, trigger points, or deformity. Appellant had active spinal range of motion. Dr. Smith also advised that neurologic examination of the lower extremities was normal with no atrophy, weakness, or reflex asymmetry. He opined that appellant had no residuals of the accepted condition and that minor disc bulging at L5-S1 was preexisting and age related, not caused either directly or aggravated by the work incident. Dr. Smith noted that she had no radiculopathy or trigger points on clinical examination or diagnostic testing that would require further treatment. He further opined that there was no evidence of ongoing organic abnormalities that would prevent appellant from returning to work.

² The record also indicates that appellant underwent a cervical fusion on October 29, 2013. The cervical fusion is not part of the present claim.

On June 10, 2014 OWCP sent Dr. Bands a copy of Dr. Smith's second opinion report and requested that he submit any comments to OWCP within 30 days. In an August 3, 2014 report, Dr. Bands advised that appellant had radiographic and clinical evidence of lumbar degenerative and disc bulging at L5-S1. He recommended telecommuting on a permanent basis in an attempt to reduce stress on her lumbar spine and to avoid further deterioration of her underlying spinal disorder.

OWCP determined that there was a medical conflict between the treating physician, Dr. Bands, and OWCP referral physician, Dr. Smith, regarding whether appellant had continuing residuals of her employment injury, and by letter dated August 28, 2014, it referred her for a referee examination with Dr. Mohammad Zamani, a Board-certified orthopedic surgeon.

In his September 22, 2014 report, Dr. Zamani noted the history of appellant's injury and treatment history. In reviewing the medical records, he noted that she was seen initially in an emergency room and had x-rays taken on June 10 and 11, 2013, which were normal or unremarkable. Thereafter, appellant was diagnosed with sacroiliac compression and received two steroid injections. Dr. Zamani questioned why she was diagnosed with and treated for sacroiliac compression, noting that the origin of this diagnosis was unclear. On examination of the back he noted normal trunk alignment, pain on palpation in lower lumbar area, no tenderness over the sacroiliac joint or thoracic area, no pain upon sacroiliac stressing, and a normal gait. On physical examination of the foot, Dr. Zamani noted full mobility of the toes, foot, and ankle, no redness, no warmth, and no swelling of the joints. He noted that the examination was absolutely normal with no positive objective finding. Dr. Zamani opined that appellant's accepted injury was temporary and her symptoms had subsided. He advised that there were no residuals of the work injury and that full recovery had been obtained. Dr. Zamani acknowledged that appellant had subjective pain complaints, but reiterated that her examination was without objective findings. He explained that MRI scanning from August 26, 2012 showed a minor disc bulge, but revealed no compression of the nerve. Dr. Zamani further opined that appellant required no further treatment as a result of the work-related injuries and expressed that the pain management and injection treatments that she underwent appeared unnecessary and unrelated. He found that her back was better than average for a person of her age and advised that she was capable of returning to work full time.

By letter dated October 20, 2014, OWCP advised appellant that it proposed a termination of wage-loss and medical compensation benefits. It advised that the weight of the evidence was represented by Dr. Zamani who found that there were no residuals of her accepted conditions and that she was no longer disabled from work. Appellant was advised that she had 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

Appellant submitted October 20 and November 21, 2014 progress reports from Dr. James Huang, a Board-certified physiatrist and associate of Dr. Zimmerman. In his October 20, 2014 report, Dr. Huang noted that appellant had a June 10, 2013 work injury and currently presented with low back pain. He noted her symptoms, examination findings, and diagnosed lumbar disc degeneration, spondylosis, and radiculopathy. In his November 21, 2014 report, Dr. Huang advised that on physical examination there was lumbosacral tenderness on palpation on the left, no muscle atrophy, no lumbosacral spine weakness, and no lower extremity weakness. He assessed sacroiliitis, lumbar disc degeneration, lumbar spondylosis, and lumbar radiculopathy.

Dr. Huang referenced the report from Dr. Zamani and opined that appellant's pain was radicular in etiology and most likely due to radiculopathy. He noted that EMG testing had poor sensitivity for radiculopathy and recommended a lumbar epidural steroid injection.

In a November 13, 2014 statement, appellant argued that the second opinion physician and referee physician did not come to the right conclusion. She alleged that Dr. Zamani was rude and that he had made up his mind prior to conducting the examination. Appellant advised that she recently went to an independent physician who addressed her pain and opined that it was related to the work incident. She advised that she would have him complete the necessary paperwork. Appellant also submitted printed patient reviews of Dr. Zamani and Dr. Smith.

In a November 25, 2014 work capacity evaluation, Dr. Huang advised that there were severe symptoms of pain limiting sitting and standing and noted that appellant could only work one to two hours per day.

By decision dated January 14, 2015, OWCP terminated appellant's wage-loss and medical benefits effective February 8, 2015. It found that the weight of medical opinion was represented by Dr. Zamani.

LEGAL PRECEDENT

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits,³ which includes furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability ceased or was no longer related to the employment.⁵ The right to medical benefits for an accepted condition, on the other hand, is not limited to the period of entitlement to disability compensation. To terminate authorization for medical treatment, OWCP must establish that an employee no longer has residuals of an employment-related condition, which would require further medical treatment.⁶

FECA provides that, if there is a 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 the examination.⁷ The implementing regulations state that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee or impartial examination and OWCP

³ *I.J.*, 59 ECAB 408 (2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

⁴ *D.C.*, Docket No. 09-1070 (issued November 12, 2009); *Larry Warner*, 43 ECAB 1027 (1992).

⁵ *I.J.*, *supra* note 3.

⁶ *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ 5 U.S.C. § 8123(a).

will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁸

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual, and medical background, must be given special weight.⁹

ANALYSIS

OWCP accepted appellant's claim for sprained left foot and sprain of the lumbar region. Appellant received wage-loss compensation and medical benefits based on the accepted conditions. OWCP referred her to Dr. Smith for a second opinion regarding the status of her accepted conditions. In his February 18, 2014 report, Dr. Smith noted appellant's history and opined that she had no residuals of the accepted condition. He found that the minor disc bulging at L5-S1 was preexisting and age related and noted that there was no radiculopathy or trigger points on clinical examination or diagnostic testing. Dr. Smith opined that appellant was able to return to work full time. However, appellant's treating physician, Dr. Bands, indicated that radiographic and clinical evidence supported ongoing symptoms and suggested lumbar degenerative disc disease and disc bulging at L5-S1. OWCP found that this created a conflict of medical opinion, and under 5 U.S.C. § 8123(a), referred the case to Dr. Zamani for a referee examination and an opinion as to whether appellant continued to have employment-related residuals.

In his September 22, 2014 report, Dr. Zamani reviewed appellant's history, reviewed the medical evidence of record, and noted findings on examination. He found that there were no positive objective findings on examination. Dr. Zamani acknowledged that appellant had subjective pain complaints, but reiterated that her examination was without objective findings. He explained that, while MRI scanning showed a minor disc bulge, it showed no nerve compression. Dr. Zamani indicated that appellant's accepted sprain conditions required only limited treatment and that she had no disability. He opined that there were no residuals of the accepted injury and that full recovery was obtained. Dr. Zamani further opined that appellant required no further treatment and that she was capable of returning to work full time. He found no basis on which to attribute any continuing condition or disability to the accepted injury.

The Board finds that the weight of the medical evidence rests with the well-rationalized report of Dr. Zamani. Dr. Zamani's opinion is based on a complete and accurate factual and medical history and is entitled to special weight. The Board finds that OWCP met its burden of proof to terminate wage-loss compensation effective February 8, 2015.

Appellant submitted October 20 and November 21, 2014 progress reports from Dr. Huang. In his October 20, 2014 report, Dr. Huang noted that she had a June 10, 2013 work injury and currently presented with low back pain. He noted appellant's symptoms, examination findings, and diagnosed lumbar disc degeneration, spondylosis, and radiculopathy. On

⁸ 20 C.F.R. § 10.321.

⁹ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

November 21, 2014 Dr. Huang assessed sacroiliitis, lumbar disc degeneration, lumbar spondylosis, and lumbar radiculopathy. He opined that appellant's pain was radicular in etiology and most likely due to radiculopathy. In his November 25, 2014 work capacity evaluation, Dr. Huang advised that there were severe symptoms of pain limiting sitting and standing and noted that she could only work one to two hours per day. The Board finds that these reports are of diminished probative value and do not overcome the weight of Dr. Zamani's report because they fail to specifically address how the accepted left foot and back sprain caused appellant's sacroiliitis, lumbar disc degeneration, lumbar spondylosis, and lumbar radiculopathy. This is especially important where Dr. Zamani diagnosed preexisting conditions that were not accepted by OWCP as employment related.¹⁰ He also did not provide any medical reasoning to support continuing disability due to the accepted sprains.

In a statement, appellant alleged that Dr. Zamani was rude and biased during the examination. She also submitted on-line patient reviews for both Dr. Smith and Dr. Zamani. However, the Board has held that mere allegations are not sufficient to establish bias. There must be evidence of actual bias or unfairness by the physician used by OWCP as a referral physician.¹¹ Here, appellant provided no evidence showing that Dr. Zamani acted in a biased manner toward her.

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 wage-loss compensation effective February 8, 2015.

¹⁰ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

¹¹ *J.C.*, Docket No. 08-1833 (issued March 23, 2009).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 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