

FACTUAL HISTORY

On January 24, 2005 appellant, a 50-year-old postmaster, injured her back, upper shoulders, and neck when she slipped and fell on a patch of ice. She filed a claim for benefits, which OWCP accepted for lumbar strain/sprain. OWCP commenced payment for wage-loss compensation on the periodic rolls as of March 14, 2005.

The record substantiates that appellant continued to treat with Dr. Gordon D. Donald, a Board-certified orthopedic surgeon, for the cervical and lumbar conditions. Dr. Donald continued to relate that appellant remained temporarily disabled.

In a June 15, 2012 report, Dr. Donald noted that appellant continued to have debilitating discogenic neck pain and cervical radiculitis secondary to disc herniation and chronic low back pain and secondary to chronic lumbosacral strain. He advised that she recently had experienced severe worsening of her right cervical radiculitis and was referred for a cervical epidural block. The epidural block significantly improved appellant's more acute symptoms, but she continued to have residual debilitating axial neck pain and some residual muscle weakness of her right arm. Dr. Donald opined that she remained permanently disabled from work due to her chronic cervical radiculitis and discogenic neck pain, secondary to a herniated disc causally related to her work injury.

In order to determine appellant's current condition and ascertain whether she still suffered residuals from her accepted conditions, OWCP referred appellant for a second opinion examination with Dr. Kenneth Heist, a Board-certified orthopedic surgeon. In an August 30, 2012 report, Dr. Heist stated that the accepted condition of lumbar sprain had resolved. He stated that on examination there were no positive objective findings related to the January 24, 2005 work injury. Dr. Heist opined that the claim should not be expanded to include other conditions. He stated that appellant had a current disability of degenerative spinal disease that was not due to the January 24, 2005 fall. Dr. Heist asserted that she was capable of performing her job as a postmaster full time, with light restrictions which included exerting up to 20 pounds of force occasionally or up to 10 pounds of force frequently to lift, carry, push, pull, or otherwise move objects; she also had some restrictions on walking or standing to a significant degree. He stated that these restrictions were related to appellant's preexisting spinal disease and not to the January 24, 2005 work injury. Dr. Heist advised that she had reached maximum medical improvement and did not require additional orthopedic treatment, surgical intervention, or diagnostic testing.

In a report dated April 19, 2013, Dr. Donald stated that appellant had experienced severe flare ups which were disabling to her and commonly resulted in treatments which gave her temporary relief. He advised, however, that her symptoms tended to recur over time. Dr. Donald asserted that appellant had significant occipital cervical and bilateral neck upper shoulder pain which radiated to the right proximal arm. He diagnosed cervical herniated disc with radiculitis and chronic lumbosacral strain and advised that appellant had chronic recurrent and persistent symptoms due to pathology causally related to trauma from her accepted 2005 work injury. Dr. Donald stated that she was not able to tolerate any prolonged or persistent general activities and remained permanently disabled from gainful employment.

OWCP found on August 16, 2013 that there was a conflict in the medical evidence between Dr. Donald and Dr. Heist, the second opinion physician, as to whether appellant still had residuals from her accepted lumbar sprain/strain. It referred her to Dr. Robert Dennis, Board-certified in orthopedic surgery, for an impartial medical examination.

In a report dated September 9, 2013, Dr. Dennis stated findings on examination, reviewed the statement of accepted facts, and reviewed appellant's medical history. He concluded that she had no residuals from her January 24, 2005 employment injury, as her accepted condition was lumbar strain/sprain, which had resolved. Dr. Dennis noted that appellant had been actively treated with regard to cervical spine and upper extremity symptomatology, which pertained to an unaccepted condition unrelated to her January 24, 2005 work injury. He advised that while she may have sustained a temporary aggravation of her preexisting condition as a result of the January 24, 2005 fall, this was attributable to the degenerative nature of her condition and not to a fall that occurred eight and one half years ago.

Dr. Dennis opined that appellant had no current disability and stated that her subjective complaints and findings on clinical examination, as well as results of objective studies, were reflective of age-related degenerative pathology. He further found that the physical requirements of the postmaster position did not exceed her capabilities; she was capable of working full time, eight hours per day, with one restriction of no heavy lifting exceeding 25 pounds. Dr. Dennis reiterated that appellant's current complaints pertained to the cervical spine, which was not an accepted condition.

On October 7, 2013 OWCP issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Dennis' impartial opinion, established that her accepted lumbar strain/sprain condition had ceased and that she had no work-related residuals stemming from this condition.

By decision dated December 12, 2013, OWCP terminated appellant's medical and wage-loss compensation benefits as of December 15, 2013, finding that Dr. Dennis' impartial opinion represented the weight of the medical evidence.

On December 27, 2013 appellant requested an oral hearing, which was held on July 9, 2014.

In reports dated September 19 and November 18, 2013, Dr. Donald essentially reiterated his previous findings and conclusions.

By decision dated September 11, 2014, an OWCP hearing representative affirmed the December 12, 2013 termination decision.

LEGAL PRECEDENT

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.³

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

The right to receive medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁴

Section 8123(a) 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 an examination.⁵ 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.⁶

ANALYSIS

Appellant sustained a lumbar sprain/strain as a result of a fall on January 24, 2005. OWCP properly determined on August 16, 2013 that a conflict existed in the medical opinion evidence between appellant's treating physician, Dr. Gordon, and OWCP's second opinion physician, Dr. Heist, as to whether appellant continued to have residuals from the accepted condition. OWCP selected Dr. Dennis to provide an impartial medical evaluation.

In his September 9, 2013 report, Dr. Dennis, the impartial medical specialist, opined that appellant's accepted condition of lumbar strain/sprain had resolved and that she had no residuals from her January 24, 2005 employment injury. He stated that her current complaints and treatment involved her cervical spine and upper extremities, which were not accepted conditions and were not related to her January 24, 2005 employment injury. Dr. Dennis reported that appellant might have sustained a temporary aggravation of a preexisting condition as a result of her January 24, 2005 fall. He advised that she had no current disability and opined that her subjective complaints and the findings on clinical examination, as well as results of objective studies, were reflective of age-related degenerative pathology. Dr. Dennis opined that appellant was capable of working full time, eight hours per day, with a restriction on lifting more than 25 pounds. OWCP relied on Dr. Dennis' opinion in its December 12, 2013 decision, to find that appellant had no accident related continuing disability or impairment.

The Board finds that Dr. Dennis' impartial opinion negates a causal relationship between appellant's continuing condition and disability related to her employment. The medical evidence establishes that appellant no longer has any residuals from her accepted lumbar sprain/strain condition. Dr. Dennis' opinion is sufficiently probative, rationalized, and based upon a proper factual background. Therefore, OWCP properly accorded Dr. Dennis' opinion the special weight of an impartial medical examiner.⁷ The Board therefore finds that Dr. Dennis' opinion

⁴ See *T.P.*, 58 ECAB 524 (2007).

⁵ *Regina T. Pellecchia*, 53 ECAB 155 (2001).

⁶ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

⁷ *Gary R. Seiber*, 46 ECAB 215 (1994).

constituted the weight of medical opinion and supports OWCP's December 12, 2013 decision to deny any entitlement to continuing compensation based on her accepted condition.

Appellant subsequently requested an oral hearing and submitted the September 19 and November 18, 2013 reports from Dr. Donald. However, these reports merely restate one side of the conflict in medical evidence which was resolved by Dr. Dennis' opinion. Dr. Donald did not provide a well-reasoned and sufficiently supported opinion that would outweigh OWCP's December 12, 2013 determination that appellant no longer had an employment-related disability or residuals stemming from her accepted lumbar strain/sprain condition. Thus the Board will affirm OWCP hearing representative's September 11, 2014 decision.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits as of December 15, 2013.

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2015
Washington, DC

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

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

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