

OWCP accepted the claim for a low back strain. The record indicates that appellant returned to light duty and on March 24, 1997 she sustained a concussion in the performance of duty when she fell and struck her head.²

Appellant was referred for a second opinion examination with Dr. Justin Howland, a Board-certified orthopedic surgeon. In a report dated October 19, 1998, Dr. Howland indicated that appellant would have been disabled for four to five weeks after the November 22, 1994 injury. By report dated December 3, 1998, he stated that although she reported worsening back symptoms, a new magnetic resonance imaging (MRI) scan did not show a worsening pathology. Dr. Howland stated that worsening symptoms could be ascribed to a natural progression of the disease that was “lighted up” by the employment injury.

An attending physician, Dr. Stephen Dow, a Board-certified orthopedic surgeon, submitted a report dated January 13, 1999. He stated that appellant continued to have lumbar symptoms and should continue her current limitations.

By letter dated January 27, 1999, OWCP stated that there was a conflict in the medical evidence between Dr. Howland and Dr. Dow with respect to a continuing employment-related disability. Appellant was referred to Dr. Peter Costa, a Board-certified physiatrist. In a report dated February 23, 1999, Dr. Costa stated that it was difficult to discern the origin of appellant’s continuing back pain, but it was not a lumbar strain/sprain. He reported that appellant’s pain was most likely discogenic and arthrogenic from the facet joints. Dr. Costa opined that appellant had preexisting degenerative processes that were asymptomatic at the time of injury, and the diagnosis was work related by acceleration and precipitation. He indicated that appellant could work four hours per day with restrictions.

Appellant remained off work and continued to receive compensation for wage loss. OWCP referred appellant, along with a statement of accepted facts (SOAF) and medical evidence, to Dr. Aubrey Swartz, a Board-certified second opinion orthopedic surgeon. In a report dated February 5, 2013, Dr. Swartz provided a history and results on examination. He stated that appellant had degenerative changes in the lumbar spine, which were a combination of age-related and genetic changes. Dr. Swartz opined that there were no symptoms or findings causally related to the November 22, 1994 work injury.

By letter dated August 29, 2013, OWCP advised appellant that it proposed to terminate her compensation for wage-loss and medical benefits based on the medical evidence. Appellant was advised to submit additional evidence or argument within 30 days.

On September 27, 2013 appellant submitted a September 12, 2013 report from Dr. Richard Gremillion, a Board-certified rheumatologist, who stated that he disagreed with the opinion of Dr. Swartz. Dr. Gremillion opined that appellant’s symptoms and examination findings were consistent with progressive changes typical of patients with spinal injuries. According to him, there was rarely a direct correlation between the pain experienced and spine imaging results. Dr. Gremillion concluded that appellant continued to have an employment-related disability.

² OWCP has administratively combined the case records.

Appellant also submitted a September 10, 2013 report from Dr. Michael Reid, a psychiatrist, who stated that appellant reported that her depression started when she injured her back in 1994. Dr. Reid diagnosed major depression, anxiety disorder, and chronic back pain. He stated that it appears appellant's depression continued to be exacerbated by her ongoing injury and pain resulting from her work injury.

OWCP found that a conflict in the medical evidence existed between Dr. Schwartz, the second opinion physician, and Dr. Gremillion as to whether the diagnosed conditions are work related or whether appellant's accepted position had resolved. Dr. Robert Hansen, a Board-certified orthopedic surgeon, was selected as a referee physician. In a report dated October 24, 2013, Dr. Hansen provided a history and results on examination. He diagnosed lumbar spondylosis with spinal stenosis, facet arthrosis, and neural foraminal stenosis at L4-5. Dr. Hansen further stated, "[Appellant's] accepted condition of low back strain from the [November 22, 1994] injury is not medically reasonably active at this time. Her current complaints are due to the progressive degenerative changes over the years and most likely were present at least a less severe state at the time of the [November 22, 1994] injury." Dr. Hansen noted that a 1998 MRI scan showed facet arthrosis, degenerative spurring, annular bulging, and moderate central spinal canal stenosis. He stated that these findings had progressed as shown on a 2012 MRI scan. Dr. Hansen indicated that appellant was disabled due to her lumbar condition, chronic narcotic use, depression, and anxiety. He concluded that the disability was "due to her progressive, degenerative changes of her spine, and unrelated work factors not associated with the accepted low back strain in 1994. There is no objective evidence present that the accepted low back strain injury in 1994 has caused the progressive degenerative changes present in her spine or necessity for pain clinic treatment."

By decision dated November 15, 2013, OWCP terminated appellant's compensation for wage-loss and medical benefits. It found the weight of the medical evidence was represented by Dr. Hansen.

Appellant requested a hearing before an OWCP hearing representative, which was held on May 7, 2014. At the hearing appellant's representative discussed appellant's light-duty job and stated that Dr. Hansen did not understand that appellant's light-duty position involved heavy work. Appellant argued that neither Dr. Hansen nor Dr. Swartz provided probative medical opinions. In addition, she argued that she had suffered consequential emotional conditions. Appellant submitted a U.S. District Court decision with respect to the claim under the California Unfair Insurance Practices Act. The decision noted that the insurance company had chosen Dr. Swartz and instructed him as to his conclusions regarding the plaintiff's condition. Appellant argued that the decision showed Dr. Swartz was biased.

By decision dated July 10, 2014, the hearing representative affirmed the termination of compensation. He found the weight of the evidence was represented by Dr. Hansen.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the

disability had ceased or that it was no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

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.⁵ 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 will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁶

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.⁷ Medical rationale is a medically sound explanation for the opinion offered.⁸

ANALYSIS

In the present case, OWCP found that a conflict existed between the attending physician, Dr. Gremillion, and the second opinion physician, Dr. Swartz. Dr. Gremillion opined that appellant continued to have an employment-related disability, while Dr. Swartz found appellant's back condition was a degenerative condition not related to the November 22, 1994 employment injury.

The Board notes that appellant has argued that Dr. Swartz was biased and cannot provide a probative medical opinion. The record does not, however, establish bias against appellant. A decision in an unrelated case does not establish bias in the present case.⁹ Dr. Swartz provided a

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

⁴ *Furman G. Peake*, 41 ECAB 361 (1990).

⁵ 5 U.S.C. § 8123(a).

⁶ 20 C.F.R. § 10.321.

⁷ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

⁸ See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound and logical).

⁹ See *Jonathan Coppedge*, Docket No. 04-907 (issued August 16, 2004) (evidence from a court decision in an unrelated matter involving Dr. Swartz did not establish bias in the current claim).

history, examined appellant, and provided an opinion based on the evidence. There is no evidence of bias against appellant with respect to the present claim.¹⁰

OWCP selected Dr. Hansen as a referee physician to resolve the conflict in the medical evidence. In an October 24, 2013 report, Dr. Hansen opined that appellant's then current condition was a progressive, degenerative back condition not related to her November 22, 1994 injury. Appellant has argued that Dr. Hansen was not provided with a complete background, but the record indicated Dr. Hansen was provided an accurate SOAF and medical records. Dr. Hansen provided a history and a rationalized medical opinion on the issue presented: whether appellant continued to have an employment-related condition or disability. A rationalized opinion from a referee physician is entitled to special weight and the opinion of Dr. Hansen represents the weight of the medical evidence in this case.

On appeal appellant's representative reiterates her arguments that Dr. Hansen's report was of diminished probative value. She argues that Dr. Hansen did not explain his disagreement with prior physicians of record, such as Dr. Costa. Although Dr. Costa had indicated that appellant continued to have an employment-related condition in 1999, this does not establish an employment-related condition or disability in 2013. Dr. Hansen had an accurate background, and he explained that appellant's current condition was not related to the employment injury. The purpose of 5 U.S.C. § 8123(a) is to select an impartial physician who can resolve a medical issue with conflicting opinions.

The Board finds that Dr. Hansen resolved the conflict and OWCP met its burden of proof to terminate compensation.

The Board notes that appellant had raised the issue of a consequential emotional condition, and had cited the work load in appellant's light-duty job. The issue is not before the Board in this appeal.

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 properly terminated appellant's compensation for wage-loss and medical benefits effective November 15, 2013.

¹⁰ See *A.P.*, Docket No. 11-1545 (issued March 2, 2012).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 10, 2014 is affirmed.

Issued: June 4, 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