

her February 9, 2010 injury which had been accepted for right shoulder sprain and impingement, right upper back/scapular strain, thoracic strain, and subluxations of T5-7. She stopped work on November 2, 2010. OWCP developed this as a claim for a new injury and accepted the new claim for brachial neuritis or radiculitis and other affections of the shoulder region not elsewhere classified.² It began paying wage-loss compensation on November 1, 2010.

In a December 7, 2010 report, Dr. Edward Novik, Board-certified in pain medicine and anesthesiology, advised that appellant initially injured her neck on February 9, 2010 while lifting a heavy box. Appellant eventually recovered and returned to work in April 2010, but the pain had returned in November 2010 and she needed additional treatment. A magnetic resonance imaging (MRI) scan of the cervical spine showed moderate bulging at C3-4, C4-5 impinging on the anterior thecal sac. Dr. Novik assessed cervical radiculopathy and cervical facet syndrome. He continued submitting reports noting appellant's status.

On January 2, 2013 OWCP requested that appellant provide a medical report addressing her current status and an opinion as to whether her accepted conditions remained present and active. In a January 24, 2013 report, Dr. Novik advised that appellant complained of neck and mid-back pain. He noted that she was injured at work on November 1, 2010. Dr. Novik further noted that appellant was being treated with injections and physical therapy. On physical examination he advised that she had decreased range of motion in the cervical spine with pain on extension and lateral rotation to the right. Dr. Novik also noted muscle spasm and tenderness along the right paraspinal muscles in the projection of the right facet joints and significant tenderness in the mid-back area in the thoracic spine that radiated to the right scapula. He assessed cervical facet syndrome, thoracic radiculopathy, and herniated thoracic disc. Dr. Novik noted appellant's future treatment plan and advised that she was unable to return to work because she could not stand for more than a few hours at a time. In a January 24, 2013 attending physician's report, he diagnosed cervical/thoracic radiculopathy and herniated discs. Dr. Novik advised that appellant was totally disabled and checked a box "yes" that her condition was employment related.

On March 21, 2013 OWCP referred appellant, together with the medical record and a statement of accepted facts to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for a second opinion regarding appellant's status and whether she had residuals of her accepted conditions. In his April 4, 2013 report, Dr. Lakin advised that appellant was employed as a mail handler with the employing establishment. He noted that she injured her right shoulder and neck on November 1, 2010 and that she had a work-related injury on February 9, 2010 where she was diagnosed with a right shoulder sprain. Dr. Lakin further noted that appellant complained of occasional pain with turning the neck which radiated down to the right shoulder and thoracic spine, pain with prolonged positions such as sitting and standing, and occasional pain to the right shoulder with overhead activities.

On physical examination Dr. Lakin noted that the cervical spine was nontender with full active range of motion in all planes tested with 60 degrees of extension, 50 degrees of flexion, and 80 degrees of lateral rotation left and right. Examination of the thoracic spine revealed that

² The claim pertaining to the February 9, 2010 injury is not presently before the Board.

it was nontender, appellant was able to forward flex six inches from fingertips to toes, and there was a negative straight leg raise in the sitting and supine positions. Motor examination of the arms and legs was normal. Right shoulder examination revealed that it was nontender, negative impingement, negative drop arm test, negative anterior apprehension, and full and symmetric range of motion to the left with 180 degrees forward flexion, 175 degrees abduction, and 92 degrees internal and external rotation. Strength was normal.

Dr. Lakin noted that the November 4, 2010 MRI scan of the cervical spine revealed bulging at C3-4 and C4-5 and a May 25, 2011 MRI scan of the thoracic spine revealed central herniation of T5 to T6. He opined that appellant's accepted conditions were resolved and that there were no objective findings on examination. Dr. Lakin further opined that she was not disabled from work and that she could return to work full time without restrictions. He advised that appellant had no other current diagnoses. Dr. Lakin noted that her examination was essentially unremarkable and that there was no need for further treatment of the accepted conditions. In an April 4, 2013 work capacity evaluation form, he advised that appellant was capable of performing her usual job.

By letter dated January 7, 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. Lakin, who found that there were no residuals of her accepted conditions and that she was no longer disabled from work.

In a January 16, 2014 statement, counsel for appellant argued that there was a conflict in the medical evidence because the attending physician maintained that she still had residuals of the work injury. He also argued that Dr. Lakin failed to provide medical reasoning, his answers were short with no medical basis, he did not discuss her positive imaging results, and that there was no evidence that he was familiar with the requirements of her position. In a February 7, 2014 attending physician's report, Dr. Novik restated appellant's diagnoses and advised that she was totally disabled. He checked a box "yes" to indicate that her condition was work related. An accompanying February 7, 2014 work capacity evaluation advised that appellant was unable to work.

By decision dated February 12, 2014, OWCP terminated appellant's wage-loss and medical benefits effective February 12, 2014. It found that the weight of medical opinion was represented by Dr. Lakin.

By letter dated February 20, 2014, counsel for appellant requested an oral hearing. Later on June 10, 2014 he requested a change from an oral argument to a review of the written record.

In a March 20, 2014 report, Dr. Novik reiterated the history of appellant's injury and treatment history. He noted that initially appellant was experiencing neck pain that radiated down to her right shoulder. Dr. Novik advised that currently appellant was under his care for thoracic and cervical spine conditions. On physical examination he found significantly decreased range of motion in the cervical spine with positive Spurling's sign on the left, diminished right motor function, diminished deep tendon reflexes in the right upper extremity, and significant muscle spasm and tenderness along the cervical paraspinal muscles. Dr. Novik noted that an MRI scan of the cervical spine revealed moderate disc bulging at C3-4 and C4-5.

He assessed cervical radiculopathy and cervical facet syndrome. Dr. Novik opined that appellant sustained an aggravation of her cervical complaints, thoracic herniated discs, and cervical and thoracic subluxation as a result of the November 1, 2010 work injury. He stated that appellant's injuries caused permanent changes to the discs and joints. Also submitted were February 6 and May 15, 2014 treatment reports, in which Dr. Novik noted appellant's status and restated diagnoses.

By decision dated September 24, 2014, an OWCP hearing representative affirmed the termination of appellant's wage-loss and medical benefits.

On appeal counsel maintained that there was a conflict in the medical record.

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, it 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

ANALYSIS

OWCP accepted appellant's claim for brachial neuritis or radiculitis and other affections of the shoulder region not elsewhere classified. Appellant received wage-loss compensation and medical benefits based on the accepted conditions. In 2013, OWCP referred her to Dr. Lakin for a second opinion regarding the status of her accepted conditions.

In his March 21, 2013 report, Dr. Lakin set forth the history of appellant's accepted conditions, reviewed the medical treatment records related to her conditions and reviewed the statement of accepted facts. He noted her history and reported detailed findings on examination. While appellant reported occasional pain with turning her neck and with prolonged positions, Dr. Lakin did not note any positive findings on examination. He indicated that the examination was normal including motor examination as well as all examined ranges of motion. Based on this, Dr. Lakin determined that accepted conditions had totally resolved because there were no objective findings on examination. He noted the accepted conditions but advised that there were no objective findings on these conditions on his evaluation. Dr. Lakin further opined that

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).

appellant was not disabled from work and that she could return to work full time without restrictions. He found no basis on which to attribute any continuing condition or disability to her employment.

Appellant provided reports from Dr. Novik. These included a January 24, 2013, report in which Dr. Novik advised that appellant complained of neck and mid-back pain. Dr. Novik noted that appellant had decreased range of motion in the cervical spine with pain on extension and lateral rotation to the right. He also noted muscle spasm and tenderness along the right paraspinal muscles and significant mid-back tenderness that radiated to the right scapula. Dr. Novik assessed cervical facet syndrome, thoracic radiculopathy, and herniated thoracic disc. He advised that appellant was unable to return to work. On March 20, 2014 Dr. Novik reiterated her history and noted findings. He assessed cervical radiculopathy and cervical facet syndrome. Dr. Novik opined that appellant sustained an aggravation of her cervical complaints, thoracic herniated discs, and cervical and thoracic subluxation as a result of the November 1, 2010 work injury. He also submitted attending physician's reports supporting continuing work-related conditions. The Board finds that the submitted reports are of diminished probative value and do not overcome the weight of Dr. Lakin's report, nor do they create a conflict in the medical record.⁷ Although he attributed appellant's current conditions to the work incident, Dr. Novik does not provide medical rationale to support his opinion.⁸ This is especially important where he diagnosed conditions that were not accepted by OWCP as employment related.⁹ Dr. Novik does not explain the reasons why appellant's current conditions are related to the accepted conditions of brachial neuritis or radiculitis and other affections of the shoulder region. He also did not provide any medical reasoning to support that the accepted conditions continued.

The Board finds that the weight of medical opinion is represented by the report of Dr. Lakin whose report was based on a full and accurate history, a review of the medical records, and provided a rationalized medical opinion addressing the basis for his conclusion that appellant was no longer disabled from work and that her diagnosed conditions were resolved. In contrast, the reports by Dr. Novik do not provide medical rationale to explain why the accepted conditions continued or how they caused appellant's current diagnosed conditions.

On appeal, counsel asserted that there was a conflict in the medical evidence; however, a conflict only occurs when there are two reports of virtually equal weight and rationale that reach

⁷ See 5 U.S.C. § 8123(a) (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).

⁸ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁹ 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).

opposing conclusions.¹⁰ Here, Dr. Novik's report is of diminished probative value for the reasons explained.

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 appellant's compensation benefits effective February 12, 2014.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ See *James P. Roberts*, 31 ECAB 1010 (1980). See *John D. Jackson*, 55 ECAB 465 (2004) (a simple disagreement between two physicians does not, of itself, establish a conflict; to constitute a conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale).