

On appeal, counsel argued that there was an unresolved conflict of medical opinion evidence.

FACTUAL HISTORY

On February 25, 2010 appellant, then a 42-year-old mail carrier, filed an occupational disease claim alleging that on February 24, 2010 as she picked up a parcel from a hamper of mail she pulled a muscle in her back resulting in pain shooting down her leg. She returned to light-duty work eight hours a day on February 25, 2010.

Dr. James F. Bonner, a Board-certified physiatrist, noted appellant's history of lifting a heavy box in the performance of duty and examined her on February 25, 2010 diagnosing lumbosacral (LS) strain/sprain with possibility of herniated disc. He reviewed a magnetic resonance imaging (MRI) scan dated March 10, 2010, which demonstrated multilevel degenerative changes and osteophyte complex as well as facet arthropathy at L3-4. Dr. Bonner also reported moderate hyperlordosis and increased pain with facet load. OWCP accepted appellant's claim for sprain of LS joint and ligament on April 20, 2010.

In a note dated August 18, 2010, Dr. Bonner stated that appellant's electrodiagnostic studies were consistent with L5 radiculopathy. On physical examination, he reported palpable pain in her lumbar spine and discomfort on straight leg raising.

Appellant filed a recurrence of disability on August 30, 2010 alleging on August 21, 2010 that she stopped work due to her February 24, 2010 employment injury. She stated that the employing establishment informed her that there was only one hour of limited-duty work available.

By decision dated September 16, 2010, OWCP informed appellant that she had not established a recurrence of disability but authorized compensation benefits for the hours that she had no work.

In a report dated October 21, 2010, Dr. Hagop L. Der-Krikorian, a Board-certified neurosurgeon, examined appellant and diagnosed low back pain with bilateral radiation of pain into both buttocks and thighs. He stated that her neurological condition was within normal limits and found no sciatica and no motor, sensory, or reflex abnormalities. Dr. Der-Krikorian reviewed appellant's March 10, 2010 MRI scan and found degenerative disc disease at L5-S1 including disc osteophyte complex causing a mild degree of bilateral neural foraminal narrowing, touching but not compressing the exiting L5 nerve roots. He also found minimal facet arthropathy at L2, L3, and L4. Dr. Der-Krikorian stated that appellant's electrodiagnostic studies were consistent with a left L5 radiculopathy.

Appellant underwent an additional MRI scan on October 26, 2010, which found a mild disc bulge at L3-4 and L4-5 with facet arthropathy without significant central canal or foraminal narrowing. At L5-S1 the MRI scan demonstrated mild disc bulge with posterior annular tear and bilateral facet arthropathy resulting in a mild right lateral recess and foraminal narrowing. Dr. Der-Krikorian reviewed this study on November 23, 2010 and found mild degenerative changes from L3-4 through L5-S1 without disc herniation, *cauda equine*, or nerve root

compression. He stated that appellant's symptoms suggested an intermittent bilateral lumbar radicular involvement with no clear-cut evidence of acute lumbar radiculopathy or herniated disc.

Dr. Bonner completed a note on February 3, 2011 and reduced appellant's work hours to four per day due to increased back pain. He continued to support this schedule on March 2, 2011. On May 25, 2011 Dr. Bonner stated that appellant's physical examination demonstrated extenuated lumbar lordosis with palpable pain in the lumbar spine with positive sitting root sign. He opined that her symptoms were the result of her February 24, 2010 employment injury with degenerative disc disease exacerbated by a fall and documented lumbar radiculopathy. In a note dated February 1, 2012, Dr. Bonner stated that appellant had no change in her symptoms with good and bad days. He noted that she performed light duty with no heavy lifting or repetitive bending. Dr. Bonner made similar findings on March 28, 2012. Appellant had an exacerbation of her back pain on April 19, 2012 according to Dr. Bonner.

Dr. Jonathan Morgan, a Board-certified radiologist performed an MRI scan on April 24, 2012, which demonstrated stable mild bilateral facet hypertrophy at L2-3 and L3-4 and a mildly degenerative disc at L5-S1 with mild degenerative loss of both height and signal. He interpreted his findings as unchanged.

Appellant filed a recurrence of disability on April 23, 2012 and alleged that she sustained a recurrence of disability on April 19, 2012. She noted that she was working four hours a day. Appellant stated that her back "goes out" from everyday activities. OWCP authorized compensation benefits.

In a note dated May 3, 2012, Dr. Bonner stated that appellant had experienced an exacerbation of her back condition and was totally disabled. He reviewed her April 24, 2012 MRI scan and found progression of her degenerative changes in her lumbar spine with disc osteophyte causing narrowing in her neural foramina. Dr. Bonner also found palpable pain in the low back and weakness in the left lower extremity on physical examination. He found that appellant's back pain had returned to the normal level on May 30, 2012 and recommended that she return to four hours of light-duty work. Dr. Bonner continued to support four hours of light-duty work through September 26, 2012. He completed a note on December 19, 2012 and found persistent back pain radiating into her lower extremities with lumbar radiculopathy.

OWCP referred appellant for a second opinion evaluation on January 14, 2013 with Dr. Robert Allen Smith, a Board-certified orthopedic surgeon. In his February 1, 2013 report, Dr. Smith reviewed the statement of accepted facts and described her history of injury. He stated that appellant underwent MRI scans, which demonstrated a slight progression of the degenerative changes in the 2012 study. Dr. Smith performed a physical examination and found no spasm, atrophy, trigger points, or deformity. He stated, "Distracted straight leg raising maneuvers are negative bilaterally." Dr. Smith concluded that appellant had no evidence of any focal neurological deficit in her legs. He opined that she had no ongoing objective clinical findings of a lumbar strain. Dr. Smith further stated that appellant had no residuals from her accepted condition. He agreed with Dr. Der-Krikorian that she had no clear-cut evidence of radiculopathy and stated that there was no evidence of any post-traumatic compressive lesion on the MRI scans that could be attributed to her work incident. Dr. Smith opined that the findings

on MRI scan were related to appellant's degenerative disease. He stated that she could return to regular-duty work without restrictions and required no additional treatment, testing, or activity modification.

OWCP proposed to terminate appellant's medical benefits and compensation for wage loss on February 11, 2013. It found that Dr. Smith's report was sufficiently detailed and well-reasoned to establish that her work-related disability and medical residuals had ended and to terminate her benefits.

Dr. Bonner examined appellant on February 13, 2013 and described her ongoing pain symptoms. He attributed this condition to her February 24, 2010 employment injury. Dr. Bonner stated that appellant's most recent MRI scan demonstrated progression of her degenerative disc disease. He found palpable pain in the lumbar spine and pain with facet load worse on the left than the right. Dr. Bonner stated that appellant should remain on light duty.

In a report dated March 14, 2013, Dr. Bonner described appellant's history of injury and again stated that the April 24, 2012 MRI scan revealed progression of her degenerative disc disease and osteophyte complexes involving her L5 and S1 nerve roots. He further stated that electrodiagnostic studies demonstrated L5 radiculopathy. Dr. Bonner stated that the functional capacity evaluation demonstrated that appellant was incapable of performing the physical demands of her job. He concluded, "It is my medical opinion, within a reasonable degree of medical certainty, that as a direct result of the work-related injury that [appellant] suffered an acute LS strain/sprain with an aggravation of a preexisting degenerative condition and development of acute lumbar radiculopathy." Dr. Bonner stated that appellant continued to have significant limitations of physical activity and that she was unable to perform the functions of her normal job.

By decision dated March 25, 2013, OWCP terminated appellant's medical and wage-loss compensation benefits effective March 25, 2013 based on Dr. Smith's report.

Counsel requested an oral hearing before an OWCP hearing representative on April 1, 2013. He submitted a series of treatment notes from Dr. Bonner beginning March 12, 2013 diagnosing persistent ongoing pain as a result of appellant's employment injury. Dr. Bonner stated that she had guarding in her low back and decreased range of motion as well as a pain with facet load bilaterally. On April 3, 2013 he stated that appellant had a burning sensation down her left lower extremity with ongoing pain in the lumbar spine. Dr. Bonner stated that she could not perform heavy lifting, bending, or stooping. He repeated that appellant had palpable pain in the lumbar area and pain with facet load bilaterally with decreased range of motion. Dr. Bonner examined her on May 2, 2013 and stated that her examination was unchanged. In a note dated May 30, 2013, he reported palpable pain in the lumbar area and pain with facet load. Dr. Bonner found weakness in the left lower extremity and decreased range of motion. On July 1, 2013 he reported paresthesias and a burning sensation in appellant's back and left lower extremity. Dr. Bonner repeated his previous physical findings and stated that she was capable of light-duty work.

Dr. Bonner completed a report on July 18, 2013 and stated, "It does remain my opinion that [appellant] suffered a lumbar sprain/strain, as well as aggravation of a preexisting

degenerative condition.” He stated that her degenerative condition was demonstrated on MRI scan and that this condition had “accelerated in the degree, which would not have been anticipated if not for the traumatic event of February 24, 2010.” Dr. Bonner further opined that appellant’s electrodiagnostic studies demonstrated active radiculopathy as a result of the aggravation of her degenerative process, which was consistent with her symptomatology of back pain, leg pain, and thigh pain. He stated that the aggravation was permanent based on the objective findings of her MRI scans. Dr. Bonner concluded, “In addition it is clear that this work-related injury has resulted in an injury that hastened the development of the underlying condition being degenerative changes of the lumbar spine and acceleration in relation to the ordinary course of the disease.”

Appellant testified at the oral hearing on August 7, 2013. Counsel argued that there was a conflict of medical evidence between Dr. Bonner and Dr. Smith. Appellant stated that the employing establishment informed her that there was no light-duty work available for her on April 2, 2013 and that she was not currently working. She indicated that prior to the termination decision she worked light duty for four hours a day and received compensation benefits from OWCP for the other four hours.

Dr. Bonner completed a note on August 1, 2013 and found palpable pain in the lumbar spine, pain with facet load bilaterally, and decreased range of motion. He also reported slight weakness in the left lower extremity. Appellant underwent an electromyogram on August 27, 2013 which demonstrated chronic/active L5 radiculopathy. Dr. Bonner reviewed this study on September 26, 2013 and found that she was capable of light-duty work.

By decision dated November 20, 2013, an OWCP hearing representative found that Dr. Smith’s report was entitled to the weight of the medical opinion evidence and established that appellant had no continuing disability or medical residuals due to her accepted condition of sprain of the LS joint. He found that Dr. Bonner’s opinion was not sufficient to create a conflict due to the lack of medical reasoning establishing how and why the workplace incident aggravated her preexisting degenerative disc disease. The hearing representative noted that Dr. Morgan found only a slight progression of mild degenerative disc disease and stable osteophyte complexes in contrast to Dr. Bonner’s conclusions.

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 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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ To terminate

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

⁴ *Id.*

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁷ Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.⁸

ANALYSIS

OWCP accepted that appellant's February 24, 2010 employment injury resulted in sprain of LS joint and ligament on April 20, 2010. The Board finds that OWCP properly terminated her wage-loss compensation and medical benefits.

OWCP referred appellant to Dr. Smith for a second opinion medical evaluation. In his February 1, 2013 report, Dr. Smith reviewed the statement of accepted facts and described her history of injury. He performed a physical examination and found no spasm, atrophy, trigger points, or deformity. Dr. Smith noted that appellant's distracted straight leg raising maneuvers were negative bilaterally. He found no evidence of any focal neurological deficit in her legs. Dr. Smith opined that appellant had no ongoing objective clinical findings of a lumbar strain. He further stated that she had no residuals from her accepted condition. Dr. Smith agreed with Dr. Der-Krikorian that appellant had no clear-cut evidence of radiculopathy and stated that there was no evidence of any post-traumatic compressive lesion on the MRI scans that could be attributed to her work injury. He opined that the findings on the MRI scan were related to her degenerative disease. Dr. Smith stated that appellant could return to regular-duty work without restrictions and required no additional treatment, testing, or activity modification.

The Board finds that Dr. Smith's report is entitled to the weight of the medical evidence. Dr. Smith's report is based on the statement of accepted facts and includes detailed findings on physical examination. He noted that appellant had no clinical findings of a lumbar sprain, the accepted condition, and that she therefore had no residuals of this condition. Dr. Smith also examined the medical evidence of record and found that there was no evidence of any post-traumatic lesion on MRI scan that could be attributed to her work incident. He concluded that appellant's MRI scan findings represented her degenerative disc disease. Dr. Smith concluded that she could return to her date-of-injury position without restrictions. He provided the basis for his conclusions by listing the negative clinical findings on examination. Dr. Smith also provided the basis for his opinion that appellant's degenerative disc disease was neither caused, nor

⁶ *Id.*

⁷ *T.F.*, 58 ECAB 128 (2006).

⁸ *A.D.*, 58 ECAB 149 (2006).

aggravated by her employment incident, noting that there was no evidence of post-traumatic lesion on MRI scan. As he addressed the issues of her continuing disability and medical residuals and provided a factual basis for his conclusions, the Board finds that this report is entitled to the weight of the medical evidence and establishes that her accepted condition has resolved with no disability or residuals and that OWCP properly terminated her wage-loss compensation and medical benefits.

Appellant's attending physician, Dr. Bonner, continued to support appellant's disability for work and need for medical treatment. He also opined that she had additional conditions resulting from this incident which required medical treatment and rendered her disabled. Dr. Bonner also diagnosed L5 radiculopathy as a result of the employment injury. On May 25, 2011 he diagnosed degenerative disc disease exacerbated by a fall and lumbar radiculopathy.

The May 25, 2011 note from Dr. Bonner does not support that appellant's continuing disability or medical residuals are the result of her accepted February 24, 2010 lifting injury resulting in lumbar sprain, as he attributed her disability and medical residuals to degenerative disc disease and lumbar radiculopathy. He further indicated that her degenerative disc disease and radiculopathy were attributable to a fall. There is no indication that appellant has sustained a fall in the performance of duty and such a fall is not an accepted mechanism of injury in this claim. Any injury or condition resulting from a fall would not be compensable and would not establish continuing disability or medical residuals as a result of the February 24, 2010 employment injury.

On July 18, 2013 Dr. Bonner continued to opine that appellant's accepted LS sprain was due to the February 24, 2010 employment injury. He also stated that she had sustained an aggravation of a degenerative back condition as well as lumbar radiculopathy as a result of this lifting incident. Dr. Bonner based his opinion on appellant's MRI scans finding that her degenerative disc disease "accelerated in the degree, which would not have been anticipated if not for the traumatic event of February 24, 2010." He further opined that her electrodiagnostic studies demonstrated active radiculopathy as a result of the aggravation of her degenerative process which was consistent with her symptomatology of back pain, leg pain, and thigh pain. Dr. Bonner stated that the aggravation was permanent based on the objective findings of appellant's MRI scans. He concluded, "In addition it is clear that this work-related injury has resulted in an injury that hastened the development of the underlying condition being degenerative changes of the lumbar spine and acceleration in relation to the ordinary course of the disease." While these reports offer medical opinion evidence that appellant's accepted employment injury on February 24, 2010 resulted in additional conditions, the reports are not sufficiently well reasoned to establish that additional conditions resulted from the employment injury. Dr. Bonner did not explain how and why he believed that the lifting incident resulted in a permanent aggravation of her preexisting condition of degenerative disc disease and the resulting lumbar radiculopathy. These reports also fail to support appellant's claim for continued disability or medical residuals a result of her accepted lumbar sprain. Dr. Bonner did not attribute her current disability for work or her medical residuals to her accepted condition.

Dr. Morgan performed an MRI scan on April 24, 2012 which demonstrated stable mild bilateral facet hypertrophy at L2-3 and L3-4 and a mildly degenerative disc at L5-S1 with mild degenerative loss of both height and signal. He interpreted his findings as unchanged. This

report does not support Dr. Bonner's conclusions that appellant's employment incident aggravated her underlying degenerative disc disease. Dr. Morgan found no change in her degenerative condition following the employment incident. This report does not support appellant's continuing disability due to her accepted employment injury or Dr. Bonner's asserting that she sustained additional conditions as a result of her employment injury.

Dr. Der-Krikorian examined appellant and found that her neurological condition with within normal limits with no sciatica and no motor, sensory, or reflex abnormalities. He reviewed her March 10, 2010 MRI scan and found degenerative disc disease at L5-S1 consistent with a left L5 radiculopathy. Appellant underwent an additional MRI scan on October 26, 2010 and Dr. Der-Krikorian reviewed this study on November 23, 2010. Dr. Der-Krikorian found that her symptoms suggested an intermittent bilateral lumbar radicular involvement with no clear-cut evidence of acute lumbar radiculopathy or herniated disc. This report does not support appellant's claim as he did not diagnose lumbar sprain and did not opine that an additional condition resulted from her accepted employment injury. Dr. Der-Krikorian did not opine that her degenerative disc disease or radiculopathy were due to her accepted employment injury. Without medical opinion to evidence establish a causal relationship between the diagnosed condition and the employment incident, this report does not establish continuing disability or medical residuals resulting from either the accepted condition or from an additional employment-related condition.

On appeal, counsel argued that there was a conflict of medical opinion evidence between Drs. Smith and Bonner. The Board finds that Dr. Bonner did not address any continuing disability or residuals from the accepted condition of lumbar sprain/strain such that there is a conflict of medical opinion on this issue. The Board further finds that he did not provide sufficient medical opinion evidence to raise a conflict regarding any additional alleged condition resulting from appellant's accepted employment injury.

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 has met its burden of proof to terminate appellant's wage-loss and medical benefits due to her February 24, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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