

FACTUAL HISTORY

On January 3, 2003 appellant, then a 45-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained cervical disc herniation at C6-7 with stenosis due to the repetitive reaching and heavy lifting required by her job over time.² She indicated that she first became aware of her claimed condition on December 15, 2002 and that she first realized on December 28, 2002 that it was caused or aggravated by her employment. Appellant stopped work on December 16, 2002. OWCP accepted that she sustained cervical disc herniation at C6-7 and spinal stenosis and she received disability compensation on the daily rolls beginning January 4, 2003.

On January 20, 2003 appellant underwent OWCP-authorized arthrodesis and anterior cervical discectomy at C6-7 with microdissection and anterior plating (Atlantis plate and Allograft).

Appellant returned to light-duty work on a full-time basis on April 14, 2003 and stopped work on July 17, 2003. She returned to a modified rural letter carrier position on a full-time basis on September 18, 2003 and stopped work again on December 27, 2003. OWCP accepted that appellant sustained a new injury on December 27, 2003 in the form of an acute cervical strain when she pulled mail from a mailbox. This claim was developed under a separate claim file number xxxxxx786.³

On March 21, 2011 appellant underwent OWCP-authorized removal of C6-7 anterior cervical plate, anterior cervical discectomy at C4-5, anterior cervical discectomy at C5-6, anterior cervical fusion at C4-5 with Cornerstone Peek cage and Atlantis plate, and anterior fusion at C5-6 with Cornerstone Peek cage and Atlantis plate.

On August 20, 2014 Dr. Ballard Wright, an attending Board-certified anesthesiologist, detailed his treatment of appellant for cervical pain and diagnosed several conditions including cervicgia and cervical spondylosis without myelopathy. He did not provide any opinion on her ability to work.

OWCP referred appellant for examination and further evaluation of her work-related medical condition to Dr. Edward G. Fisher, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Fisher was asked to provide an opinion regarding whether appellant continued to have disability due to her accepted work injuries, cervical disc herniation at C6-7 and spinal stenosis.

² The rural letter carrier position was a full-time position and required sitting for up to six hours per day, standing for up to six hours, bending/stooping/twisting for up to two hours, pushing/pulling for up to three hours, intermittent lifting of up to 45 pounds, reaching above the shoulder for up to two hours, and driving a vehicle for up to six hours.

³ On July 6, 2004 appellant began to receive disability compensation for her December 27, 2003 injury on the daily rolls. Under the claim file for her December 27, 2003 injury, she alternated between receiving wage-loss compensation and schedule award compensation for 15 percent permanent impairment of her left arm and 12 percent permanent impairment of her right arm. In early 2010 appellant began to receive wage-loss compensation again on the daily rolls under the claim file for her accepted occupational injuries.

In an October 31, 2014 report, Dr. Fisher detailed appellant's factual and medical history and provided a summary of the physical examination and diagnostic testing reports of record. He reported the findings of his October 31, 2014 physical examination of appellant, noting that she had no muscle spasms in her cervical region or shoulders and that sensation and strength were intact in her upper extremities. The only cervical or upper extremity findings were mild decreased range of cervical motion and decreased deep tendon reflexes in the right upper extremity. Dr. Fisher indicated that the discectomy and fusion surgery had healed solidly. Appellant exhibited no objective findings over her back or lower extremities and no treatment was needed for her spinal stenosis. Dr. Fisher listed the specific duties of her regular rural letter carrier position and posited that, based on the accepted work injuries and "minimal/mild positive objective findings," she was capable of working eight hours per day in this position.⁴ In an attached work restrictions form report, he noted that appellant's cervical herniated discs at C6-7 and her spinal stenosis had healed and also noted "no restrictions/limitations for either allowed condition."

In a December 3, 2014 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation because she ceased to have disability due to her accepted work injuries. It indicated that the weight of the medical evidence with respect to her work-related disability rested with the well-rationalized opinion of Dr. Fisher, an OWCP referral physician. OWCP provided appellant 30 days to submit evidence and argument challenging the proposed termination of her wage-earning compensation.⁵

Appellant submitted a December 15, 2014 report in which Dr. David L. Jackson, an attending Board-certified physical medicine and rehabilitation physician, noted that appellant reported that she had chronic neck pain and was unable to lift and carry objects. Dr. Jackson diagnosed chronic neck pain and post cervical discectomy and fusion and noted that she was "unable to work at this time." Appellant submitted other reports of visits to attending physicians, including visits on October 17 and December 19, 2014, but none of these reports contained an opinion on disability.

By decision dated January 28, 2015, OWCP terminated appellant's wage-loss compensation effective February 8, 2015 because she had no disability due to her accepted work injuries after that date. It found that the termination action was based on Dr. Fisher's October 31, 2014 report which contained medical rationale explaining why appellant ceased to have disability due to her accepted work injuries. OWCP noted that appellant submitted several reports of attending physicians, but none of the reports contained a well-rationalized opinion relating disability to the accepted work injuries. Appellant continued to be entitled to medical benefits related to treatment of her accepted work injuries.

Appellant submitted a February 18, 2015 report in which Dr. Steven Ganzel, an attending osteopath, indicated that she reported having cervical pain and right upper extremity weakness.

⁴ Dr. Fisher noted that appellant should be weaned off of narcotic pain medications and placed on nonnarcotic medications because extended use of narcotic pain medications for noncancerous conditions was not appropriate.

⁵ OWCP did not indicate that it intended to terminate appellant's entitlement to medical benefits related to her accepted work injuries.

Dr. Ganzel indicated that on examination appellant exhibited some restriction of range of cervical motion, but he did not provide any opinion on disability. On March 10 and 26, 2015 he administered bilateral cervical medial branch block injections at multiple disc levels.

On March 10, 2015 Dr. Wright also treated appellant's cervical complaints with medial branch block injections. He did not provide any discussion regarding her ability to work. In a March 3, 2015 report, Dr. Peter Hester, an attending Board-certified orthopedic surgeon, examined appellant for complaints relating to her shoulders and cervical region. He noted that she reported that she could not work, but he did not provide his own opinion on disability. Appellant submitted other medical documents from March and April 2015, including diagnostic testing reports and other treatment reports of Dr. Ganzel and Dr. Wright, but none of the documents contained an opinion on disability.

On May 13, 2015 appellant requested reconsideration.

By decision dated July 7, 2015, OWCP affirmed its January 28, 2015 decision terminating appellant's wage-loss compensation. It again found that the October 31, 2014 report of Dr. Fisher justified the termination of appellant's wage-loss compensation effective February 8, 2015. OWCP also considered the medical evidence appellant submitted after the termination of her wage-loss compensation and found that she had not met her burden of proof to establish disability due to her accepted work injuries after February 8, 2015.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁶ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained cervical disc herniation at C6-7 and spinal stenosis due to the repetitive reaching and heavy lifting required by her job. Appellant received disability compensation on the daily rolls beginning January 4, 2003. She underwent OWCP-authorized cervical surgery on January 20, 2003 and March 21, 2011. OWCP terminated appellant's wage-loss compensation effective February 8, 2015 based on the October 31, 2014 report of Dr. Fisher, a Board-certified orthopedic surgeon, who served as an OWCP referral physician.

In his October 31, 2014 report, Dr. Fisher detailed appellant's factual and medical history and provided a summary of the medical reports of record. He reported the findings of his

⁶ *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁷ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

⁸ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

physical examination of appellant, noting that the only cervical or upper extremity findings were mild decreased range of cervical motion and decreased deep tendon reflexes in the right upper extremity. Dr. Fisher indicated that the discectomy and fusion surgery had healed solidly. Appellant exhibited no objective findings over her back or lower extremities and no treatment was needed for her spinal stenosis. Dr. Fisher opined that, based on the accepted work injuries (cervical herniation and spinal stenosis) and minimal to mild positive objective findings, she was capable of working eight hours per day in her regular position as a rural letter carrier.⁹

The Board has carefully reviewed the opinion of Dr. Fisher and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding work-related disability. Dr. Fisher provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹⁰ He provided medical rationale for his opinion by explaining that appellant exhibited limited objective findings which did not prevent her from working as a rural letter carrier.

Appellant submitted a December 15, 2014 report in which Dr. Jackson, an attending Board-certified physical medicine and rehabilitation physician, noted that she reported that she had chronic neck pain and was unable to lift and carry objects. Dr. Jackson diagnosed chronic neck pain and post cervical discectomy and fusion and noted that she was “unable to work at this time.” However, this report is of limited probative value on the relevant issue of this case because Dr. Jackson did not provide a rationalized medical opinion relating disability to the accepted work conditions.¹¹ Dr. Jackson did not discuss appellant’s accepted work conditions in any detail or explain how they could cause disability. His opinion on disability appears to have been based on appellant’s own belief that she could not work rather than on objective findings. Appellant submitted other reports of attending physicians, but none of these reports contained an opinion on disability.

For these reasons, OWCP met its burden of proof to terminate appellant’s wage-loss compensation effective February 8, 2015.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative, and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.¹²

⁹ Dr. Fisher did not indicate that she had any disability due to issues with medications.

¹⁰ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

¹¹ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on a medical matter if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹² *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

ANALYSIS -- ISSUE 2

After OWCP's January 28, 2015 decision terminating appellant's wage-loss compensation effective February 8, 2015, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after February 8, 2015 due to residuals of her accepted work injuries. Given that the Board has found that OWCP properly relied on the opinion of OWCP referral physician, Dr. Fisher, in terminating appellant's wage-loss compensation effective February 8, 2015, the burden of proof shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and finds that it does not establish disability due to her accepted work injuries on or after February 8, 2015.

Appellant submitted February 18, March 10 and 26, 2015 reports in which Dr. Steven Ganzel, an attending osteopath, detailed his treatment of her cervical and upper extremity complaints, including the administration of medial branch block injections. In a March 10, 2015 report, Dr. Wright, an attending Board-certified anesthesiologist, also treated appellant's cervical complaints with medial branch block injections. However, these physicians did not provide any discussion regarding appellant's ability to work. In a March 3, 2015 report, Dr. Hester, an attending Board-certified orthopedic surgeon, examined appellant for complaints relating to her shoulders and cervical region. He noted that she reported that she could not work, but he did not provide his own opinion on disability. Appellant submitted other medical documents from March and April 2015, but none of the documents contained an opinion on disability.

Therefore, appellant has not established disability on or after February 8, 2015 due to her accepted work injuries.

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 wage-loss compensation effective February 8, 2015 because she had no disability due to her accepted work injuries after that date. The Board further finds that appellant did not meet her burden of proof to establish disability on or after February 8, 2015 due to her accepted work injuries.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2015
Washington, DC

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

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

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