United States Department of Labor
Employees' Compensation Appeals Board

H.P., Appellant	)	
and	)	**Docket No. 15-0568**
	)	**Issued: September 14, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Edison, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 12, 2015 appellant, through counsel, filed a timely appeal from an October 7, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation benefits as her accepted conditions ceased without residuals.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the October 7, 2014 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 22, 2012 appellant, then a 47-year-old clerk (automated parcel bundle sorter keyer), filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury on September 21, 2012 after being hit by a heavy mail hamper in the performance of duty. OWCP accepted the claim for bilateral contusion of the thigh, hip, and knee, thoracic or lumbosacral neuritis or radiculitis, bilateral hip dislocation, and internal derangement of the left knee. At the time of the injury, appellant was working in a light-duty capacity for six hours per day due to a previously accepted claim under OWCP File No. xxxxxx881 for bilateral carpal tunnel syndrome and bilateral rotator cuff impingement.[3] Her duties included scanning, keyboarding, and sorting with restrictions on lifting, pushing, and pulling no more than 10 pounds and avoiding reaching and reaching above the shoulder. After the September 21, 2012 injury, appellant stopped work the next day and received disability compensation and medical treatment.

Appellant, through counsel, filed claims for compensation (Form CA-7s) for periods beginning November 6, 2012.

On January 23, 2013 OWCP referred appellant to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of her employment-related conditions. In his February 7, 2013 report, Dr. Lakin conducted a physical examination and reviewed appellant's medical history and a statement of accepted facts. He indicated that her examination was "essentially unremarkable" with some minimal tenderness to the lower lumbar spine and the right and left knee. Appellant had excellent function of the spine and extremities, excellent motion, and excellent strength. Dr. Lakin found that she had no residuals of her September 21, 2012 employment injury and was capable of working full-time, regular duty. He explained that appellant's only medical restrictions were due to her 2009 employment injury, (OWCP File No. xxxxxx881) for which she underwent left shoulder surgery. Dr. Lakin concluded that she had reached maximum medical improvement as of the date of his examination on February 7, 2013. He opined that there was no need for any further medical treatment and released appellant to full duty without restrictions.

By decision dated February 27, 2013, OWCP terminated appellant's wage-loss compensation benefits effective that day. It found the weight of the evidence was represented by Dr. Lakin.

On March 5, 2013 appellant, through counsel, requested an oral hearing before an OWCP hearing representative and submitted reports dated February 5 and March 19, 2013 from Dr. Bikramjit Singh, a Board-certified nephrologist, who diagnosed hypertension "due to pain

[3] Under File No. xxxxxx881, OWCP accepted bilateral carpal tunnel syndrome, bilateral rotator cuff tendinitis and impingement, and acute gastritis resulting from scanning, keyboarding, lifting up to 10 pounds, sorting, pushing and pulling up to 10 pounds, and sorting letters while avoiding reaching. It authorized surgery for the accepted conditions, which appellant underwent on December 13, 2010. Appellant stopped work on or around December 12, 2009 and returned to full duty on March 27, 2010. She subsequently had a recurrence of disability and stopped work on October 9, 2010. Appellant returned to modified duty on November 12, 2011 with the following restrictions: pushing, pulling, lifting, and carrying no more than 10 pounds; avoid reaching, reaching above the shoulder, and climbing; work no more than six hours per day.

because of injury" and contusion of back, left flank. Dr. Singh listed her medications and indicated that her hypertension was diagnosed after the September 21, 2012 employment injury.

In reports dated February 19 to May 9, 2013, Dr. Mark Filippone, a Board-certified physiatrist, reported that appellant had low back pain, left flank pain, bilateral hip pain radiating into both lower extremities, and left knee pain. He noted that she had abnormal magnetic resonance imaging (MRI) scans and electromyograms and opined that she was totally disabled for work.

On March 26, 2013 Dr. Marc Cohen, a Board-certified orthopedic surgeon, diagnosed symptomatic lumbar discogenic pain.

In reports dated March 8 to June 26, 2013, Dr. Joseph Ibrahim, a Board-certified physiatrist and pain medicine specialist, diagnosed lumbago and thoracic or lumbosacral neuritis or radiculitis, indicating that appellant started to complain of her low back pain secondary to a work injury that occurred on September 21, 2012 when she was hit by a heavy moving hamper. He opined that she was disabled and unable to return to work.

In reports dated March 14 to June 6, 2013, Dr. David Deramo, a Board-certified orthopedic surgeon, indicated that he had been treating appellant since December 6, 2012 for left knee pain and bilateral hip pain. He noted that she sustained injuries to her left knee and hips during a work-related accident on September 21, 2012. Dr. Deramo opined that appellant continued to suffer from residuals of her left knee condition and diagnosed chondromalacia patella, a grade 1 sprain of the medial collateral ligament, internal derangement, patella tendinitis, and a possible meniscus tear. He concluded that she was disabled for work causally related to her September 21, 2012 employment injuries. On April 11, 2013 Dr. Deramo diagnosed knee joint pain and bursitis of the hip and disagreed with Dr. Lakin's second opinion that the left knee was not a problem and was not symptomatic.

In an addendum report dated March 5, 2013, Dr. Lakin reviewed the medical evidence of record and indicated that his opinion from February 7, 2013 remained unchanged. He opined that no further treatment was needed and appellant had reached maximum medical improvement.

An oral hearing was held before an OWCP hearing representative on June 25, 2013.

Following the hearing, appellant submitted an April 11, 2013 report by Dr. Ibrahim, who indicated that she had been under his care since November 29, 2012. Dr. Ibrahim stated that she initially presented with low back pain radiating to the left lower extremity after an injury at work on September 21, 2012. He found that a November 15, 2012 MRI scan of the lumbar spine revealed a mild acute inferior endplate fracture at L2, mild grade 1 retrolisthesis of L2 on L3, a midline annular tear and broad-based posterior disc bulge as well as moderate facet arthropathy at this level, L5-S1 left far lateral disc bulge and endplate osteophyte formation resulting in abutment of the extraforaminal segment of the exiting left L5 nerve root.

In reports dated June 26 to July 11, 2013, Dr. Filippone reiterated his opinions and disagreement with Dr. Lakin's second opinion report.

In reports dated July 18 and September 5, 2013, Dr. Deramo reiterated his diagnoses and opinions.

By decision dated September 9, 2013, an OWCP hearing representative found a conflict in the medical opinion evidence, and remanded the case for further development.

OWCP referred appellant to Dr. Edward Krisiloff, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion between Drs. Ibrahim, Deramo, Filippone, and Lakin on the issues of her diagnosis and whether she continued to have any disability or residuals as a result of the accepted employment conditions. In his October 22, 2013 report, Dr. Krisiloff conducted a physical examination and reviewed her medical history and a statement of accepted facts. He reviewed diagnostic testing dated November 15, 2012 and found bilateral bursitis/tendinitis of the hips. Dr. Krisiloff stated that upon examination appellant complained of pain when moving the left hip and had some joint crepitation with flexion and extension of the knee coming from her patellofemoral joint. He stated that an MRI scan study of her left knee revealed a possible grade 1 sprain of her medial collateral ligament (MCL) and opined that this condition would have healed within 8 to 10 weeks. Dr. Krisiloff further indicated that an MRI scan of the lumbar spine showed a possible far lateral disc bulge at L5-S1 and a possible inferior endplate injury at L2 and opined that the endplate injury would have healed by this time, approximately 13 months after the incident. He opined that if the disc bulge at L5-S1 were significant appellant would have had physical examination findings below the knee joint on the left side, but she had no hard findings below the knee joint and her complaints were primarily to the knee joint and not below. Dr. Krisiloff diagnosed chondromalacia of the patella and opined that this condition was causing the majority of her symptoms in the left knee joint. He concluded that appellant had no residuals of her accepted conditions and had reached maximum medical improvement as of the date of his examination. Dr. Krisiloff advised that she was capable of returning to the light-duty position she was working at the time of her injury for six hours per day with restrictions on pushing, pulling, and lifting no more than 10 pounds.

Appellant submitted progress reports from Dr. Filippone dated August 27 to October 24, 2013, progress reports from Dr. Ibrahim dated October 1 and November 26, 2013, and a December 3, 2013 progress report from Dr. Cohen.

By decision dated December 30, 2013, OWCP terminated appellant's wage-loss compensation benefits finding that the weight of the evidence was represented by Dr. Krisiloff.

On January 7, 2014 appellant, through counsel, requested an oral hearing before an OWCP hearing representative and submitted March 27, 2014 nerve conduction velocity (NCV) studies and a February 14, 2014 computed tomography (CT) scan of the lumbar spine which showed mild disc bulging at L1-2, moderate central disc herniation, causing a mild-to-moderate stenosis at L2-3, and a right neural foraminal radial tear at L3-4. She also submitted progress reports dated April 10 and May 29, 2014 from Dr. Deramo who reiterated his diagnoses.

In reports dated January 2 to June 3, 2014, Dr. Ibrahim diagnosed displacement of lumbar intervertebral disc without myelopathy and peripheral neuritis.

On February 26 and March 27, 2014 Dr. Filippone reiterated his opinion that appellant continued to suffer residuals of her accepted conditions and stated that his findings upon examination correlated with an abnormal CT scan of the lumbar spine dated February 14, 2014, as well as previous NCV studies.

In reports dated March 18 to June 1, 2014, Dr. Cohen diagnosed symptomatic lumbar internal disc disruption disease at L3-5, lateral recess stenosis at L3-5, and lumbosacral radiculopathy. He opined that appellant continued to suffer residuals of her employment-related conditions.

An oral hearing was held by video conference before an OWCP hearing representative on June 19, 2014.

Appellant submitted an August 13, 2014 progress report from Dr. Cohen and progress reports dated June 1 to September 9, 2014 from Dr. Ibrahim.

By decision dated October 7, 2014, an OWCP hearing representative affirmed the December 30, 2013 termination decision, finding that Dr. Krisiloff represented the special weight of the medical evidence.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[4] 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.[5] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6]

Section 8123(a) of FECA provides in pertinent part: 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.[7] Where 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.[8]

[4] *See S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[5] *See I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

[6] *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

[7] 5 U.S.C. § 8123(a). *See R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

[8] *See V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

ANALYSIS

The Board finds that OWCP properly terminated appellant's wage-loss compensation benefits as her accepted conditions ceased without residuals.

OWCP accepted appellant's claim for bilateral contusion of the thigh, hip, and knee, thoracic or lumbosacral neuritis or radiculitis, bilateral hip dislocation, and internal derangement of the left knee. It terminated her wage-loss compensation benefits finding that the accepted employment-related conditions had resolved without residuals based on the opinion of the impartial medical examiner, Dr. Krisiloff. It is OWCP that bears the burden to justify modification or termination of benefits.[9]

OWCP referred appellant to Dr. Krisiloff to resolve the conflict in medical opinion between Drs. Ibrahim, Deramo, and Filippone, appellant's treating physicians who opined that she continued to suffer residuals from her accepted employment injuries and Dr. Lakin, an OWCP referral physician who found that she had no residuals of her September 21, 2012 employment injury and was capable of working full-time, regular duty. The Board finds that OWCP properly referred appellant to Dr. Krisiloff to resolve the conflict in the medical opinion evidence, pursuant to 5 U.S.C. § 8123(a).

The Board further finds that OWCP met its burden of proof to terminate appellant's compensation benefits based on the October 22, 2013 report of Dr. Krisiloff who reviewed her medical history, examined her, and found no objective evidence of ongoing residuals or disability due to her employment-related conditions. Dr. Krisiloff reviewed the statement of accepted facts and the medical record. He stated that an MRI scan study of appellant's left knee revealed a possible grade 1 sprain of her MCL and opined that this condition would have healed within 8 to 10 weeks. Dr. Krisiloff further indicated that the MRI scan of the lumbar spine showed a possible far lateral disc bulge at L5-S1 and a possible inferior endplate injury at L2 and opined that the endplate injury would have healed by this time, approximately 13 months after the incident. He opined that if the disc bulge at L5-S1 were significant appellant would have had physical examination findings below the knee joint on the left side, but she had no hard findings below the knee joint and her complaints were primarily to the knee joint and not below. Dr. Krisiloff diagnosed chondromalacia of the patella and opined that this condition was causing the majority of her symptoms in the left knee joint. He concluded that appellant had no residuals of her accepted conditions and had reached maximum medical improvement as of the date of his examination. Dr. Krisiloff advised that she was capable of returning to the light-duty position she was working at the time of her injury for six hours per day with restrictions on pushing, pulling, and lifting no more than 10 pounds.

The Board finds that Dr. Krisiloff's report represents the special weight of the medical evidence at the time OWCP terminated benefits and OWCP properly relied on his report in terminating appellant's compensation benefits. The Board finds that he had full knowledge of the relevant facts and evaluated the course of her condition. Dr. Krisiloff is a specialist in the appropriate field. His opinion is based on proper factual and medical history and his report

[9] *See Curtis Hall*, 45 ECAB 316 (1994); *see also K.B.*, Docket No. 15-11 (issued April 7, 2015).

contained a detailed summary of this history. Dr. Krisiloff addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's condition.[10] At the time benefits were terminated, he found no basis on which to attribute any residuals or continued disability to her accepted conditions. Dr. Krisiloff's opinion as set forth in his October 22, 2013 report is found to be probative evidence and reliable. The Board finds that his opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's termination of benefits on the basis that the accepted conditions had ceased.

In reports dated January 2 to June 3, 2014, Dr. Ibrahim diagnosed displacement of lumbar intervertebral disc without myelopathy and peripheral neuritis. In reports dated February 26 and March 27, 2014, Dr. Filippone reiterated his opinion that appellant continued to suffer residuals of her accepted conditions and stated that his findings upon examination correlated with an abnormal CT scan of the lumbar spine dated February 14, 2014, as well as previous NCV studies. As Drs. Filippone and Ibrahim were on one side of the conflict, their reports, without more by way of medical rationale, are insufficient to create a new conflict in medical opinion to overcome the special weight properly accorded to Dr. Krisiloff.[11] Thus, the Board finds that OWCP properly terminated appellant's compensation benefits effective February 27, 2013.

Appellant submitted reports dated March 18 to June 1, 2014 from Dr. Cohen who diagnosed symptomatic lumbar internal disc disruption disease at L3-5, lateral recess stenosis at L3-5, and lumbosacral radiculopathy and opined that she continued to suffer residuals of her employment-related conditions. Dr. Cohen failed to provide a well-rationalized explanation as to how and whether these conditions, which have not been accepted by OWCP, are causally related to the September 21, 2012 employment injury.[12] Thus, his reports are of diminished probative value and are insufficient to overcome the special weight properly accorded to Dr. Krisiloff's report as the impartial medical examiner or to create a new conflict.[13]

The March 27, 2014 NCV studies and February 14, 2014 CT scan do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant's disability to her employment.[14] The Board, therefore, finds that this evidence is insufficient to establish appellant's claim.

[10] *See Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

[11] *See Dorothy Sidwell*, 41 ECAB 857 (1990); *J.M.*, Docket No. 11-1257 (issued January 18, 2012).

[12] *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (for conditions not accepted or approved by OWCP as being due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

[13] *See Dorothy Sidwell, supra* note 11.

[14] *See Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation benefits as her accepted conditions ceased without residuals.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2015
Washington, DC

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

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

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