

FACTUAL HISTORY

On February 20, 2007 appellant, then a 53-year-old rural mail carrier, filed an occupational disease claim alleging that she experienced noticeable left hip discomfort beginning January 2006 due to repetitive twisting, bending, lifting, and reaching in order to process and deliver mail. She did not stop work. OWCP accepted appellant's claim for aggravation of herniated disc disease at L5-S1 and aggravation of disc protrusion.

On August 30, 2011 appellant underwent an authorized L5 decompression and discectomy surgery. She stopped work and filed a recurrence claim. On November 7, 2011 OWCP accepted appellant's recurrence claim and paid compensation benefits.

OWCP expanded her claim to include right hip and thigh sprain, degeneration of lumbosacral intervertebral disc, displacement of lumbar intervertebral disc without myelopathy, postlaminectomy syndrome, and thoracic or lumbosacral radiculitis.

On November 2, 2013 appellant was examined by Dr. Amy D. Leland, Board-certified in physical medicine and rehabilitation, who reviewed several medical reports regarding a permanent nerve injury in appellant's left leg, diagnostic reports, and her chart notes from appellant's last two visits in 2012. She opined that it was probable that appellant's fall on July 17, 2013 was the result of the permanent nerve damage in her left leg (chronic left L5 radiculopathy) caused by her January 2006 job injury. Dr. Leland explained that appellant's report of the July 17, 2013 incident had been consistent and fit with her diagnosis.

OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Stanley W. Collis, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated November 12, 2013, Dr. Collis reviewed her medical records, including the SOAF, and noted her accepted conditions. He reported that appellant's physical examination was not remarkable at all except for some mild neuralgia at times in the right leg. Dr. Collis opined that, in the absence of any objective findings on the physical examination, appellant was able to return to work delivering mail in the rural area.

In a January 14, 2014 report, Dr. Leland discussed Dr. Collis' November 12, 2013 report and disagreed with his opinion. She pointed out that appellant had always complained of left leg symptoms, but Dr. Collis' report mentioned appellant's right leg. Dr. Collis noted that in her November 12, 2013 report she provided a narrative explaining the nature of appellant's permanent injuries related to her workers' compensation injury from January 2006. Dr. Leland opined that appellant was not capable of full-duty work.

OWCP determined that there was a conflict in the medical opinion evidence between Dr. Collis and Dr. Leland regarding whether appellant continued to suffer residuals of her employment injuries and was able to return to work. It referred appellant to Dr. Richard Sheridan, a Board-certified orthopedic surgeon, in order to resolve the conflict in medical opinion evidence regarding whether there continued to be a causal relationship between the accepted work injuries and her current symptoms and inability to work.

In a June 10, 2014 report, Dr. Sheridan discussed appellant's medical history, including her diagnostic test results. Upon examination of the lumbar spine, he reviewed no abnormal rotation or flexion of the trunk and no asymmetry. Dr. Sheridan found no points of tenderness in the lumbar spinous processes and no lumbar paravertebral spasm. Range of motion of appellant's spine was full in all modes and straight leg raise testing was negative. Upon examination of the lower extremities, Dr. Sheridan found no evidence of alopecia or pedal edema. Homan and Battle tests were negative for deep venous thrombosis. Dr. Sheridan reported that there were no objective findings on physical examination to support an active diagnosis of status postmicrolumbar discectomy at L5-S1 or any of the accepted conditions described in the SOAF. He indicated that any current disability was not due to the work injury, but to preexisting lumbar degenerative disc disease. Dr. Sheridan stated that he reviewed the date-of-injury job position and believed that appellant was capable of performing the duties of a rural mail carrier position.

By letter dated July 1, 2014, OWCP requested clarification from Dr. Sheridan. It noted that his opinion was unequivocal that appellant had an active diagnosis of postmicrolumbar discectomy at L5-S1 and that any residuals were not due to her work injury. It clarified that OWCP had authorized the surgery and any disability related to her August 30, 2011 surgery would be considered work related. Dr. Sheridan was asked to clarify his findings in light of that information.

In a July 2, 2014 addendum, Dr. Sheridan reported that appellant had a normal examination of her low back and no longer had any residuals of her work-related conditions of lumbago, sciatica, and right thigh strain. He further reported that she did not have residuals of her authorized micro lumbar discectomy as performed on August 30, 2011 and explained that she had no evidence of radiculopathy. Dr. Sheridan confirmed that appellant's current diagnosis was status post L5-S1 discectomy with no objective residuals. He opined that she was capable of returning to her former duties as a rural letter carrier without physical limitations.

On September 10, 2014 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because the medical evidence demonstrated that she ceased to have residuals of her accepted work injuries. Appellant was advised to submit additional evidence or argument within 30 days if she disagreed with the preliminary determination.

On September 18, 2014 appellant retired from the employing establishment.

In a September 19, 2014 statement, appellant requested a current physical examination, including an updated electromyogram and functional capacity evaluation, in order to ascertain how Dr. Sheridan was able to come to the conclusion that she was able to return to her job with no restrictions. She alleged that his opinion was based on past medical records that were at least two years old and were not an accurate representation of her current condition. Appellant contended that medical records from Dr. Leland confirmed that she had permanent nerve damage to her lower left extremities that promoted tingling, numbness, stabbing pain, and total loss of function in her left leg.

Appellant was examined by Dr. William C. Thompson, a family practitioner, who discussed in reports dated May 30 to September 16, 2014, her history and conducted an

examination. Dr. Thompson observed pain with backward bending of the lumbar spine and pain with straight leg raise testing of the left leg. He also reported good strength of extensor hallucis longus and a bit of weakness on left extensor hallucis compared to the right. Dr. Thompson diagnosed disc degeneration of the lumbar spine, displacement of lumbar intervertebral disc, right thigh sprain, and sciatica. He opined that appellant's condition had worsened in the last two years. In a September 16, 2014 report, Dr. Thompson stated that there was a discrepancy between the independent medical examiners and Dr. Leland regarding the left-sided neuropathic pain.

By decision dated October 31, 2014, OWCP terminated appellant's compensation for wage-loss and medical benefits. It found that the weight of the medical evidence rested with Dr. Sheridan's June 10 and July 2, 2014 independent medical reports, which determined that she no longer had residuals of her accepted work-related injuries.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.³ It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ 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.⁷

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.⁸ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁹ When there exists opposing medical reports of virtually equal weight and rationale and

³ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *A.P.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁸ 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

⁹ 20 C.F.R. § 10.321.

the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁰

ANALYSIS

OWCP found that a conflict in medical opinion existed between appellant's physician, Dr. Leland, who opined that appellant remained totally disabled from work, and the second opinion physician, Dr. Collis, who opined that appellant was capable of returning to full duty delivering mail in the rural area. To resolve the conflict in medical opinion, it referred appellant to Dr. Sheridan for an impartial medical examination. OWCP properly found that a conflict in medical opinion existed and referred her for an impartial medical examination.

In a June 10, 2014 report, Dr. Sheridan discussed appellant's medical history, including reports and diagnostic test results, and reviewed the SOAF. Upon examination of the lumbar spine, he observed no abnormal rotation or flexion of the trunk, no points of tenderness in the lumbar spinous processes, and no lumbar paravertebral spasm. Range of motion of appellant's spine was full in all modes and straight leg raise testing was negative. Examination of the lower extremities revealed no evidence of alopecia, pedal edema, or bruits. Homan and Battle tests were negative for deep venous thrombosis. Dr. Sheridan reported that there were no objective findings on physical examination to support an active diagnosis of status postmicrolumbar discectomy at L5-S1 or any of the accepted conditions described in the SOAF. He indicated that any current disability was not due to the work injury, but to preexisting lumbar degenerative disc disease. Dr. Sheridan concluded that appellant was capable of performing the duties of a rural mail carrier position. In a July 2, 2014 addendum, he clarified that she no longer had residuals of her work-related conditions of lumbago, sciatica, and right thigh strain as evidenced by the normal examination. Dr. Sheridan further reported that appellant did not have residuals of her authorized micro lumbar discectomy as performed on August 30, 2011 and explained that she had no evidence of radiculopathy. He confirmed that her current diagnosis was status post L5-S1 discectomy with no objective residuals and concluded that she was capable of returning to her former duties as a rural letter carrier without physical limitations.

The Board finds that Dr. Sheridan's opinion is sufficient to constitute the special weight of the medical evidence and to justify the termination of appellant's compensation and wage-loss compensation benefits. Dr. Sheridan's June 10, 2014 report and July 2, 2014 addendum were based on the complete medical record and SOAF. He performed a thorough, clinical examination, and provided findings on examination. Dr. Sheridan reported that appellant's examination was normal and opined that her accepted conditions had resolved. The Board finds that he provided sufficient medical rationale explaining why she no longer suffered residuals of her accepted conditions. Dr. Sheridan further reported that he reviewed appellant's former duties and concluded that she was capable of returning to full duty. The Board finds that his opinion is sufficiently rationalized to represent the weight of medical evidence in this case and to justify OWCP's termination of compensation and medical benefits.¹¹

¹⁰ *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹¹ *See Melvina Jackson*, 38 ECAB 443 (1987); *Naomi Lilly*, 10 ECAB 560 (1957).

On appeal, appellant pointed out that her examinations with Dr. Collis and Dr. Sheridan were very brief and alleged that the physicians lacked any knowledge of her case or the affected body parts. As previously discussed, however, the Board finds that Dr. Sheridan's examination and subsequent report was based on the complete record and objective examination findings and, accordingly, was sufficient to represent the special weight of medical evidence afforded to an impartial medical examiner.

The Board further finds that the medical evidence submitted after Dr. Sheridan's impartial medical evaluation report does not overcome the weight of his report or create a conflict in medical evidence.

Appellant submitted reports by Dr. Thompson dated May 30 to September 16, 2014. Dr. Thompson described her history and conducted an examination. He reported pain with backward bending of appellant's lumbar spine and pain with straight leg raise testing of the left hip. Examination of the left lower extremity demonstrated good strength of extensor hallucis and some weakness on left extensor hallucis. Dr. Thompson diagnosed disc degeneration of the lumbar spine, displacement of lumbar intervertebral disc, right thigh sprain, and sciatica. He noted that appellant's condition had worsened in the last two years. Dr. Thompson further indicated that there was a discrepancy between the independent medical examiners and Dr. Leland regarding appellant's left-sided neuropathic pain. Although he provided several medical diagnoses, he did not offer any opinion on whether appellant continued to be disabled from work as a result of her accepted conditions or whether her current symptoms were causally related to her work-related lumbar and right hip injuries. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹²

On appeal, appellant alleges that the weight and magnitude of the medical evidence justifies continuing benefits. There is no medical evidence contemporaneous with the termination of her benefits which supports that she has any continuing residuals related to her accepted lumbar condition. The Board, therefore, finds that OWCP properly terminated appellant's rights to compensation and medical benefits.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss and medical compensation benefits effective October 31, 2014 because she no longer had any residuals or disability causally related to her accepted employment injuries.

¹² *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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