

FACTUAL HISTORY

On September 19, 2012 appellant then a 58-year-old systems accountant, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2012 while in the performance of duty she slipped and fell on a bathroom floor and injured her back, hip, neck, shoulder, knees, legs, hands, and right ankle. She stopped work on September 13, 2012.

On November 5, 2012 OWCP accepted her claim for neck sprain, right hip and thigh sprains, right knee and leg sprains, and lumbar sprain. Appellant was placed on the periodic rolls and received appropriate compensation for injury-related disability.

In a March 13, 2013 report, Dr. Assaf T. Gordon, a treating Board-certified physiatrist physician specializing in pain medicine, noted appellant's history of injury and treatment. He determined that appellant's lumbar magnetic resonance imaging (MRI) scan revealed expected age-related changes. Dr. Gordon diagnosed right knee sprain, sprain and strain other unspecified sites, hip, thigh, and neck sprain and strain, and back strain, lumbar.

In an August 26, 2013 report, Dr. Jorge A. Mondino, an orthopedic surgeon and treating physician, noted that appellant continued to have symptoms of the cervical and lumbar spine sprains. He advised that appellant was undergoing therapy and having a great deal of pain in the cervical spine and shoulders. Dr. Mondino also related that appellant was diagnosed with fibromyalgia. He recommended that appellant stay off work and continue care with the pain clinic.

In a November 19, 2013 report, Dr. Ai Huong Phu, Board-certified in physical medicine and rehabilitation, advised that appellant was being seen for chronic pain to include facet arthropathy, degeneration of lumbar intervertebral disc, lumbosacral radiculitis, and unspecified myalgia. He advised that appellant was able to return to work four hours a day, no more than three days a week with limitations on physical activities to avoid aggravating her pain. Dr. Phu ruled out lumbosacral radiculitis based on electromyogram/nerve conduction studies of the lower extremities. Dr. Phu indicated that her ability to return to full-duty work was to be determined based upon her progress with treatment.

On November 8, 2013 OWCP referred appellant for a second opinion, along with a statement of accepted facts, a set of questions, and the medical record to Dr. Mohammad Zamani, a Board-certified orthopedic surgeon, determine whether appellant continued to have residuals of, or any disability stemming from appellant's accepted work injury.

Dr. Zamani, in his November 22, 2013 report, described appellant's history of injury and treatment and provided results on examination. He noted the neck and upper extremities revealed no obvious deformity or pain on palpation in the cervical spine area with no paravertebral muscle spasm or tightness. Dr. Zamani also advised that he found no click or popping on range of motion. There was full active range of motion of the neck on flexion and rotation. Extension of the neck was 20 degrees and appellant reported pain on extreme motion of the neck. Range of motion of both shoulders, both elbows, both wrists, and both hands and fingers were without deficit. Grip power was grade 5. Dr. Zamani found normal circulation and sensation and reflexes with no measurable or visible atrophy. There was normal trunk alignment

and no thoracic tenderness. Although appellant reported pain from palpation of the lumbar area, Dr. Zamani found no spasm or tightness. Appellant was able to walk a normal gait and walk on tiptoe and heel. She had full range of motion of hips, knees, feet, and ankle. Appellant had forward flexion of the back to 70 degrees, lateral tilt to 20 degrees, 20 degrees extension, 10 degrees rotation, and 45 degrees with pain on extreme flexion and extension. He advised that appellant had been previously diagnosed with fibromyalgia and complained of pain all over her body. Dr. Zamani reviewed the statement of accepted facts and the accepted conditions of neck sprain, right hip and thigh sprains, right knee and leg sprains, and lumbar sprain. He determined that the conditions were temporary aggravations. Dr. Zamani found that “total disability ceased one week after the incident due to the fact that there was nothing seriously wrong, there was no serious trauma, and it was a minor soft tissue trauma.” Regarding physical restrictions, he advised that they would be attributable to preexisting conditions of fibromyalgia and neck arthritis. Dr. Zamani advised that appellant was capable of returning to work with no restrictions. He noted, however, that due to an arthritic condition she would be precluded from heavy activity and heavy lifting over 30 or 40 pounds. Dr. Zamani explained that appellant’s date-of-injury position was sedentary and would be able to perform it with no restrictions. He completed the work capacity evaluation on December 24, 2003, advising no restrictions.

On January 24, 2014 OWCP issued a notice of proposed termination of wage -loss and medical compensation benefits based on the report of Dr. Zamani, which established that residuals of the work injury had ceased.

OWCP finalized the termination on February 27, 2014. It found that the weight of medical evidence rested with Dr. Zamani and supported that appellant no longer had residuals of the accepted work-related conditions.³

On March 4, 2014 appellant requested a hearing, which was held on August 12, 2014. During the hearing, she explained that her examination with Dr. Zamani lasted only 10 minutes. Appellant also believed he had not reviewed her medical records because she was in severe pain, remained under medical care, and was still taking medication.

In a February 21, 2014 report, Dr. G. Hudson Drakes, an interventional pain medicine specialist, noted appellant’s history of injury and treatment. He indicated that appellant’s injury had contributed to her neck pain and also impacted her ability to function in the workplace. Dr. Drakes also explained that he was concerned with Dr. Zamani’s report, as it appeared that he had conducted a cursory examination. He recommended a functional capacity evaluation. He found it difficult to dignify the rest of his conclusions with a response knowing it was necessary to fully before rendering an opinion. Dr. Drakes recommended an independent medical examination. OWCP received additional medical evidence, which included physical therapy reports and copies of previously submitted reports.

By decision dated November 4, 2014, an OWCP hearing representative affirmed the termination of benefits, but found that the medical evidence submitted after the termination was sufficient to require further development. The hearing representative explained that a conflict of

³ In a February 27, 2014 decision, OWCP also denied authorization for epidurography injection, foramen epidural injection, and fluroguide for spine injection.

opinion existed between Dr. Zamani and Dr. Drakes necessitating an impartial medical examination with regard to any ongoing disability and need for medical care.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵

ANALYSIS

In the instant case, OWCP accepted that appellant sustained sprain of the neck, right hip and thigh sprains, right knee and leg sprains, and lumbar sprain.

In the November 19, 2013 report, Dr. Phu advised that appellant was being seen for chronic pain to include facet arthropathy, degeneration of lumbar intervertebral disc, lumbosacral radiculitis, and unspecified myalgia. He also advised that appellant was able to return to work four hours a day, no more than three days a week with limitations on physical activities to avoid aggravating her pain. Regarding her ability to return to full-duty work, Dr. Phu advised that was to be determined based upon her progress with treatment.

OWCP referred appellant for a second opinion examination with Dr. Zamani, with regard to any residuals of, or any disability from work resulting from appellant's work injury.

In the November 22, 2013 report, Dr. Zamani found that there were no obvious deformities of the neck and upper extremities, although he found pain on palpation in the cervical spine area with no paravertebral muscle spasm or tightness. He opined that "total disability ceased one week after the incident due to the fact that there was nothing seriously wrong, there was no serious trauma and it was a minor soft tissue trauma." Dr. Zamani explained that physical restrictions would be attributable to the preexisting conditions of fibromyalgia and neck arthritis. He indicated that appellant was capable of performing all activity as usual prior to her fall without any restrictions. Dr. Zamani noted that she had an arthritic condition that precluded heavy activity and heavy lifting over 30 or 40 pounds. He explained that the job was sedentary and she was able to do it without restrictions. Dr. Zamani opined that appellant had no residuals of the work injury as the current symptoms were related to her pre-existing conditions fibromyalgia and neck arthritis. He completed the work capacity evaluation on December 24, 2013, advising no restrictions. The Board finds that Dr. Zamani's opinion is well rationalized and represents the weight of the medical evidence regarding appellant's accepted conditions and ability to work. The Board also finds that at the time of the termination there were no current reports from a treating physician to contradict Dr. Zamani's findings. In this regard, Dr. Phu supported appellant's return to work on a part-time basis in his

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

November 19, 2013 report. However, he did not provide any medical rationale to explain why appellant's continuing condition and disability were due to the accepted condition.⁶

Dr. Gordon provided diagnoses of right knee sprain, sprain and strain of other specified cites, hip and thigh, neck sprain and strain, and lumbar strain. However, he neither related these conditions to appellant's September 13, 2012 employment injury, nor did he address the issue of disability. The Board notes 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.⁷ As Dr. Gordon did not address causal relationship, the Board finds that his report is of limited probative value.

Similarly, although Dr. Mondino reported that appellant continued to experience symptoms about the cervical and lumbar spine areas, diagnosed fibromyalgia, and noted continuing treatment for the cervical spine and shoulders, he too did not address causal relationship. As such, his report is also of limited probative value.⁸ Additionally, as OWCP did not accept fibromyalgia as resulting from the September 13, 2012 employment injury, it is appellant's burden of proof to establish causal relationship.⁹ This he has not done. No other medical evidence contemporaneous with the termination of benefits provides medical rationale in support of an ongoing, employment-related condition. Because appellant no longer had residuals or disability related to her accepted employment condition at the time of the termination, OWCP properly terminated entitlement to wage-loss compensation and medical benefits effective November 17, 2013. Accordingly, its decision to terminate appellant's compensation and medical benefits shall be affirmed.

Counsel for appellant asserts that OWCP erred when it found that appellant was no longer entitled to medical and wage-loss compensation and in denying further medical treatment. However, as the Board has found these arguments are not supported by the evidence of record. The Board also notes that regarding the issue of whether appellant established continuing employment-related residuals or disability after the termination, an OWCP hearing representative found a conflict in the medical evidence and remanded that aspect of the claim for further medical development. Consequently, this issue is not presently before the Board as it is in an interlocutory posture at this time.¹⁰

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.

⁶ 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).

⁷ See, e.g., *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

⁸ *Id.*

⁹ See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ See 20 C.F.R. § 501.2(c)(2) (there will be no appeal with respect to any interlocutory matter decided (or not decided) by OWCP during the pendency of a case).

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 27, 2014, as she had no residuals of her work-related injury.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board