

approximately 20-oversized pieces of mail to process along with the 30 pieces she was already processing. She noted that she processed all 50-plus mail items for that day, but that the associated bending and lifting caused a herniated disc. OWCP accepted appellant's claim for temporary aggravation of lumbar disc herniation at L1-2.

On February 14, 2004 appellant filed a claim for a recurrence (Form CA-2a) of the August 30, 2002 employment injury, as of October 7, 2002.² OWCP accepted her recurrence claim on February 6, 2004 for temporary aggravation of lumbar disc herniation at L1-2 which ended on October 7, 2002. The claim was subsequently expanded to include displacement of lumbar intervertebral disc without myelopathy. Appellant stopped work on October 10, 2002 and has not returned. She received compensation benefits on the periodic rolls as of October 11, 2002.

The record reflects that appellant received physical therapy from 2006 until 2008. On April 24, 2008 appellant sought treatment from Dr. Anthony R. Grasso, a Board-certified physiatrist. Dr. Grasso noted that x-ray evaluation of April 10, 2008 revealed findings of degenerative disc disease, while an April 21, 2008 magnetic resonance imaging (MRI) scan revealed left paracentral/left lateral disc displacement at L1-2 level, which could impinge on the L1 nerve root outside the left neural foramen, and L4-5 disc slight abutment over the L4 nerve root on the right. He diagnosed displacement of the intervertebral disc, site unspecified, without myelopathy, lumbago, muscle spasm, lumbar radiculitis, and disorders of the sacrum. Dr. Grasso noted that appellant had failed conservative treatment, including physical therapy, but that she wished to avoid surgical intervention. Appellant underwent lumbar facet injections on September 19, 2008 and sacroiliac injection on May 29, 2009. She continued to treat with Dr. Grasso.

In an April 13, 2011 report, Dr. Grasso related that appellant's repeat MRI scan of August 13, 2009 showed multilevel mild-to-moderate facet arthropathy without significant canal stenosis or neural foraminal narrowing, and preserved intervertebral discs. He again diagnosed displacement of intervertebral disc without myelopathy, lumbar radiculitis, muscle spasm, lumbago, disorders of the sacrum, cervicalgia, and depression.

On June 2, 2011 OWCP referred appellant to Dr. Eric S. Furie, a Board-certified orthopedic surgeon, to determine whether she continued to suffer from residuals of the accepted injury. In a report dated July 7, 2011, Dr. Furie related that the August 13, 2009 MRI scan showed no evidence of a herniated disc, therefore, this condition had resolved. He opined that appellant's current diagnosis was lower lumbar and sacral strain. Dr. Furie opined that she could return to work as a sales associate. OWCP subsequently requested that he clarify whether appellant had residuals of the accepted injury. In an addendum report of September 13, 2011, Dr. Furie related that she did not currently have residuals of the October 7, 2002 employment injury. He concluded that appellant's current lumbar and sacral strain was not related to the accepted injury.

² The record reveals that under File No. xxxxxx243 appellant had sustained a back injury on August 30, 2002 while working as a window clerk, for which she filed a traumatic injury claim (Form CA-1).

In May 30 and July 25, 2012 progress reports, Dr. Grasso again assessed appellant with lumbago, disorders of sacrum, displacement of intervertebral disc without myelopathy, spasm of muscle, lumbar radiculitis, cervicalgia, and depression.

On July 24, 2012 OWCP referred appellant to Dr. Alexander M. Doman, a Board-certified orthopedic surgeon, to determine whether her current back condition was related to her accepted employment injury and, if the condition continued to be related, whether she could return to work. It informed Dr. Doman that the date of her employment injury was December 8, 2002.

In an August 23, 2012 report, Dr. Doman noted that appellant sustained an accepted back injury on August 30, 2002 and subsequently filed a notice of recurrence of disability. He noted that the case had been accepted for aggravation of lumbar disc at L1-2. Dr. Doman reviewed appellant's medical history, noting that she had been involved in a motor vehicle accident in May 2001, following which a herniated disc was diagnosed based upon an MRI scan dated June 29, 2001. He related that x-rays of her lumbar spine were normal and nerve conduction studies did not show any evidence of radiculopathy. Dr. Doman did note that appellant possibly had a polyneuropathy, but that this was unrelated to her lumbar spine conditions. He found that her current diagnosis was malingering on either a conscious or unconscious basis. Dr. Doman noted that it was his firm belief that appellant's complaints of back pain were subjective and not objective in origin. He related that during his examination she displayed obvious signs of intentional efforts to deceive the examiner with complaints of severe back pain during simple attempts to flex her knees while in the prone position. Dr. Doman opined that any aggravation appellant had of her preexisting lumbar spine condition including the herniated lumbar disc were temporary and would have resolved in 2002. He concluded that it was his firm opinion that her current back condition was in no way related to the work injury she sustained in 2002, and that she was able to return to work.

Dr. Grasso continued to submit progress reports. In a January 16, 2013 progress note, he noted that appellant complained of a dull aching sensation with sharp intermittent exacerbations, worse with activity. Dr. Grasso noted that the pain was partially relieved with rest. He also noted that appellant complained of radiation of the pain into her bilateral lower extremities. Dr. Grasso stated that the date of injury was October 7, 2002 and the precipitating event was an injury while processing mail. He noted that appellant was doing a little better since her last visit. Dr. Grasso noted that she has been on disability since 2002. He noted that he had given appellant injections to treat her pain. Dr. Grasso diagnosed lumbago, disorders of the sacrum, displacement of intervertebral disc without myelopathy, spasm of muscle, lumbar radiculitis, cervicalgia, and depression.

In a May 9, 2013 note, Dr. Grasso indicated that appellant remained under his care for low back pain, which related to a work injury in October 2002. He reiterated the same diagnoses. Dr. Grasso opined that appellant continued to have low back pain that disabled her from working at her previous job. He noted that she was at maximum medical improvement and had permanent restrictions as noted on a July 2012 functional capacity evaluation at the light physical demand level. Dr. Grasso noted that appellant was a candidate for a vocational rehabilitation program, if available.

By letter dated June 21, 2013, OWCP determined that an updated second opinion evaluation was necessary prior to terminating benefits. The supervisory claims examiner noted that the questions posed to Dr. Doman were based on an inaccurate injury date which rendered his original second opinion invalid.

On August 15, 2013 OWCP referred appellant to Dr. Doman an updated second opinion examination with a corrected statement of accepted facts. In a September 19, 2013 report, Dr. Doman provided results from a September 12, 2013 examination. He stated that the current diagnosis was a malingering patient. Dr. Doman noted no objective findings on examination or radiologic studies that would indicate any ongoing orthopedic condition. He further opined that appellant was malingering in either a conscious or unconscious way and that her back pain was psychogenic in origin and not physiologic. Dr. Doman concluded that her current back condition was in no way related to her work injury that she sustained on October 7, 2002. He noted that appellant could return to her regular employment. Dr. Doman stated that she did not need a work-conditioning program as her pain was psychogenic in etiology and not physiologic.

Dr. Grasso continued to submit multiple progress reports.

On May 14, 2014 OWCP issued a notice of proposed termination of appellant's medical benefits and wage-loss compensation. It noted that her claim was accepted for displacement of intervertebral disc without myelopathy and indicated that she stopped work in 2004 and has not returned to work in any capacity. Appellant was advised that the record would be held open for 30 days to afford her an opportunity to submit further evidence, following which a decision would be issued based upon the evidence of record.

Appellant resubmitted progress notes by Dr. Grasso on June 3, 2014.

On July 9, 2014 OWCP terminated appellant's compensation benefits, effective July 11, 2014, finding that the residuals of her accepted employment-related medical condition had ceased.

On July 29, 2014 appellant requested an oral hearing, before a hearing representative of OWCP's Branch of Hearings and Review.

At the hearing held on March 4, 2015 appellant testified that she was not undergoing medical treatment because her workers' compensation benefits had been terminated. She alleged that she only saw Dr. Doman twice, and that the last time he saw her, he did not examine her. Appellant contended that she could not afford another medical opinion. She stated that she was still in substantial pain, and that it was now not only in her back, but also in her hips.

In a March 25, 2015 report, Dr. Grasso noted that he initially treated appellant on April 10, 2008 for a work-related injury that occurred on October 7, 2002. He stated that an MRI scan showed L4-5 disc bulge with compression of the L4 nerve root on the right side, and that she had undergone a series of lumbar epidural steroid injections and a July 2008 lumbar discogram, which showed a disc herniation at L4-5. Dr. Grasso noted that appellant had electromyogram and nerve conduction study abnormalities, which correlated to her clinical findings. Appellant underwent bilateral sacroiliac joint injections. Dr. Grasso opined that appellant was not able to return to work full duty. He stated that she had been extremely

compliant with her treatment and had not shown signs of malingering or inconsistencies. Dr. Grasso noted appellant's diagnoses as lumbar intervertebral disc displacement, sacroiliac joint dysfunction, muscle spasm, and lumbar radiculitis. He also noted that she had lumbar degenerative disc disease, which was not related to her work injury. Dr. Grasso opined that, at this point, appellant's condition was clearly chronic based on the injury date of October 2002. He noted that she was not a surgical candidate, and that his other treatment recommendations included continuation of her home exercise program, weight-loss program, and limited uses of nonsteroidal anti-inflammatory drugs. Dr. Grasso noted that appellant had functional restrictions from a 2010 work capacity evaluation which showed that she could work in a light-duty category.

By decision dated May 6, 2015, an OWCP hearing representative affirmed the termination of appellant's wage-loss compensation and medical benefits. The hearing representative also found that appellant's "work-related injuries" had resolved.³

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ OWCP's burden of proof in terminating compensation 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 to compensation for disability.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

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for an initial injury on August 30, 2002 and a recurrence on October 7, 2002. The accepted conditions were aggravation of lumbar disc herniation at L1-2 and displacement of lumbar disc without myelopathy. OWCP terminated appellant's medical benefits and wage-loss compensation effective July 11, 2014, finding that she no longer had residuals from her accepted employment conditions, based upon the reports of Dr. Doman, the second opinion physician. The Board finds that OWCP met its burden of proof to terminate her benefits.

³ The hearing representative directed OWCP to double the current file with File No. xxxxxx243.

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991); *see also J.P.*, Docket No. 13-1049 (issued August 16, 2013).

⁵ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁶ *See T.P.*, 58 ECAB 524 (2007).

⁷ *See I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

In his report dated August 23, 2012, Dr. Doman noted appellant's accepted August 30, 2002 employment injury, as well as her accepted 2002 recurrence of disability. He also reviewed her prior medical history and noted that she had been involved in a motor vehicle accident in 2001, which had caused a herniated disc, based upon MRI scan. Dr. Doman reviewed objective testing, including x-rays, and nerve conduction studies, which were essentially negative. He concluded that the work-related conditions had resolved and that appellant's current complaints were psychogenic, rather than physiologic. Dr. Doman pointed to findings of malingering during his physical examination, to support his opinion.

The Board finds that the reports of Dr. Doman are of probative value with respect to his conclusions regarding the issues presented in this case. Dr. Doman's opinion is based on a proper factual and medical history, and the medical records. He provided medical rationale for his opinion that the work-related conditions had resolved by explaining that there were no objective findings to indicate that the accepted work-related conditions were still active.⁸ Thus, Dr. Doman's opinion establishes that appellant was no longer experiencing residuals or disability related to the accepted work-related condition.⁹

Appellant's treating physician, Dr. Grasso, submitted multiple reports commencing in 2008. He continually assessed appellant with lumbago, disorders of the sacrum, displacement of intervertebral disc without myelopathy, spasm of muscle, lumbar radiculitis, cervicalgia, and depression. Dr. Grasso did not specify the intervertebral level of these diagnosed conditions. In his April 13, 2011 report, he related, however, that appellant's most recent MRI scan of August 13, 2009 showed multilevel mild-to-moderate facet arthropathy without significant canal stenosis or neural foraminal narrowing, and preserved intervertebral discs. Dr. Grasso did not explain upon what his continued diagnoses were based, as his own objective findings did not substantiate the diagnoses.¹⁰ The Board also notes that his reports are of reduced probative value as they did not provide a complete history of appellant's employment injury, nor did they note her history of the preexisting herniated disc, from her 2001 motor vehicle accident.¹¹

The Board therefore finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of July 11, 2014 based upon the reports of the second opinion physician Dr. Doman.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates appellant's compensation benefits, the burden shifts to appellant to establish that she has continuing disability after that date related to her accepted injury.¹² To establish causal relationship between the condition as well as any attendant

⁸ See *L.G.*, Docket No. 15-1334 (issued January 28, 2016).

⁹ The Board notes that while OWCP in its referral letter had improperly noted appellant's date of injury, Dr. Doman's reports actually related the correct date of injury.

¹⁰ See *J.C.*, Docket No. 13-1200 (issued November 1, 2013).

¹¹ See *C.P.*, Docket No. 15-0617 (issued August 4, 2015).

¹² See *Manuel Gill*, 52 ECAB 282 (2001).

disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.¹³ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁴

ANALYSIS -- ISSUE 2

Following the termination of her wage-loss compensation and medical benefits, appellant submitted the March 25, 2015 report from Dr. Grasso in support of her claim for continuing employment-related disability. In this report Dr. Grasso related that an MRI scan showed L4-5 disc bulge, with compression of the L4 nerve root on the right side. He related that a lumbar discogram performed in July 2008 also showed disc herniation at L4-5. Dr. Grasso again stated that appellant's diagnoses were lumbar intervertebral disc displacement, sacroiliac joint dysfunction, muscle spasm, and lumbar radiculitis. He also noted that she had lumbar degenerative disc disease that was not related to her work injury. The Board finds that Dr. Grasso's report is of limited probative value in establishing disability due to the accepted employment injury, as none of the conditions he diagnosed were accepted by OWCP as related to the employment injury. The employment injury was accepted for aggravation of L1-2 disc, Dr. Grasso did not opine that appellant in fact had residuals or disability from this condition. Dr. Grasso did not offer any medical explanation as to how the L4-5 disc condition, or any of the other conditions he diagnosed were caused by the accepted employment injury.¹⁵ His report is unrationalized and does not establish that appellant had continuing disability causally related to the accepted injury.¹⁶ Appellant therefore did not establish continuing disability after July 11, 2014 causally related to the accepted injury.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 11, 2014. The Board further finds that appellant has not established that she has continuing disability causally related to the accepted injury.

¹³ *Id.*

¹⁴ *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁵ *G.C.*, Docket No. 15-0985 (issued August 21, 2015).

¹⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 6, 2015 is affirmed.

Issued: May 20, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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