

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 11, 2012, as she had no further disability due to her accepted May 17, 2011 employment injury; and (2) whether appellant has established that she has continuing disability after March 11, 2012 as a result of her employment injury.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The facts relevant to this appeal will be set forth below.

On May 27, 2011 appellant, then a 61-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on May 17, 2011 she experienced left-sided sciatica after a patient fell against her left side. She stopped work on May 18, 2011. OWCP accepted the claim for displacement of a lumbar intervertebral disc without myelopathy and an aggravation of lumbar postlaminectomy syndrome. It paid compensation for total disability beginning July 2, 2011.

On November 2, 2011 Dr. Kenneth Park, an osteopath, treated appellant for lumbar pain with radiculopathy. He discussed her prior history of a fusion and the implantation of a spinal cord stimulator. Dr. Park provided appellant with pain management.

On November 14, 2011 OWCP referred appellant to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated December 7, 2011, Dr. Lakin discussed appellant's May 17, 2011 work injury and her history of a preexisting back condition requiring a spinal fusion in June 2006 and the placement of a spinal cord stimulator. He further reviewed the medical records. On examination, Dr. Lakin found minimal tenderness over the spinal cord stimulator, limited forward flexion, and "decreased strength throughout the entire left lower extremity...." He opined that appellant had "no significant orthopedic or neurological deficit resulting from the accident of May 17, 2011." Dr. Lakin concluded that the accepted conditions of an aggravation of a lumbar intervertebral disc without myelopathy and an aggravation of postlaminectomy syndrome had resolved. He found that appellant could return to her usual employment as she had "no current objective findings of any disability as a result of work[-]related aggravation." In a work restriction evaluation dated December 7, 2011, Dr. Lakin determined that she had no work restrictions.

On January 13, 2012 OWCP advised appellant of its proposed termination of her compensation and provided her 30 days to submit evidence or argument if she disagreed with the proposed action.

A computerized tomography (CT) scan of the lumbar spine, obtained on January 19, 2012, revealed postsurgical changes from the L4-S1 spinal fusion, grade 1 spondylolisthesis of

L4 on L5 with “asymmetric laterally bulging disc as well as [a] small right inferior foraminal protrusion,” minimal disc bulging at L3-4, and a mild asymmetrical bulging disc at L5-S1.

On January 19, 2012 appellant advised that Dr. Lakin was unfamiliar with nerve stimulators and asserted that her work injury jarred the stimulator. She maintained that she experienced difficulty even getting to physician’s appointments.

In a January 25, 2012 progress report, Dr. Park discussed his pain management treatment of appellant.³ He noted that she remained in bed most of the day and indicated that her “excessive pain level may be secondary to too much opioids, opioid hyperalgesia.” Dr. Park diagnosed osteoporosis and postlaminectomy syndrome.

In a progress report dated February 6, 2012, Dr. John M. Hwang, a Board-certified orthopedic surgeon, diagnosed benign hypertension, arthritis, and back pain. He noted that appellant did not believe that she could work and was going to see a neurosurgeon.

On February 21, 2012 Dr. Park evaluated appellant for back pain radiating from her lumbar spine through her left leg. He diagnosed postlaminectomy syndrome, osteoporosis, and asthma.

On February 22, 2012 Dr. Christopher J. Winfree, a Board-certified neurosurgeon, noted that appellant related having relief from pain following the implantation of the stimulator until a patient fell on her and she hit the ground. A CT scan of the thoracic spine did not show a shift in the stimulator and he did not know why she no longer had benefit from the device. Dr. Winfree referred appellant to another physician for “a disability assessment.”

In an undated statement, received by OWCP on February 27, 2012, appellant discussed her history of back problems and the placement of a spinal column stimulator. She noted that diagnostic studies obtained July 15, 2010 did not show damage around the area of her fusion. Appellant submitted a magnetic resonance imaging (MRI) scan study July 15, 2010 showed a spinal fusion from L4 to S1 with no herniation or stenosis.

By decision dated March 7, 2012, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective March 11, 2012. It found that the opinion of Dr. Lakin represented the weight of the medical evidence and established that she had no further disability or need for medical treatment due to her accepted employment injury.

In a report dated April 12, 2012, Dr. Howard Liss, a Board-certified physiatrist, discussed appellant’s history of a lumbar fusion at L4-S1 in June 2006 and the implantation of a neurostimulator in January 2011. He noted that, following the stimulator implant, she had a reduction of pain and returned to full-time work. On May 17, 2011 a patient fell onto appellant’s left side causing her to fall to the floor. Dr. Liss related, “[Appellant] noted an immediate change in the electrical sense that she had had from her stimulator. The following day, she was barely able to bear weight due to pain. Attempts were made at reprogramming the electrical stimulator without success.” He found that appellant currently complained of left leg pain with

³ Dr. Park continued to submit progress reports describing his treatment of appellant for pain in 2012.

left foot numbness and that an examination showed pain on straight leg raise and negative Waddell's signs. Dr. Liss reviewed diagnostic studies and diagnosed "chronic, disabling lumbar discogenic pain with a radicular component." He opined that appellant was totally disabled.

On April 18, 2012 appellant requested reconsideration. By decision dated July 20, 2012, OWCP denied modification of its March 7, 2012 decision. It found that Dr. Liss did not attribute her disability to the accepted work injury.

In a report dated July 31, 2012, Dr. Liss again reviewed appellant's medical history and discussed her May 17, 2011 work injury. On examination he provided findings similar to those obtained in his March 14, 2012 examination, including a positive bilateral straight leg raise. Dr. Liss advised that a July 15, 2010 MRI scan study demonstrated no disc herniation or stenosis, but that a CT scan obtained on January 19, 2012 subsequent to the work injury yielded multiple findings. He related, "Upon review of imaging, there appears to have been a change of the structural integrity of the discs, with the January 19, 2012 study revealing multiple bulges, and encroachment upon the thecal sac." Dr. Liss found that appellant was totally disabled as a result of the May 17, 2011 work injury.

On September 20, 2012 appellant requested reconsideration. She related that a CT scan taken after her work injury established that she sustained damage to her lumbar discs.

In a decision dated December 12, 2012, OWCP denied modification of its March 7, 2012 decision.

On March 14, 2013 Dr. Liss again compared the changes in the imaging studies before and after the May 17, 2011 injury and advised that the integrity of appellant's discs had been altered. He opined that her complaints were consistent and that examination findings did not suggest any "nonorganic component to her pain." Dr. Liss noted that Dr. Lakin had not performed a straight leg raise or all range of motion measurements, and also found "decreased strength throughout the entire left lower extremity compared to the right." He related, "In summary, there were imaging changes consistent with a structural injury to [appellant's] lumbar discs. Furthermore, [appellant] presented to me with a consistent history and examination. Portions of the examination did demonstrate positive mechanical signs that were reproductive of her pain."

On March 27, 2013 appellant, through counsel, requested reconsideration.

By decision dated June 25, 2013, OWCP denied modification of its December 12, 2012 decision. It found that Dr. Liss had not explained why the changes on imaging study resulted from the May 17, 2011 work injury.

On July 17, 2013 Dr. Liss discussed the rationale for his finding that the changes on imaging study resulted from the accepted work injury. He related:

"Firstly, on July 15, 2010 imaging did not reveal the presence of a herniated disc or spinal stenosis, whereas on the January 19, 2012 imaging did reveal bulging at L2 to S1 levels. The only noteworthy event that occurred between those times was the accident of May 17, 2011 when a patient fell into [appellant] while she

was working. My physical examinations of [her] have never revealed any inconsistencies. In the course of my examination, I look for evidence of a nonorganic component to a patient's pain. [Appellant] has never displaced any, which suggest that her symptoms are on a structural or organic basis.”

Dr. Liss found that it was “certainly possible” that the May 17, 2011 trauma increased pressure on the discs due to flexion and torsion, which caused additional pain in her back and leg. He concluded, “My impression with a reasonable degree of medical certainty, considering [appellant's] history, exam[ination], and imaging, is that the injury of May 17, 2011 did cause structural changes and resulted in ongoing pain leading to [her] disability.”

On August 21, 2013 appellant, through counsel, requested reconsideration. In a decision dated October 11, 2013, OWCP denied modification of its June 25, 2013 decision. It found that Dr. Liss' opinion was speculative and of diminished probative value.

In a report dated November 11, 2013, Dr. Liss related, “I am confident within a reasonable degree of medical probability that [appellant] suffered a disc injury on May 17, 2011. The trauma caused an increase in disc pressure due to flexion and torsion forces resulting in new damage to her discs. A January 19, 2012 imaging study revealed additional discal pathology.”

On November 19, 2013 counsel again requested reconsideration of the July 25, 2013 decision. In an accompanying statement, appellant advised that she had not experienced any injury between May 17, 2011 and January 19, 2012.

By decision dated April 11, 2014, OWCP denied appellant's request for reconsideration after finding that she had not raised an argument or submitted evidence sufficient to warrant reopening her case for further review of the merits under 5 U.S.C. § 8128(a).

Appellant appealed to the Board. In an order dated October 21, 2014, the Board reversed the April 11, 2014 decision after finding that OWCP delayed in issuing its reconsideration decision more than 90 days and that the delay jeopardized her right to appeal the merits of her case to the Board.⁴ The Board remanded the case for OWCP to conduct a merit review of the case.

In a statement dated October 1, 2015, appellant described her neurostimulator implant and its failure to control her pain after the May 17, 2011 work injury.

By decision dated November 3, 2015, OWCP denied modification of its October 11, 2013 decision.

On appeal counsel contends that Dr. Lakin performed a limited examination and provided no explanation for his conclusions. He asserts that a conflict exists between Dr. Lakin and Dr. Liss.

⁴ *Order Remanding Case*, Docket No. 14-1309 (issued October 21, 2014).

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ 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.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ 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.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained displacement of a lumbar intervertebral disc without myelopathy and an aggravation of lumbar postlaminectomy syndrome as the result of a May 17, 2011 employment injury. Appellant stopped work on May 18, 2011 and did not return. OWCP paid her compensation for total disability.

In a report dated November 2, 2011, Dr. Park discussed appellant's history of a lumbar fusion at L4-S1 and spinal cord stimulator implant and provided pain management. He did not, however, relate any condition to the May 17, 2011 work injury or otherwise address causation. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁹

On November 14, 2011 OWCP referred appellant to Dr. Lakin for a second opinion examination. The Board finds that OWCP met its burden of proof to terminate her compensation through the opinion of Dr. Lakin, who determined that she had no further disability causally related to her accepted employment injury. In his December 7, 2011 report, Dr. Lakin reviewed appellant's history of preexisting back pain leading to a June 2006 fusion and subsequent implantation of a spinal cord stimulator. On examination, he found a loss of strength on the left side and a minimally antalgic gait. Dr. Lakin determined that appellant's accepted conditions had resolved and provided as a rationale that she did not have objective orthopedic or neurological findings due to the May 17, 2011 employment injury. He further found that she could return to her usual employment. Dr. Lakin provided a thorough review of the factual and medical background and accurately summarized the relevant medical evidence. Moreover, he provided detailed findings on examination and reached conclusions regarding appellant's

⁵ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁶ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁷ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁸ *Id.*

⁹ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

condition which comported with his findings.¹⁰ Dr. Lakin's opinion thus constitutes the weight of the medical evidence and establishes that appellant had no employment-related disability or need for medical treatment, effective March 11, 2012.

The remaining evidence of record submitted prior to OWCP's termination of compensation is insufficient to show that appellant had further disability or need for medical treatment due to her employment injury. In a January 25, 2012 progress report, Dr. Park discussed his treatment and noted that she remained in bed most of the day. He considered that appellant's excessive pain level could be secondary to too much opioids or opioid hyperalgesia. Dr. Park diagnosed osteoporosis and postlaminectomy syndrome. In a progress report dated February 21, 2012, he again diagnosed postlaminectomy syndrome and osteoporosis. Dr. Park did not address causation and thus his reports are of diminished probative value.¹¹

On February 6, 2012 Dr. Hwang diagnosed benign hypertension, arthritis, and back pain. He noted that appellant did not feel she could work. Dr. Hwang, however, did not provide an independent disability assessment and thus his report is of little probative value.¹²

On February 22, 2012 Dr. Winfree noted that appellant related that she had relief from pain following the implantation of the stimulator until a patient fell on her and she hit the ground. He related that a thoracic CT scan did not show a shift in the stimulator. Dr. Winfree referred appellant to another physician to determine disability. As he did not address the relevant issue of whether she was disabled due to her employment injury, his report is of diminished probative value.

On appeal counsel asserts that Dr. Lakin did not explain his conclusions. As discussed, however, his opinion is based on a thorough examination and review of the evidence and thus constitutes the weight of the evidence and establishes that she had no employment-related disability or need for medical treatment effective March 11, 2012, the date OWCP terminated her compensation.

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.¹³ To establish a causal relationship between the condition as well as any attendant 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

¹⁰ See *Pamela K. Guesford*, *supra* note 7.

¹¹ See *B.S.*, Docket No. 15-572 (issued May 27, 2015).

¹² See *Earl David Seal*, 49 ECAB 152 (1997).

¹³ *Manual Gill*, 52 ECAB 282 (2001).

relationship.¹⁴ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established continuing disability after March 11, 2012 due to her employment injury.

As discussed above, the weight of the evidence at the time of the termination rested with Dr. Lakin, an OWCP referral physician, who concluded that appellant had no residuals due to her accepted displacement of a lumbar intervertebral disc without myelopathy and aggravation of lumbar postlaminectomy syndrome. Based on his physical findings and review of the factual and medical evidence, Dr. Lakin determined that she had returned to her preinjury condition and could perform her regular work duties without restrictions.

On reconsideration, appellant submitted reports from Dr. Liss, an attending physician. In a report dated April 12, 2012, Dr. Liss discussed her history of a May 17, 2011 injury, a fusion at L4-S1 in June 2006, and the implantation of a neurostimulator in January 2011. He further noted that on May 17, 2011 a patient fell on appellant's left side, causing a change in the electrical sensation from the stimulator. Dr. Liss diagnosed lumbar pain with radiculopathy and provided examination findings. He opined that appellant was totally disabled. A physician's opinion on causal relationship between a claimant's disability and an employment injury, however, is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Dr. Liss did not provide sufficient medical rationale to demonstrate that the conclusion reached regarding appellant's disability was sound, logical and rationale.¹⁶ Consequently, his report is insufficient to meet appellant's burden of proof.

On July 31, 2012 Dr. Liss compared a July 15, 2010 MRI scan study obtained prior to the injury, which did not show stenosis or a herniated disc, with a January 19, 2012 CT scan obtained after the injury, which showed a foraminal protrusion at L4-5 with disc bulging and a possible deformity of the thecal sac. He found that appellant sustained structural changes in disc integrity and that she was totally disabled as a result of her employment injury. Dr. Liss did not, however, explain the physiologic progress by which the work injury caused continued disability after March 11, 2012. Without a sufficient explanation regarding the mechanism of injury, his opinion on disability is of diminished probative value.¹⁷

In a report dated March 14, 2013, Dr. Liss indicated that diagnostic studies taken before and after appellant's injury showed an alteration in the integrity of her discs. He also indicated

¹⁴ *Id.*

¹⁵ *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁶ *K.W.*, 59 ECAB 271 (2007).

¹⁷ *See generally N.M.*, Docket No. 15-0704 (issued June 22, 2015); *M.P.*, Docket No. 15-0747 (issued May 18, 2015).

that she had consistent complaints on examination and no nonorganic pain findings. Dr. Liss advised that in contrast to Dr. Lakin's findings he found mechanical signs of pain on examination. He did not, however, address the relevant issue of disability and thus his opinion is of little probative value.

On July 17, 2013 Dr. Liss again attributed the structural changes to the May 17, 2011 injury as it was the only event between the 2010 and 2012 imaging studies and was consistent with examination findings. He advised that the injury may have caused pressure on appellant's discs due to flexion and torsion and concluded that, within reasonable medical certainty, she sustained structural changes to her disc with resulting disability due to her May 17, 2011 employment injury. On November 11, 2013 Dr. Liss asserted that she injured her disc on May 17, 2011 as a result of the forces of flexion and torsion on her discs. He provided no explanation for finding that appellant had continued disability other than to discuss the change in imaging studies from 2010 to 2012. Without additional rationale, the Board finds that Dr. Liss' opinion is insufficient to meet her burden of proof.¹⁸

On appeal argues that a conflict exists between Dr. Lakin and Dr. Liss. As discussed, however, Dr. Liss' opinion is of diminished probative value as he did not provide sufficient medical rationale and thus insufficient to create a conflict in medical opinion.

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 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 and medical benefits, effective March 11, 2012, as she had no further disability due to her accepted May 17, 2011 employment injury. The Board further finds that she has not established continuing disability after March 11, 2012 as a result of her employment injury.

¹⁸ Medical reports without adequate rationale are of diminished probative value and do not meet an employee's burden of proof. *See T.C.*, Docket No. 15-1534 (issued March 1, 2016).

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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