

On appeal appellant asserts that OWCP had not reviewed the medical evidence as ordered by the Board on March 10, 2016, including reports from Dr. Christopher S. Rumana, an attending Board-certified neurosurgeon, and Dr. Joshua E. Fuhrmeister, an attending physician Board-certified in anesthesiology and pain medicine.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances outlined in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On January 5, 2010 appellant, then a 49-year-old laundry supervisor, filed a traumatic injury claim, alleging that she was injured when she fell to the floor at 10:30 a.m. that day. OWCP assigned the claim File No. xxxxxx486. Appellant returned to regular-duty work on March 1, 2010 and submitted claims for compensation (Forms CA-7) for intermittent periods of disability beginning February 23, 2010. By decision dated April 30, 2010, OWCP denied her claim, finding that the evidence of record failed to establish an injury in the performance of duty. Appellant requested a review of the written record from OWCP's Branch of Hearings and Review. In a September 28, 2010 decision, an OWCP hearing representative affirmed the April 30, 2010 denial of appellant's claim. Following a November 12, 2010 reconsideration request, OWCP issued a merit decision dated February 3, 2011, also denying modification of the prior decisions.

Appellant appealed to the Board. In a November 23, 2011 decision, the Board vacated the February 3, 2011 OWCP merit decision and remanded the case for referral to an appropriate Board-certified specialist for an examination, diagnosis and a rationalized opinion as to whether appellant sustained an injury on January 5, 2010 and, if so, whether she had any concurrent disability from work on or after that date.⁴

On remand, OWCP referred appellant to Dr. R. Derry Crosby, a Board-certified osteopath specializing in orthopedic surgery, for a second opinion evaluation. In a February 27, 2012 report, Dr. Crosby described the January 5, 2010 employment injury and appellant's complaints of intermittent pain and swelling in the upper back and cervical spine areas. He noted his review of the medical record and indicated that physical examination produced no strong radicular pain to the right and left upper extremities, with normal strength testing and reflexes, and no marked tenderness found on examination of paraspinal musculature. Dr. Crosby obtained x-rays of the cervical and thoracic spines, and advised that these showed no spondylosis or foraminal canal encroachment. He opined that appellant probably sustained cervical and thoracic strains on January 5, 2010 and had appropriate treatment for the conditions. Dr. Crosby noted that appellant was under treatment for a low back condition and that no treatment was indicated for her neck and thoracic region. He advised that appellant had no disability or need for restricted duty as far as the neck or thoracic spine was concerned. In an April 19, 2012

³ Docket No. 11-1166 (issued November 23, 2011); Docket No. 13-1940 (issued August 4, 2014); *Order Remanding Case*, Docket No. 15-1403 (issued March 10, 2016).

⁴ Docket No. 11-1166 (issued November 23, 2011).

supplemental report, Dr. Crosby advised that, while appellant sustained cervical and thoracic strains on January 5, 2010, the conditions had resolved at the time of his examination on February 27, 2012.

By decision dated May 11, 2012, OWCP denied appellant's claim.

In a September 4, 2012 report, Dr. Rumana noted appellant's chief complaint of neck and right arm pain, low back and leg pain. He reported that appellant had a slip and fall at work in 2010. On neck examination, Spurling's and Lhermitte's signs were negative. Dr. Rumana diagnosed thoracic myofasciitis/sprain and neck pain, and indicated that appellant could be experiencing myofascial neck pain or right cervical radiculopathy.

On January 22, 2013 OWCP accepted sprains of the thoracic region of the back and of the neck.⁵ It paid intermittent wage-loss compensation for 33.25 hours. By decision dated March 28, 2013, OWCP terminated any future wage-loss compensation and medical benefits, effective February 27, 2012, finding that the weight of the medical evidence rested with the opinion of Dr. Crosby.

Appellant again appealed to the Board. In an August 4, 2014 decision, the Board found that OWCP had met its burden of proof to terminate her future wage-loss compensation, effective February 27, 2012, because she no longer had employment-related disability. The Board found, however, that OWCP had failed to meet its burden of proof to terminate appellant's medical benefits because it had not provided her with a pre-termination notice.⁶

On September 30, 2014 OWCP issued a notice of proposed termination of medical benefits and future wage-loss compensation, based on the opinion of its referral physician Dr. Crosby who advised that appellant no longer had residuals of the accepted neck and thoracic sprains. By decision dated November 14, 2014, it terminated appellant's medical benefits and future wage-loss compensation, effective November 16, 2014, finding that the weight of the medical opinion evidence rested with Dr. Crosby.

Appellant timely requested a review of the written record before OWCP's Branch of Hearings and Review and submitted additional evidence. Treatment notes dated September 4 and October 22, 2012 from Dr. Rumana noted a chief complaint of neck and right arm pain, low back and leg pain, and reported that appellant had a slip and fall at work in 2010. A report from Dr. Fuhrmeister discussed neck examination findings and diagnosed thoracic myofasciitis/sprain and neck pain. He indicated that appellant could be having myofascial neck pain or right cervical radiculopathy and recommended a cervical magnetic resonance imaging (MRI) scan. In December 11, 2012 to July 28, 2014 reports, Dr. Fuhrmeister noted a two-year history of neck pain which could be related to a work injury, and that appellant had been in a motor vehicle accident in 2002. He described her complaints of neck and back pain and muscle aches and indicated that examination of the cervical spine demonstrated mild tenderness and mild-to-

⁵ The record also indicates that appellant has a separate claim, assigned File No. xxxxxx606 accepted for aggravation of lumbar radiculopathy on September 8, 2005.

⁶ Docket No. 13-1940 (issued August 4, 2014).

moderate limitation of range of motion. Dr. Fuhrmeister noted that a November 9, 2012 cervical spine MRI scan showed minor disc bulging with no significant foraminal narrowing. He opined that appellant's pain was likely multifactorial, including cervical radiculitis and chronic cervicothoracic spasms. Dr. Fuhrmeister performed cervical epidural steroid injections on December 13, 2012 and March 21, 2013.

By decision dated May 27, 2015, an OWCP hearing representative affirmed the November 14, 2014 termination decision, finding that the weight of the medical evidence rested with the opinion of Dr. Crosby.

On June 15, 2015 appellant appealed to the Board. She also submitted additional medical evidence to OWCP following the May 27, 2015 decision. In a treatment note dated February 24, 2015, Dr. Rumana noted appellant's continued complaint of neck pain. He noted his review of medical records including a November 9, 2012 MRI scan of the cervical spine that he characterized as essentially normal with no signs of obvious disc herniation, or nerve root or spinal cord compression. The neck was supple on examination, and Spurling's maneuvers were negative. Dr. Rumana diagnosed neck pain and described appellant's medication regimen. He referred her to Dr. Fuhrmeister for further treatment. In a May 20, 2015 report, Dr. Fuhrmeister noted appellant's complaint of neck pain and reviewed medical records. He noted cervical tenderness on examination with stable range of motion and no scapular winging. Dr. Fuhrmeister diagnosed brachial neuritis or radiculitis, not otherwise specified. On June 4, 2015 he provided a steroid injection.

In a March 10, 2016 order, the Board found the case not in posture for decision, set aside the May 27, 2015 OWCP decision, and remanded the case. The Board noted that appellant had properly filed a timely request for review of the written record before OWCP's Branch of Hearings and Review and had submitted relevant and pertinent new medical evidence. The Board found that, while OWCP's hearing representative briefly mentioned Dr. Rumana's reports, she had not mentioned Dr. Fuhrmeister's reports. As the hearing representative had not considered the medical reports dated September 4, 2012 to July 28, 2014 from Dr. Fuhrmeister, the Board again remanded the case for OWCP to properly consider all of the evidence submitted, to be followed by an appropriate *de novo* decision.⁷

By decision dated June 2, 2016, OWCP again terminated appellant's entitlement to medical benefits and future wage-loss compensation benefits as the weight of the medical evidence established that she no longer had employment-related residuals or disability.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits. 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. The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for

⁷ Docket No. 15-1403, *Order Remanding Case* (issued March 10, 2016).

medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁸

ANALYSIS

The Board initially notes that, in its August 4, 2014 decision, it found that OWCP had met its burden of proof to terminate appellant's wage-loss compensation, effective February 27, 2012, because she had no employment-related disability.⁹ Appellant has not requested further wage-loss compensation. The Board now finds that OWCP met its burden of proof to terminate appellant's medical benefits, effective November 16, 2014.

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.¹⁰

In reports dated February 27 and April 19, 2012, Dr. Crosby had clearly explained that, based on his review of the medical record and his physical examination findings of no strong radicular pain to the right and left upper extremities, with normal strength testing and reflexes, and no marked tenderness found on examination of paraspinal musculature, appellant had no disability or need for restricted duty as far as the neck or thoracic spine were concerned. He advised that, while appellant had sustained cervical and thoracic strains on January 5, 2010, the conditions had resolved at the time of his examination on February 27, 2012. Thus, the Board concludes that Dr. Crosby's reports established that appellant no longer had residuals of the accepted neck and thoracic strains, caused by the January 5, 2010 employment-related fall at work.

Dr. Rumana submitted reports dated September 4, 2010 to February 24, 2015, but these reports merely described appellant's complaints and physical examination findings. While he diagnosed cervical radiculopathy, this condition has not been accepted.¹¹ Dr. Rumana did not explain at any time how the January 25, 2010 fall caused appellant's continued complaints.¹²

In reports dated December 11, 2012 to May 20, 2015, Dr. Fuhrmeister opined that appellant's neck pain could be related to an employment injury and was likely multifactorial. He diagnosed brachial neuritis or radiculopathy, also not accepted under this claim. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in

⁸ *C.R.*, Docket No. 15-0501 (issued February 18, 2016); *Fred Simpson*, 53 ECAB 768 (2002).

⁹ *Supra* note 6.

¹⁰ *Supra* note 8.

¹¹ *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (where a claimant claims that a condition not accepted or approved by OWCP was 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).

¹² *Id.*

terms of a reasonable degree of medical certainty.¹³ Dr. Fuhrmeister couched his opinion in speculative terms.

The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁴ As Dr. Crosby provided a well-rationalized opinion that appellant had no continuing residuals of the accepted neck and thoracic strains, his opinion constitutes the weight of the medical evidence regarding whether appellant had a continuing need for medical treatment due to the accepted condition.¹⁵ Accordingly, OWCP properly terminated appellant's medical benefits based on his opinion.¹⁶

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits, effective November 16, 2014 because she no longer had residuals of the accepted employment-related conditions.

¹³ See *T.H.*, Docket No. 15-311 (issued June 2, 2015) (physician's opinion that employee's injury was most likely attributable to work factors was considered speculative and insufficient to establish claim); *Ricky E. Storms*, 52 ECAB 349 (2001) (medical opinions which are speculative or equivocal in character have little probative value).

¹⁴ *I.R.*, Docket No. 09-1229 (issued February 24, 2010).

¹⁵ *C.R.*, *supra* note 8.

¹⁶ See *E.J.*, 59 ECAB 695 (2008).

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2017
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