

appellant has met her burden of proof to establish any continuing disability or medical residuals causally related to her employment injury.

On appeal counsel contends that the second opinion physician was not entitled to the weight of the medical evidence and that there was an outstanding conflict of medical opinion evidence.

FACTUAL HISTORY

On May 28, 2013 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained neck and back injuries on May 28, 2013 when her postal truck lost control. She reported that as she was approaching a red light, she applied her brakes and her vehicle began to swerve from side to side. Appellant could not regain control of her vehicle, left the road, and struck a tree. On July 18, 2013 OWCP accepted her claim for lumbar sprain and neck sprain. Appellant's attending physician, Dr. Amit Bhargava, a Board-certified physiatrist, released her to return to light-duty work on August 20, 2013 with restrictions of lifting no more than 5 pounds, no bending, and no pushing or pulling more than 10 pounds. Appellant returned to light-duty work for part of the day on August 26, 2013, but was sent home after the employing establishment determined that it could no longer accommodate her work restrictions. Dr. Bhargava repeated his restrictions on September 3, 2013.

Appellant filed a claim for compensation (Form CA-7) for leave without pay from August 24 through September 6, 2013. She underwent a lumbar computerized tomography (CT) scan on September 13, 2013 which demonstrated mild degenerative changes in the lumbar spine. On February 5, 2014 Dr. Bhargava diagnosed lumbago and found that appellant had reached maximum medical improvement.

Appellant underwent a functional capacity evaluation on March 27, 2014. This testing demonstrated that she could work in the light physical demand level. The test found that appellant exhibited fair consistency of efforts and noted that she had a high perception of pain and limited ability. Dr. Bhargava reviewed this testing on April 2, 2014 and diagnosed lumbago. He recommended a work-hardening program. Dr. Bhargava completed a duty status report and indicated that appellant could return to work restrictions including intermittent lifting up to 10 pounds, occasional walking, and occasional climbing. He provided illegible restrictions on kneeling, bending, stooping, and twisting. Dr. Bhargava indicated that appellant could push and pull up to 20 pounds occasionally and occasionally lift above the shoulder.

OWCP referred appellant for a second opinion examination with Dr. Willie Thompson, a Board-certified orthopedic surgeon on May 14, 2014. Dr. Thompson completed a report on May 30, 2014 and noted her history of injury. He noted appellant's opinion that she was experiencing "excruciating low back pain." Dr. Thompson found that she did not wish to actively participate in the examination and stopped the appointment.

Dr. Bhargava examined appellant on May 22, 2014 and diagnosed lumbago. Appellant related having low back pain symptoms with constant aching, burning, stabbing, pressure, throbbing, and cramping. Dr. Bhargava found that her gait was normal, that she had normal sensation in the legs, normal muscle strength, and symmetrical reflexes.

In a letter dated June 18, 2014, OWCP proposed to suspend appellant's compensation benefits as she failed to cooperate with the May 30, 2014 second opinion evaluation. It afforded her 14 days to present good cause for her failure to cooperate. In a note dated June 23, 2014, appellant requested that the second opinion examination be rescheduled.

OWCP rescheduled the examination with Dr. Thompson on June 24, 2014. In a report dated July 25, 2014, Dr. Thompson noted appellant's history of injury on May 28, 2013. He found that she had a normal gait with full range of motion of the cervical and lumbar spines. Dr. Thompson noted no muscle wasting or atrophy. He found that appellant's neurovascular status was intact. Dr. Thompson reported that she had no paraspinous muscle spasms and she failed to make an effort to walk on her heels or toes. He indicated that appellant's straight leg raising was negative bilaterally and that she had no motor or sensory deficits. Dr. Thompson opined that it was reasonable to accept that she sustained soft tissue sprains or strains to her neck and back as a result of her employment incident. However, he found no objective evidence of any ongoing pathology. Dr. Thompson concluded, "In my opinion, all conditions related to the injury of May 28, 2013 have resolved without residuals at this point in time." He advised that appellant could safely return to her work as a letter carrier and was perfectly capable of performing all activities associated with her job as a letter carrier.

On August 5, September 5, October 6, and November 6, 2014 Dr. Bhargava repeated his diagnosis of lumbago. He repeated appellant's complaints of back pain, but noted that her gait was normal, her sensation to light touch was normal, her muscle strength was normal, and that her reflexes were symmetrical. Dr. Bhargava reported that flexion and extension of the lumbar spine increased appellant's pain.

In a letter dated December 22, 2014, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as, based on Dr. Thompson's report, she had no continuing medical residuals or disability from work due to her accepted employment injury. It allowed appellant 30 days for a response.

Dr. Bhargava completed reports on December 3, 2014 and January 15, 2015 diagnosing low back pain or lumbago. He repeated his findings and conclusions.

Appellant returned to full-duty work on January 17, 2015.

By decision dated March 13, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date finding that the weight of the medical opinion evidence rested with Dr. Thompson and established that she had no medical residuals and could return to her date-of-injury position.

Dr. Bhargava completed a note on February 17, 2015 and reported that appellant returned to work on January 17, 2015 and experienced an increase in low back pain when she bent over to pick up her lunch. He diagnosed lumbago.

On December 9, 2015 counsel requested reconsideration of the March 13, 2015 termination decision. She argued that Dr. Thompson failed to review appellant's CT scan and his report was not based on a complete factual history.

Dr. Ralph T. Salvagno, a Board-certified orthopedic surgeon, examined appellant on November 13, 2015. He described her history of injury and reported that she lost consciousness. Dr. Salvagno reported that appellant was unable to undergo a magnetic resonance imaging (MRI) scan due to the presence of a metal device in her skull. He noted that she returned to work on January 17, 2015 and experienced a severe increase of back pain when bending over to pick up her lunch. Dr. Salvagno found that appellant's gait was slightly antalgic with right-sided back pain. He found marked tenderness in the right lumbar area and right sacroiliac joint. Dr. Salvagno reported no sensory deficit and good motor strength with no atrophy. He diagnosed chronic lumbar sprain with disc pathology at L4-5. Dr. Salvagno opined that appellant's January 17, 2015 event of bending over to pick up her lunch was insufficient to cause her current condition. He found that appellant was disabled due to her accepted employment injury of May 28, 2013 and provided work restrictions.

By decision dated February 19, 2016, OWCP denied modification of the March 13, 2015 termination decision, finding that Dr. Thompson's report was entitled to the weight of the medical opinion evidence.

LEGAL PRECEDENT -- ISSUE 1

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.³ 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 injury.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 13, 2015.

Appellant's attending physician, Dr. Bhargava, provided a series of reports diagnosing lumbago and opining that appellant was partially disabled from work. He based his findings on appellant's report of pain. Dr. Bhargava did not provide any objective findings in support of his opinion, noting that appellant had normal gait, sensation to light touch was normal, her muscle strength was normal, and her reflexes were symmetrical.

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Id.*

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Id.*

OWCP referred appellant for a second opinion evaluation with Dr. Thompson who, in his July 25, 2014 report, likewise made no objective findings supporting appellant's ongoing back strains or disability from work. Dr. Thompson found that appellant had a normal gait with full range of motion of the cervical and lumbar spines. He noted no muscle wasting or atrophy. Dr. Thompson found that appellant's neurovascular status was intact. He reported that appellant had no paraspinous muscle spasms and that she had no motor or sensory deficits. Dr. Thompson found no objective evidence of any ongoing pathology and concluded that appellant's employment-related conditions and disability had resolved. He found that she had no residuals and that she could return to her date-of-injury position.

The Board finds that Dr. Thompson's report is entitled to the weight of the medical opinion evidence and that it establishes that appellant's employment-related injury and disability had resolved by March 13, 2015. This report is based on a proper history of injury and noted negative objective findings supporting ongoing conditions or residuals as a result of appellant's employment injury.

Following Dr. Thompson's July 25, 2014 report, Dr. Bhargava submitted additional reports. These reports also lack positive objective findings supporting ongoing disability or medical residuals and are thus insufficient to overcome the weight of Dr. Thompson's well-reasoned report or to create a conflict.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she has disability and medical residuals causally related to her accepted employment injury.⁷ To establish a causal relationship between the condition, as well as any disability claimed, and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of 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.⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish any continuing disability or residuals causally related to her employment injury on or after March 13, 2015.

⁷ *George Servetas*, 43 ECAB 424, 430 (1992).

⁸ *James Mack*, 43 ECAB 321 (1991).

In support of her claim for continuing employment-related disability, appellant submitted a report dated November 13, 2015 from Dr. Salvagno. He noted that she returned to work on January 17, 2015 and experienced severe increased back pain due to bending over to pick up her lunch. Dr. Salvagno found that appellant's gait was slightly antalgic with right-sided back pain. He found marked tenderness in the right lumbar area and right sacroiliac joint. Dr. Salvagno reported no sensory deficit and good motor strength with no atrophy. He diagnosed chronic lumbar sprain with disc pathology at L4-5. Dr. Salvagno opined that appellant's January 17, 2015 event of bending over to pick up her lunch was insufficient to cause her current condition. He found that appellant was disabled from work due to her accepted employment injury on May 28, 2013 and provided work restrictions.

The Board finds that this report is not sufficiently detailed and well-reasoned to establish appellant's claim for continuing disability or medical residuals. While Dr. Salvagno diagnosed chronic lumbar sprain, he did not explain how and why appellant's soft tissue injury would continue for almost two years after her accepted employment injury. He did not explain why he believed that appellant was incapable of performing her date-of-injury position. As this report is not well reasoned, it does not establish appellant's claim for ongoing disability or residuals.

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.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 13, 2015; and that appellant has not met her burden of proof to establish any continuing disability or residuals causally related to her employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2017
Washington, DC

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

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

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