

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 6, 2012; and (2) whether appellant has established continuing employment-related disability after May 6, 2012 causally related to the October 14, 2010 employment injury.

FACTUAL HISTORY

On November 17, 2010 appellant, then a 61-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries when lifting heavy buckets in the performance of duty on October 14, 2010. The reverse side of the claim form indicated that she stopped work on October 29, 2010. On December 7, 2010 OWCP accepted the claim for sprains of the neck, thoracic, and lumbar spine. Appellant began receiving wage-loss compensation and was placed on the periodic compensation roll as of February 13, 2011.

OWCP referred appellant to Dr. Douglas Lurie, a Board-certified orthopedic surgeon, for a second opinion examination to determine appellant's work capacity. In a report dated April 25, 2011, Dr. Lurie provided a history and results on examination. He opined that the accepted sprains had resolved. Dr. Lurie wrote that any residual symptoms were most likely the result of preexisting degenerative changes in the back, which were likely aggravated by the lifting of heavy buckets. He indicated that appellant should have a functional capacity evaluation (FCE) prior to returning to work. The record indicates that appellant underwent an FCE on June 8, 2011.

In a June 9, 2011 report, Dr. Lurie reported that appellant was capable of full-time sedentary work, based on the FCE. He noted that appellant was "self-limited" on 38 percent of the 16 tasks, and the FCE report noted that, if self-limiting exceeded 20 percent, then psychosocial and motivating factors were affecting the result. In a July 5, 2011 report, Dr. Lurie wrote that he did not feel he could "trump" the FCE and released appellant back to full-duty work.

OWCP referred appellant for another second opinion examination. In a report dated August 15, 2011, Dr. Christopher Cenac, Sr., a Board-certified orthopedic surgeon, summarized appellant's medical history and results on physical examination. He noted that he had reviewed the FCE report. Dr. Cenac opined:

"[Appellant] can return to full duty with the restrictions noted on the FCE, eight hours per day. The acute sprains have resolved; however, [she] has progressive degenerative pathology which will continue to be symptomatic in the future, unrelated to the incident. This patient's long-term work prognosis is limited because of her age, 63 years, and the progressive nature of the degenerative pathology, nonwork related."

Dr. Cenac completed an OWCP-5c work capacity evaluation dated August 15, 2011, outlining work restrictions that included 10 pounds lifting.

In a letter dated August 31, 2011, OWCP requested that Dr. Sara Fernandez, a Board-certified internist, review the August 15, 2011 report. On September 7, 2011 Dr. Fernandez indicated that she agreed with the findings of Dr. Cenac. In a report dated October 31, 2011, she provided results on examination. Dr. Fernandez reported a normal physical examination and indicated that appellant complained of back and neck pain.

In a December 5, 2011 report, Dr. Mahmoud Sarmini, a physiatrist, reported that appellant had lumbar degenerative disc disease and opined that appellant's employment-related injury had exacerbated her back pain. He reported on February 28, 2012 that appellant's low back pain restricted her from lifting more than 20 pounds, as well as from standing or walking for long periods of time.

By letter dated March 30, 2012, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits. It indicated that the weight of the evidence was represented by Dr. Cenac, who found that the accepted conditions had resolved.

On April 23, 2012 appellant submitted additional evidence, including an April 17, 2012 report from Dr. Sarmini. Dr. Sarmini again wrote that appellant had lumbar degenerative disc disease and her job-related injury had aggravated low back pain.

By decision dated May 3, 2012, OWCP terminated appellant's wage-loss compensation and medical benefits, effective May 6, 2012. It found that the weight of the medical evidence established that the accepted conditions had resolved.

On May 31, 2012 appellant requested a review of the written record by an OWCP hearing representative. She submitted a May 29, 2012 report from Dr. Justin Lundgren, a Board-certified physiatrist. Dr. Lundgren provided a history and results on examination. He wrote that if it is true that appellant did not have neck or low back pain prior to the October 14, 2010 injury, then "we can point to the work activities on [October 14, 2010] as the cause of her pain." Dr. Lundgren indicated that appellant had underlying degenerative disease in the neck and lumbar back, as most 60-year olds did, but the work activity brought the onset of pain and she never recovered. He also reported that results of an electromyogram/nerve conduction velocity study (EMG/NCV) performed on May 29, 2012 was suggestive of a sensory motor polyneuropathy.

In a report dated June 5, 2012, Dr. Walter Eversmeyer, a rheumatologist, diagnosed fibromyalgia. He opined that, although trauma had never been shown to cause fibromyalgia, it seemed likely that, if appellant was well until her on-the-job injury, the injury precipitated the fibromyalgia.

By decision dated September 7, 2012, OWCP's hearing representative affirmed the May 3, 2012 decision. He found that OWCP had properly terminated appellant's wage-loss compensation and medical benefits based on the medical evidence of record. In addition, the hearing representative found that the reports from Dr. Lundgren and Dr. Eversmeyer did not establish any continuing employment-related conditions or disability.

Appellant, through counsel, requested reconsideration on January 22, 2013. She submitted an August 20, 2012 report from Dr. Hendricks Whitman, a rheumatologist, who

provided a history, results on examination, and review of diagnostic studies. Dr. Whitman noted that a May 28, 2012 magnetic resonance imaging (MRI) scan of the lumbar spine showed multilevel degenerative disc and facet disease and a May 28, 2012 MRI scan of the cervical spine showed C5-7 spondylosis. In a December 12, 2012 report, he opined that appellant had an exacerbation of her osteoarthritis from lifting buckets at work. Dr. Whitman wrote that the lifting caused pain, muscle spasms and probable change in anatomical alignment of her cervical and lumbar spine, resulting in fibromyalgia, and chronic fatigue syndrome. He reported that appellant had multilevel degenerative disc disease, spinal canal stenosis, and facet arthropathy as documented on her imaging studies.

By decision dated September 3, 2013, OWCP reviewed the merits of the claim and denied modification. It found that the medical evidence of record failed to establish any additional employment-related conditions.

On December 3, 2013 appellant, through counsel, requested reconsideration. She submitted a November 20, 2013 report from Dr. Whitman that provided a history and results on examination. Dr. Whitman listed as compensable diagnoses: neck, thoracic and lumbar spine sprains and muscle spasms, right leg radiculopathy, chronic pain, chronic insomnia, and fibromyalgia. He further found that “Based on my medical rationale, physical examination, review of history, [appellant] received an injury while she was employed at the [employing establishment] related to multiple heavy lifting of 52 seventy-[pound] buckets incurring back sprain, muscle spasms, and nerve root injury with pain down her leg.”

By decision dated December 10, 2013, OWCP reviewed the merits of appellant’s claim and denied modification. It found that the evidence from Dr. Whitman was of limited probative value.

On May 17, 2014 appellant, through counsel, again requested reconsideration. She submitted a March 14, 2014 report from Dr. Whitman that provided results on examination. Dr. Whitman diagnosed aggravation of neck and back osteoarthritis, fibromyalgia, chronic fatigue syndrome (including episodic dysfunction of the central nervous system), spinal stenosis, facet arthropathy, lumbar and cervical radiculopathy. He opined that appellant’s conditions were causally related to the job injury of October 14, 2010. Dr. Whitman further reported, “[t]he reason for my opinion is as follows: The initial lifting of approximately 52 seventy-pound buckets would cause stress to the muscles and nerves in the lumbar and thoracic region. While degenerative changes (osteoarthritis) of the lumbar spine and cervical spine have a certain amount of age appropriateness, the repetitive lifting of extremely heavy buckets of mail would cause an exacerbation and acceleration of this process.” Dr. Whitman asserted this was consistent with the findings of Dr. Lurie. He wrote that, as a consequence of appellant’s extreme pain at time of injury, she developed fibromyalgia, chronic fatigue syndrome, and episodic dysfunction of her central nervous system. Dr. Whitman opined, “It was the inflammation of these nerves that caused the fibromyalgia and episodic dysfunction of the central nervous system being experienced by [appellant].” He concluded that the MRI scan findings were consistent with the lifting injury of October 14, 2010.

By decision dated October 22, 2014, OWCP reviewed the merits of the claim, but denied modification of its prior decision. It again found that the report from Dr. Whitman was of diminished probative value and was insufficient to overcome Dr. Cenac's opinion.

On October 6, 2015 appellant, through counsel, requested reconsideration. Counsel argued that Dr. Cenac did not discuss whether appellant's underlying degenerative condition was aggravated by the October 14, 2014 injury. Appellant also submitted an August 9, 2015 report from Dr. Whitman. In this report, Dr. Whitman again opined that appellant had additional employment-related conditions. He concluded that there was no doubt that appellant's work environment exacerbated her age-appropriate degenerative arthritis causing chronic pain, insomnia, and fibromyalgia and triggered her autoimmune disorder which caused a sensory polyneuropathy. Dr. Whitman also explained that, unfortunately, appellant's accelerated degenerative arthritis, spinal stenosis, nerve root irritation all brought on by heavy lifting and, sleep deprivation, and chronic stress had not improved and she remained totally and permanently disabled despite comprehensive treatment with the state of the art medications.

By decision dated June 7, 2016, OWCP reviewed the merits of the claim, but denied modification of its prior decision. It found that the evidence was insufficient to warrant modification.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.⁵ The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁶

ANALYSIS -- ISSUE 1

In the present case, the only accepted conditions from the October 14, 2010 lifting incidents were sprains of the cervical, thoracic, and lumbar spine. OWCP has the burden of proof to terminate wage-loss compensation and medical benefits.⁷ As to the accepted sprains, the medical evidence before OWCP as of the May 3, 2012 decision was of sufficient probative value to terminate compensation.

⁴ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

⁵ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁶ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁷ OWCP has the burden of proof to establish that the accepted conditions had resolved. *See L.Y.*, Docket No. 16-0774 (issued November 18, 2016); *A.G.*, Docket No. 16-0356 (issued October 14, 2016). Appellant has the burden of proof to establish other conditions are employment-related. *K.H.*, Docket No. 16-0776 (issued October 19, 2016).

Dr. Cenac, the second opinion physician, found in his August 15, 2011 report that the sprains had resolved. An attending physician, Dr. Fernandez, indicated on September 7, 2011 that she agreed with Dr. Cenac's conclusions. Dr. Sarmini submitted reports dated December 5, 2011 and February 28, 2012, but did not discuss the accepted sprains.

The Board finds that the probative medical evidence of record established that appellant's accepted sprains had resolved by May 6, 2012. The evidence of record was therefore sufficient to meet OWCP's burden of proof to terminate wage-loss compensation and medical benefits as of May 6, 2012.

On appeal counsel argues that OWCP did not meet its burden of proof to terminate appellant's compensation. He argues that Dr. Cenac did not address whether there was an employment-related aggravation, but as noted, OWCP's burden of proof relegated to the accepted conditions which were sprains. For the reasons discussed, the Board finds that the weight of the medical evidence was sufficient to meet OWCP's burden of proof to terminate wage-loss compensation and medical benefits as of May 6, 2012 based on the accepted conditions.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative, and substantial evidence that she had an employment-related disability based on the accepted conditions which continued after termination of compensation benefits.⁸

ANALYSIS -- ISSUE 2

As noted above, the accepted conditions in the case are sprains of the neck, thoracic, and lumbar spine. It is appellant's burden of proof to establish any continuing employment-related disability after compensation benefits have been properly terminated. The Board finds that the evidence of record is insufficient to establish that appellant had employment-related residuals or disability after May 6, 2012.

Dr. Lundgren opined in his May 29, 2012 report that, while appellant had underlying also they were speculative degenerative disc disease, he speculated that the work activity had aggravated the condition and caused symptoms. He did not, however, provide supporting medical rationale. Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty, and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

⁸ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

⁹ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

Dr. Whitman opined in his March 14, 2014 report that the repetitive lifting of extremely heavy buckets of mail would cause an exacerbation and acceleration of the degenerative process. He also opined in his August 9, 2015 report that there was an employment-related aggravation. Dr. Whitman referred to a number of diagnoses, including degenerative arthritis, spinal stenosis, nerve root irritation, chronic pain, insomnia, fibromyalgia, and an autoimmune disorder. Again, the evidence lacks medical rationale connecting any of these diagnosed conditions to the October 14, 2010 injury.¹⁰

The Board notes that OWCP has not accepted an aggravation of degenerative disc disease, or any of the other diagnoses reported by Dr. Whitman.¹¹ Based on the evidence of record, there is no rationalized medical evidence establishing an employment-related disability after May 6, 2012. It is appellant's burden of proof, and the Board finds that appellant did not meet her burden of proof.

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 compensation effective May 6, 2012. The Board further finds that appellant has not established continuing employment-related residuals or disability after May 6, 2012, causally related to the October 14, 2010 employment injury.

¹⁰ *Id.*

¹¹ Appellant may pursue the issue with OWCP of expanding the accepted conditions in this case.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 7, 2016 is affirmed.

Issued: July 6, 2017
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