

**United States Department of Labor
Employees' Compensation Appeals Board**

C.O., Appellant)
and) Docket No. 16-1905
U.S. POSTAL SERVICE, POST OFFICE,) Issued: May 25, 2017
Duluth, GA, Employer)

)

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 28, 2016 appellant, through counsel, filed a timely appeal from an August 18, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.³

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's medical benefits effective October 16, 2015.

On appeal appellant, through counsel, contends that the August 18, 2016 decision was contrary to fact and law.

FACTUAL HISTORY

On December 3, 2014 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sprained a muscle in her lower left back while lifting a tub of parcels. She stopped work on December 3, 2014.

On the same date appellant received treatment from Dr. Son Thanh Nguyen, a Board-certified internist, who noted that three hours prior to her visit, appellant had been pulling a 50-pound container at work and getting ready to lift it when she felt a shooting pain that started in her middle back and went up her upper back. He noted that the pain was more on appellant's left side. Dr. Nguyen assessed back pain, postural.

On December 5, 2014 Dr. Erin London, a family practitioner and an associate of Dr. Nguyen's, noted that appellant's back pain had not improved, and diagnosed thoracic strain. She released appellant to return to a modified work program for five days with seated work only and no bending or extended reaching.

In a December 10, 2014 report, Dr. Jeffrey S. Reed, an osteopath, diagnosed thoracic strain and back pain postural. He prescribed physical therapy for range of motion and strengthening/stretching exercises. On December 18, 2014 Dr. Nguyen reiterated his diagnosis of thoracic strain and back pain postural and returned her to light-duty work with a lifting restriction of 10 pounds.

² 5 U.S.C. § 8101 *et seq.*

³ The issue on appeal only concerns the termination of appellant's medical benefits. Appellant's wage-loss benefits were denied in a separate decision, which is not the subject of this appeal. In a decision dated July 7, 2015, OWCP denied appellant's claims for disability compensation for the period from March 7 through June 26, 2015 and continuing. It determined that the evidence was insufficient to support that appellant's disability due to her employment as the medical evidence showed that the disability was related to her nonwork medical conditions. On July 10, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative regarding the payment of appellant's wage-loss benefits. A hearing was held on March 21, 2016 regarding the termination of appellant's wage-loss benefits. By decision dated June 1, 2016, the hearing representative affirmed the July 7, 2015 decision denying wage-loss compensation, finding that the record was devoid of rationalized medical opinion evidence linking appellant's disability from work to the accepted work injury. Appellant has not appealed this decision.

In a December 31, 2014 report, Dr. Westley A. Bailey, a Board-certified family practitioner, noted that appellant indicated that she injured her back on December 3, 2014 while lifting a tub of parcels over 50 pounds. He diagnosed lumbar strain and reported multilevel lumbar disc protrusions. Dr. Bailey also noted a suspicious area on her lung from her initial diagnostic tests, and he advised appellant to follow up with pulmonary specialists regarding that matter.

On December 31, 2014 OWCP accepted appellant's claim for sprain of the thoracic region of the back. It paid her medical bills with regard to this injury.

On February 5, 2015 the employing establishment controverted the claim, and submitted medical evidence which had come to its attention from the Gwinnett Medical Center. This evidence included progress notes from the Gwinnett Medical Center dated January 21 and 23, 2015, signed by Dr. Tuan Bui, a Board-certified orthopedic surgeon. In the January 21, 2015 report, Dr. Bui noted that appellant had multiple compression fractures of unknown etiology. He stated, "Apparently, [one] month ago she had an MRI [magnetic resonance imaging] [scan] the fractures were not there." Dr. Bui stated that for better evaluation of the fracture pattern and acuity he would obtain a new MRI scan, and until then, she would be treated conservatively. In the January 23, 2015 progress note, Dr. Bui noted that appellant had an onset of back pain with fractures and a pathology of multiple vertebral segments including T5, T8, T9, T11, T12, and L1. He noted that there was concern for pathologic fractures and possible oncologic source of etiology. Dr. Bui noted that from an orthopedic spine standpoint, treatment remained the same. He did not recommend any type of surgical intervention at that time, but rather recommended a consultation with an oncologist.

On February 5, 2015 OWCP also received additional medical evidence. In a January 20, 2015 report, Dr. Jaymin R. Patel, a Board-certified radiologist, found no aortic dissection, generalized moderate-to-severe osteopenia throughout the visualized bony structures, and multiple compression fractures of lower thoracic and upper lumbar and bibasilar predominant linear infiltrates that may represent atelectasis scarring or less likely pneumonia.

A January 21, 2015 radiology report by Dr. Joseph Finley, a Board-certified radiologist, found that an upright portable film of the chest demonstrated normal heart and vascularity. Dr. Finley noted a small infiltrate left infrahilar area overlapping the hemidiaphragm laterally.

Dr. Aurora J. Peacock, a Board-certified radiologist, interpreted a January 22, 2015 MRI scan as evincing: (1) diffusely abnormal marrow signal with permeative T1 hypointense/STIR hyperintense lytic lesions throughout the visualized skeleton, and differential considerations including multiple myeloma or diffuse metastatic disease; (2) multiple chronic appearing thoracolumbar compression fractures of T5, T8, T9, T11, T12, and L1; and (3) tiny bilateral pleural effusions.

A February 5, 2015 radiologic consult was interpreted by Dr. Patel as showing no aortic dissection.

In a February 25, 2015 report, Dr. Bui summarized his treatment of appellant. He noted that she had returned for follow up of multiple thoracic and lumbar compression fractures.

Dr. Bui noted that appellant initially injured herself at work, however, during the treatment of her spine injury, appellant presented with significant pain and had been admitted to the hospital. An MRI scan was performed that confirmed multiple new compression fractures of the thoracic and lumbar area, and there was a concern for malignancy and pathology. Dr. Bui noted that a biopsy confirmed multiple myeloma. He noted that they were treating the fractures nonoperatively with a brace. Dr. Bui opined that appellant should not work for the next three months, and was seeking treatment with chemotherapy.

Appellant filed claims for wage-loss compensation CA-7 forms for consecutive periods beginning March 7, 2015.

In a May 27, 2015 report, Dr. Bui indicated that appellant's initial injury at work was likely coincidental, and that she had now reached maximal medical improvement. He did note that appellant still had muscular complaints. Dr. Bui noted that it was difficult to distinguish whether or not this was from the original injury or from the new pathologic lesions in her spine. He recommended physical therapy and that appellant continue wearing a back brace. Dr. Bui also recommended that appellant should not work secondary to her multiple myeloma compression fractures.

On September 15, 2015 OWCP proposed terminating appellant's medical benefits as the medical evidence reflected that appellant no longer had any remaining residuals of her accepted work-related medical condition.

By decision dated October 16, 2015, OWCP finalized the termination of appellant's medical benefits. It indicated that Dr. Bui found that appellant was at maximum medical improvement as it related to her accepted back sprain and that her disability was related to her multiple myeloma (bone cancer). OWCP also noted that on January 2, 2015 Dr. Bailey provided no opinion concerning the work injury. It concluded that appellant's medical benefits were terminated effective that date as the medical evidence established that she no longer had any remaining residuals of her accepted work-related medical condition.

On October 26, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative regarding the termination of her medical benefits.

In a medical report dated June 7, 2016, Dr. Bui noted that appellant was initially seen at Gwinnett Medical Center hospital on January 21, 2015 and that he was asked to consult for severe back pain. He noted that appellant initially injured herself at work on December 3, 2014 after lifting a heavy object. Appellant was treated, but her symptoms were not improving, so an MRI scan was ordered. The MRI scan subsequently showed no abnormalities aside from some bulging discs. Dr. Bui indicated that on examination appellant had complaints of paraspinal pain in the thoracic region as well as pain with any thoracic movement. He noted no complaints of radicular pain or numbness. Dr. Bui noted that appellant's diagnoses included both compression fractures as well as a paraspinal muscle spasm which was present prior to the diagnosis of the compression fractures. He opined that the paraspinal muscle spasm and pain could be directly related to the lifting injury at work based on appellant's presentation and history. Dr. Bui noted that the compression fractures will certainly cause additional thoracic and lumbar pain, but he also noted that her pain was present prior to this diagnosis as indicated by her essentially normal

MRI scan as compared to the subsequent MRI scan at the hospital. He concluded that one of the causes of her pain was certainly the work-related injury.

A hearing was held on June 13, 2016, regarding the termination of appellant's medical benefits. Appellant testified that she was not working and was receiving social security disability benefits. She stated that she had worked for the employing establishment for 12 years. Appellant testified that she was not getting any treatment for her muscle spasm and was not getting chemotherapy because her doctor would not accept insurance.

By decision dated August 18, 2016, the hearing representative affirmed OWCP's October 16, 2015 termination of appellant's medical benefits because the record of evidence did not contain rationalized medical evidence relating any further need for medical care to the accepted work injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation 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

On December 31, 2014 OWCP accepted appellant's claim for sprain of the thoracic region of the back. By decision dated October 16, 2015, it terminated medical benefits because appellant had no more residuals of her accepted sprain of the thoracic region of the back.

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's medical benefits.

Dr. Bui noted that appellant had reached maximum medical improvement from the employment-accepted conditions as of his May 27, 2015 report. He noted that appellant had multiple myeloma compression fractures. Dr. Bui opined that it did appear that the initial injury at work was likely coincidental, but that appellant still had muscular complaints. Dr. Bui opined that it was difficult to distinguish whether these complaints were from the employment injury or from the new pathologic lesions in her spine. In fact, he noted that one of the causes of appellant's pain was certainly the employment injury and he referred appellant for physical therapy. The medical reports of record from Dr. Bui are insufficient to establish that appellant's accepted thoracic sprain had resolved.⁷

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁶ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁷ *Supra* note 6.

OWCP bears the burden of proof to provide medical evidence demonstrating that appellant has no residuals of the accepted work-related injury.⁸

The record reflects that much of appellant's back pain is due to another more serious condition. Dr. Bui, however, did find that one of the causes of appellant's pain was certainly the employment injury. As the medical evidence establishes that appellant continues to have some residuals attributable to the accepted thoracic sprain, the Board finds that OWCP failed to meet its burden of proof to terminate medical benefits.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate medical benefits effective October 16, 2015.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 18, 2016 is reversed, and the case is remanded to OWCP for further action consistent with this opinion.

Issued: May 25, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁸ *Id.*