

disability causally related to her accepted conditions; and (2) whether appellant has met her burden of proof to establish continuing disability or medical residuals causally related to her accepted employment injuries after June 25, 2017.

FACTUAL HISTORY

On December 1, 2011 appellant, then a 47-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on November 30, 2011 she sprained her left ankle when a porch collapsed underneath her as she was delivering mail while in the performance of duty. She fell approximately eight feet through the porch and onto the basement floor, landing on her left side. Slabs of concrete fell upon her, trapping appellant in the basement. She stopped work on the date of injury. On January 19, 2012 OWCP accepted appellant's claim for left ankle sprain, contusion of the right thigh, sprain of the right shoulder and upper arm, and as well as right superior glenoid labrum lesion.

Appellant underwent a February 20, 2012 magnetic resonance imaging (MRI) scan of the right hip without contrast which demonstrated mild degenerative changes in both hips greater on the right.

On April 16, 2012 OWCP expanded acceptance of appellant's claim to include sprain of the right hip and thigh. It authorized payment of wage-loss compensation beginning January 16, 2012, and on June 25, 2013 it placed her on the periodic rolls.

In a report dated July 12, 2012, appellant's attending physician, Dr. Larry N. Bernstein, a Board-certified physiatrist, opined that she could not return to work due to residuals from her right hip injury.

On August 17, 2012 Dr. Tricia Beatty, an osteopath Board-certified in family practice and sports medicine, reviewed appellant's August 8, 2012 MRI scan with contrast of the right hip and found a tear in the anterolateral glenoid labrum with femoroacetabular impingement and mild degenerative changes. She opined that appellant could not return to her date-of-injury position.

Appellant retired from the employing establishment on January 7, 2014. She underwent an additional right hip MRI scan on January 8, 2014 which demonstrated, that a portion of her labrum was completely calcified or ossified. On March 25, 2014 Dr. Beatty recommended that appellant undergo a total right hip replacement. Later, on December 21, 2015, Dr. Bernstein also recommended that appellant undergo a total right hip replacement.

In a November 18, 2016 report, Dr. Bernstein noted that appellant's right hip pain had increased. He also noted that she had increasing left knee pain. Dr. Bernstein diagnosed right hip pain secondary to labral tear and degenerative joint disease following the fall through the porch. He recommended an additional MRI scan and a total hip arthroplasty. Dr. Bernstein also diagnosed left knee degenerative joint disease, which he attributed to increased stress as it was painful for appellant to bear weight on her right lower extremity. He noted that this condition might improve if she underwent the right hip replacement.

On December 5, 2016 OWCP referred appellant for a second opinion evaluation with Dr. Steven J. Valentino, an osteopath and a Board-certified orthopedic surgeon. It provided him with a statement of accepted facts (SOAF) and a list of questions.

On December 8, 2016 appellant underwent additional testing including a right hip magnetic resonance arthrogram (MRA) and right hip MRI scan which demonstrated incomplete tearing of the anterior/lateral labrum without frank labral detachment.

In his January 11, 2017 report, Dr. Valentino noted appellant's history of injury and medical history. He reviewed the February 20, 2012 and January 8, 2014 MRI scans and noted that she had mild bilateral degenerative changes without acute abnormality. Dr. Valentino provided findings on physical examination and diagnosed resolved left ankle sprain, resolved contusion of the right thigh, resolved sprain of the shoulder and upper arm, resolved glenoid labrum lesion on the right, and resolved sprain of the right hip and thigh. He opined that appellant had a nonindustrial condition of degenerative osteoarthritis of the right hip which had progressed. Dr. Valentino concluded that her ongoing right hip condition had no causal connection to her November 30, 2011 employment injury. He also found that appellant had fully recovered from her accepted employment injuries. Dr. Valentino provided work restrictions based on her ongoing idiopathic right hip condition.

On February 3, 2017 OWCP notified appellant that it proposed termination of her wage-loss compensation and medical benefits. It afforded her 30 days to submit evidence or argument if she disagreed with the proposed termination.

In a letter dated February 23, 2017, appellant asserted that she had continuing right hip pain since her November 30, 2011 employment injury. She noted that she planned to undergo a total right hip replacement previously recommended by Dr. Bernstein. Appellant also asserted that Dr. Valentino failed to review all of her right hip diagnostic studies.

On February 20, 2017 Dr. Bernstein reported that appellant continued to experience significant right hip pain and attributed this to her fall at work. He noted that she had not experienced hip symptoms prior to her November 30, 2011 employment injury. Dr. Bernstein found that the fall led to appellant's right hip labral tear and subsequent accelerated hip arthritis. He further opined that her left knee discomfort was secondary to her gait deviation because of the right hip arthritis. Dr. Bernstein noted that Dr. Valentino only commented on one of appellant's hip scans and had not discussed findings on the separate tests done with contrast. He concluded that she required a hip replacement and that this would not have been necessary had she not fallen on November 30, 2011.

On March 9, 2017 OWCP informed appellant of the conflict of medical opinion evidence between Drs. Valentino and Bernstein regarding the relationship of her current right hip condition to her November 30, 2011 employment injury.³ In a letter dated March 17, 2017, appellant

³ On March 13, 2017 OWCP referred appellant, a SOAF, and a list of questions to Dr. Menachem Meller, a Board-certified orthopedic surgeon, to act as an impartial medical examiner (IME). In a letter dated March 17, 2017, appellant objected to the selection of Dr. Meller as the IME alleging he was biased. She provided a state court finding supporting her objection. On April 7, 2017 OWCP cancelled the examination with Dr. Meller.

requested to participate in the selection of the IME. On April 7, 2017 OWCP provided her with a list of three physicians and on April 21, 2017 she selected Dr. William Simon, a Board-certified orthopedic surgeon, as the IME.

In his May 15, 2017 report, Dr. Simon reviewed the SOAF and medical records including diagnostic studies. He also performed a physical examination and noted that appellant reported pain on any rotation of the right hip. Dr. Simon noted that his findings on examination had indicated that her hip pain was referred from her lumbar spine rather than originating in her right hip. He reported depressed knee reflexes, decreased power in appellant's extensor hallucis longus, and her anterior tibial muscles on the right, and decreased sensation on the inner aspect of her right calf, plus moderately severe tenderness in her right lumbosacral angle. Dr. Simon found that all of her November 30, 2011 soft tissue injuries had healed. He concluded that appellant, therefore, had no residuals from any of the diagnosed conditions accepted by OWCP. Dr. Simon further found that her current conditions of mild adhesive capsulitis of the right shoulder, mild osteoarthritis of both hips, and right lumbar radiculopathy due to discogenic abnormalities were totally unrelated to the accepted diagnoses from her 2011 employment injury. He determined that appellant could not return to work, but that her disability was not due to her accepted employment injuries.

On May 22, 2017 Dr. Beatty examined appellant due to right hip pain. She attributed appellant's right hip pain to her work injury. Dr. Beatty reviewed x-rays and found progressive degenerative changes including spurring along the femoral head and neck junction as well as narrowing of the femoroacetabular joint space. She also examined the December 8, 2016 right hip MRA and found incomplete tearing of the anterolateral labrum. Dr. Beatty diagnosed degenerative joint disease of the right hip with degenerative labral tear. She opined that appellant had severe pain in her right hip from her work-related injury and recommended hip replacement surgery.

By decision dated June 5, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective June 25, 2017. It found that Dr. Simon's report was entitled to the special weight of the medical opinion evidence and established that she had no ongoing disability or medical residuals due to her November 30, 2011 employment injury.

On June 28, 2017 appellant through counsel, requested an oral hearing before an OWCP hearing representative.

On June 27, 2017 Dr. Beatty diagnosed degenerative joint disease of the right hip and performed an intraarticular cortisone injection.

During the oral hearing, held on December 8, 2017, appellant testified that she continued to experience right shoulder, right hip, and left knee symptoms. She attributed her left knee symptoms to protecting her right hip.

On January 8, 2018 appellant provided a copy of a June 16, 2017 lumbar MRI scan. On December 14, 2017 Dr. Bernstein reported no evidence of lumbar radiculopathy clinically or on imaging studies. He noted that the MRAs of August 12, 2012 and December 8, 2016 demonstrated right hip labral tear. Dr. Bernstein noted that appellant's initial MRI scan showed only mild degenerative changes in the right hip which rapidly progressed. He opined that the progression of

degenerative changes was much faster than would be normally expected with usual use and that she had performed a reduced level of activity. Dr. Bernstein concluded that appellant's right hip symptoms were the direct result of her November 30, 2011 employment injury.

By decision dated February 21, 2018, OWCP's hearing representative affirmed OWCP's June 5, 2017 termination decision and found that appellant had not established continuing disability or medical residuals causally related to her November 30, 2011 employment injuries after June 25, 2017.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.⁴ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵ OWCP's burden of proof 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 to compensation for disability.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

Section 8123(a) of FECA provides that if there is disagreement between the physician making the examination for OWCP and the employee's physician, the Secretary shall appoint a third physician, known as a referee physician or impartial medical specialist, who shall make an examination.⁹ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁰ Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving conflict, the opinion of such specialist, if

⁴ *D.M.*, Docket No. 17-1052 (issued January 24, 2019); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003); *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *D.M.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *D.P.*, Docket No. 18-0038 (issued January 4, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ *See R.P.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

⁹ 5 U.S.C. § 8123(a); *see R.P.*, *supra* note 7; *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

¹⁰ 20 C.F.R. § 10.321; *R.C.*, 58 ECAB 238 (2006).

sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective June 25, 2017, as she no longer had residuals or disability causally related to her accepted conditions.

OWCP accepted appellant's November 30, 2011 traumatic injury claim for left ankle sprain, contusion of the right thigh, sprain of the right shoulder and upper arm, right superior glenoid labrum lesion, and sprain of the right hip and thigh. It paid her wage-loss compensation for total disability beginning January 16, 2012. OWCP properly determined that a conflict in medical opinion arose between Dr. Bernstein, appellant's attending physician, and Dr. Valentino, an OWCP physician, regarding her ongoing medical residuals and the extent of her disability due to her employment injuries. It referred her to Dr. Simon for an impartial medical examination and provided him with a series of questions regarding her ongoing residuals, if any, and her need for treatment and her ability to return to employment.

Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹² Dr. Simon found that appellant's current conditions of mild adhesive capsulitis of the right shoulder, mild osteoarthritis of both hips, and right lumbar radiculopathy due to discogenic abnormalities were totally unrelated to the accepted diagnoses from her 2011 employment injury. He further determined that she could not return to work, but that her disability was not due to her accepted employment injuries. Dr. Simon accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's condition which comported with his findings. The Board finds that his opinion is well rationalized and based on a proper factual and medical history such that his opinion is entitled to special weight in establishing that she had no ongoing employment-related disability or medical residuals.

The remaining evidence submitted prior to OWCP's termination of appellant's wage-loss compensation and medical benefits is insufficient to overcome the special weight accorded to Dr. Simon. Dr. Beatty continued to attribute appellant's degenerative joint disease of the right hip with degenerative labral tear to her work injury. She, however, did not provide a well-rationalized explanation of how appellant's November 30, 2011 work injury caused or contributed to appellant's current right hip condition. A medical opinion not fortified by medical rationale is of little probative value.¹³

¹¹ See *R.P.*, *supra* note 7; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹² *Id.*

¹³ *D.P.*, *supra* note 6; *C.S.*, Docket No. 18-0952 (issued October 23, 2018).

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective June 25, 2017.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates a claimant's compensation benefits, he or she has the burden of proof to establish continuing disability or residuals after that date causally related to the accepted injury.¹⁴ To establish 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 relationship. A claimant must establish by the weight of the reliable, probative, and substantial evidence that he or she had an employment-related disability or residuals of his or her accepted condition which continued after termination of compensation benefits.

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing disability or medical residuals after June 25, 2017 causally related to her accepted conditions.

Following the termination of her wage-loss compensation and medical benefits, appellant submitted a December 14, 2017 report, from Dr. Bernstein, who disagreed with Dr. Simon regarding her complaint of back pain radiating into her right hip. Dr. Bernstein noted that her initial MRI scan showed only mild degenerative changes in the right hip which rapidly progressed. He opined that the progression of appellant's right hip degenerative changes was much faster than would normally have been expected, even with usual use, and that she had performed a reduced level of activity. Dr. Bernstein concluded that her right hip symptoms were the direct result of her November 30, 2011 employment injury. While his reports are generally supportive of continuing employment-related residuals and disability, they do not provide adequate medical rationale explaining how the diagnosed conditions or resultant disability were caused by the employment injury.¹⁵ As noted above, medical conclusions unsupported by rationale are of little probative value.¹⁶ The Board also notes that Dr. Bernstein had been on one side of the conflict in the medical opinion that Dr. Simon, the impartial specialist, resolved and, therefore, his reports are insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.¹⁷

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.

¹⁴ *D.P.*, *supra* note 6; *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

¹⁵ *D.P.*, *supra* note 6; *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁶ *Supra* note 13.

¹⁷ *D.M.*, *supra* note 4; *Nancy Keenan*, 56 ECAB 687 (2005); *Alice J. Tysinger*, 51 ECAB 638 (2000); *Barbara J. Warren*, 51 ECAB 413 (2000).

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective June 25, 2017. The Board further finds that she has not met her burden of proof to establish any continuing disability or medical residuals causally related to her accepted employment injuries after June 25, 2017.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2019
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