United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 20-0621**
	)	**Issued: December 22, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Yorba Linda, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 28, 2020 appellant filed a timely appeal from an October 31, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[1]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional conditions of lumbar disc displacement aggravation, two level lumbar spine retrolisthesis aggravation, and lumbar spinal stenosis; and (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss

[1] The Board notes that, following the October 31, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

compensation and medical benefits, effective October 25, 2019, as she no longer had residuals or disability causally related to her accepted April 19, 2018 employment injury.

FACTUAL HISTORY

On April 19, 2018 appellant, then a 48-year-old postal carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she developed lower back pain while loading a postal vehicle. She stopped work on April 19, 2018 and returned to part-time modified work on May 15, 2018. OWCP accepted the claim for lumbar sprain. It paid appellant wage-loss compensation on the supplemental rolls beginning June 12, 2018.

On April 20, 2018 Dr. Joline Tilly, a family medicine specialist, reported that appellant had been seen that day for back pain which began on April 19, 2018. She noted appellant's history of injury and physical examination findings. Dr. Tilly noted that appellant's lumbar x-rays showed loss of lumbar lordosis, narrowing of the intervertebral disc space between L4 and L5, and multiple areas of spurring. She diagnosed lumbar sprain, pending review of diagnostic studies.

In progress reports covering the period May 1, 2018 through June 18, 2019, Dr. Basimah Khulusi, a Board-certified physiatrist, diagnosed lumbar sprain, multiple lumbar disc displacements, lumbar spine retrolisthesis at two levels, and lumbar spinal stenosis. She noted appellant's April 19, 2018 employment injury, reviewed diagnostic testing, and detailed examination findings.

Dr. Khulusi, in a June 14, 2018 letter, requested that OWCP expand the acceptance of appellant's claim. She noted that there were different degrees of ligament sprain and explained that appellant's low back ligament sprain weakened her ligaments resulting in increased intradiscal disc space pressure which in turn contributed to L2-3, L3-4, L4-5, and L5-S1 disc displacement and L3-4 and L4-5 retrolisthesis. These disc bulges, together with the retrolisthesis, caused lumbar nerve root crowding and moderate L5-S1 spinal stenosis and multilevel bilateral neural forminal stenosis. Based on these facts, Dr. Khulusi opined that appellant's April 19, 2018 employment injury resulted in multiple lumbar disc displacement aggravation, two-level lumbar spine retrolisthesis aggravation, and lumbar spinal stenosis.

In a July 13, 2018 report, Dr. James T. Tran, a Board-certified neurosurgeon, noted appellant's April 19, 2018 injury and her complaints of continuing back pain. He noted that appellant's April 30, 2018 magnetic resonance imaging (MRI) scan revealed L3-4, L4-5, and L5-S1 lumbar stenosis. Appellant's physical examination findings included tenderness at L5-S1 on the right, positive bilateral straight leg raise, and negative bilateral Faber test. Dr. Tran noted the accepted diagnosis was lumbar sprain and that appellant had additional diagnoses of lumbar spinal stenosis with neurogenic claudication, lumbar disc degeneration aggravation, lumbar disc displacement, connective tissue and disc stenosis of lumbar intervertebral foramina, lumbar neural canal osseous stenosis, and lumbar intervertebral disc neural canal stenosis. He determined that appellant's repetitive work duties including the moving a tray of mail weighing between 50 to 60 pounds on April 19, 2018 aggravated her lumbar conditions. Dr. Tran further opined that the April 19, 2018 employment injury caused a permanent aggravation of L4-5, S3-4, L2-3, and L5-S1 disc bulges and lumbar spinal stenosis. In support of this conclusion, he explained that lifting the tray weighing 50 to 60 pounds caused lumbosacral spine twisting and flexion. The force and

pressure exerted as a result of the flexion and twisting of the lumbar spine caused L2-3, L3-4, L4-5, and L5-S1 facet joint disengagement. According to Dr. Tran, this pressure or force on the lumbar disc resulted in a permanent disc bulge aggravation and lumbar nerve root compression. Thus, he concluded that the accepted April 19, 2018 employment injury caused a permanent aggravation of appellant's preexisting L2-3, L3-4, L4-5, and L5-S1 disc bulges and lumbar stenosis.

In a report dated November 14, 2018, Dr. Khulusi noted that she had previously requested that appellant's claim be expanded to accept additional conditions as work related. She again opined that appellant's accepted April 19, 2018 employment injury caused more than a simple lumbar spine ligament sprain.

On January 8, 2019 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion evaluation as to the nature and extent of the accepted employment injury, her work capacity, and treatment recommendations.

In a report dated January 24, 2019, Dr. Khulusi described how appellant's April 19, 2018 employment injury had occurred. She noted that appellant had low back degenerative changes and opined that the sprain appellant sustained as a result of the April 19, 2018 employment injury caused an annular fissure, L2 through S1 lumbar disc displacement, and aggravation of her central spinal stenosis. Dr. Khulusi noted the different degrees of sprain and the impact on the spine. She opined that appellant's lumbar sprain caused lumbar ligament weakness holding the vertebra together which in turn contributed to her lumbar retrolisthesis. In conclusion, Dr. Khulusi requested that OWCP expand acceptance of the claim to include multiple the additional conditions of lumbar disc displacement aggravation, two level lumbar spine retrolisthesis aggravation, and lumbar spinal stenosis as work related.

In a report dated January 28, 2019, Dr. Einbund detailed appellant's history of injury, summarized the medical reports of record, noted his review of diagnostic testing reports and the SOAF, and described her current complaints. Appellant's physical examination findings included lumbar spine and bilateral gluteal pain, normal gait, normal bilateral straight leg raising, 20 degrees extension of the back, bilateral lateral bending of 20 degrees, and bilateral back rotation of 50 degrees. Dr. Einbund diagnosed lumbar spine ligament sprain due to the accepted April 19, 2018 employment injury. He opined that her lumbar spine degenerative disc disease was unrelated to the work duties performed on April 19, 2018 as set forth in the SOAF and also noted that it had not been aggravated by the employment injury. Dr. Einbund further opined that no further medical treatment was required for the accepted lumbar sprain. He determined that appellant was capable of working 2.66 hours per day with no lifting more 20 pounds, and no more than 1.50 hours of stooping or bending per day.

In a March 14, 2019 report, Dr. Khulusi noted her disagreement with Dr. Einbund's opinion, contending that it was not well rationalized. She noted that Dr. Einbund attributed appellant's disability to preexisting conditions, but did not define the preexisting conditions to which he was referring. Dr. Khulusi noted that appellant sustained a low back sprain. She discussed the inconsistencies in Dr. Einbund's report including that he provided permanent work restrictions while opining that appellant had recovered from a simple sprain with no aggravation.

Dr. Khulusi again requested that appellant's claim be expanded to include the additional conditions of multiple lumbar disc displacement aggravation, two-level lumbar spine retrolisthesis aggravation, and lumbar spinal stenosis as work related.

On August 27, 2019 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits because she no longer had disability or residuals causally related to her accepted lumbar spine ligament sprain. It found that the weight of the medical evidence rested with the January 28, 2019 report of Dr. Einbund.

In a letter dated September 18, 2019, appellant's then-representative disagreed with the proposed termination and requested that the acceptance of appellant's claim be expanded to include additional conditions as work related based on Dr. Khulusi's March 14, 2019 report.

By decision dated October 31, 2019, OWCP denied appellant's request to expand acceptance of the claim to include additional conditions as work related and finalized the termination of appellant's wage-loss compensation and medical benefits, effective October 25, 2019. It found the well-rationalized opinion of Dr. Einbund constituted the weight of the medical evidence.

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[2]

To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.[3] 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.[4]

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for a decision on the issue of claim expansion.

In support of her request that her claim be expanded to include additional conditions appellant submitted reports from Drs. Khulsi and Tran who both opined that appellant's accepted April 19, 2018 employment injury had resulted in more than the accepted lumbar sprain. Both

[2] *V.S.*, Docket No. 19-1370 (issued November 30, 2020); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[3] *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[4] *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Drs. Khulsi and Tran diagnosed additional lumbar spine conditions, set forth examination findings, and explained how the accepted employment injury resulted in those additional conditions. Following receipt of the receipt of the reports from appellant's attending physicians, OWCP undertook development of the medical evidence in the claim by selecting Dr. Einbund as a second opinion physician to address various issues, including whether appellant had continued disability or residuals of her accepted lumbar sprain and whether she had sustained any additional conditions as a result of the accepted employment injury.

The Board finds that the second opinion report of Dr. Einbund was insufficient to resolve the issue of claim expansion as his report is conclusory in nature. A conclusory opinion provided by a physician, without the necessary rationale explaining how and why an accepted employment injury was insufficient to result in a diagnosed medical condition, is insufficient to resolve the issue.[5] While Dr. Einbund denied that appellant had additional employment-related medical conditions, he failed to provide a supportive, rationalized explanation to support his opinion.[6]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation, but OWCP shares responsibility in the development of the evidence to see that justice is done.[7] Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.[8] It failed to fully develop the issue of claim expansion to determine whether it should expand acceptance of the claim to include the additional conditions diagnosed by Drs. Khulusi and Tran, and whether, if established, these conditions resulted in continuing disability from employment or the need for medical treatment.[9]

The Board will therefore remand the case for OWCP to further develop the medical evidence to determine whether the accepted April 19, 2018 employment injury caused or aggravated additional diagnosed conditions or contributed to the progression of any additional underlying conditions. Following this and any further development deemed necessary, the Board shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

Under FECA, once OWCP has accepted a claim, it has the burden of proof to justify termination or modification of compensation benefits.[10] OWCP may not terminate compensation

[5] *J.O.*, Docket No. 19-0326 (issued July 16, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[6] *See B.W.*, Docket No. 20-1033 (issued November 30, 2020).

[7] *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

[8] *See R.B.*, Docket No. 20-0109 (issued June 25, 2020); *B.W.*, Docket No. 19-0965 (issued December 3, 2019).

[9] *See J.T.*, Docket No. 19-1723 (issued August 24, 2020).

[10] *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

without establishing that the disability ceased or that it was no longer related to the employment.[11] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[12]

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[13] To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.[14]

ANALYSIS -- ISSUE 2

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 25, 2019.

OWCP has undertaken development of the medical record to determine whether the acceptance of appellant's claim should be expanded and whether she had residuals or disability related to her accepted April 19, 2018 employment injury. As OWCP has not resolved the issue of whether appellant's residuals and/or disability due to all of his accepted conditions had ceased, the Board finds that it has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.[15]

CONCLUSION

The Board finds that this case is not in posture for a decision on the issue of claim expansion. The Board further finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

[11] *See J.T.*, Docket No. 19-1723 (issued August 24, 2020); *S.P.*, *id.*; *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[12] *D.G.*, *supra* note 2; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

[13] *See S.L.*, Docket No. 19-0603 (issued January 28, 2020); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[14] *Id.*; *see also Calvin S. Mays*, 39 ECAB 993 (1988).

[15] *See D.F.*, Docket No. 19-1257 (issued July 14, 2020).

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2019 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 22, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board