

FACTUAL HISTORY

On August 15, 2005 appellant, then a 51-year-old clerk, was injured when she slipped on a wet floor and twisted her body. OWCP accepted her claim for lumbar strain and a herniated lumbar disc. Appellant stopped work on August 15, 2005 and returned to work at part-time, limited duty, four hours a day on November 8, 2005. She stopped work on December 5, 2005 and returned on December 8, 2006, to part-time, limited-duty work, six hours per day and reduced her hours to four hours a day on October 15, 2007.

A September 16, 2005 magnetic resonance imaging (MRI) scan of the lumbar spine revealed L2-3 moderate diffuse disc bulge and a mild diffuse disc bulge at L4-5. A December 7, 2005 electromyogram (EMG) revealed early radiculopathy. Appellant came under the treatment of Dr. Michael J. Bertram, a Board-certified physiatrist, who diagnosed work-related lumbar sprain as well as left paracentral myofascial pain and gluteal pain, left sacroiliac joint sprain, disc herniation at L2-3 and possible left S1 radiculitis. Dr. Bertram treated appellant conservatively and opined that she was totally disabled. He noted that appellant was involved in a nonwork-related motor vehicle accident on January 12, 2006 and sustained injuries to her right shoulder, right knee, hip, ribs, elbow and wrist. Dr. Bertram advised that she had a work-related injury on August 15, 2005, lumbar and left sacroiliac joint sprain, left lumbosacral myofascial pain, disc herniation at L2-3, degenerative disc disease and underlying discogenic pain. He recommended appellant work six hours per day with restrictions.

OWCP referred appellant to Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon, for a second opinion. In a September 14, 2007 report, Dr. Fisher noted that examination of the back revealed no objective radicular signs over the lower extremities to show a herniated disc. He also noted generalized pain over the left lumbar region and left buttock, limited range of motion of the back, normal reflexes and normal motor and sensation. Dr. Fisher opined that the accepted lumbar sprain resolved within two to three months after injury and that appellant's current symptoms related to degenerative disc disease. He did not expect her condition to improve and opined that she could return to work limited duty for four hours per day.

Appellant submitted reports from Dr. Rajbir S. Minhas, a Board-certified orthopedist, dated July 13 to November 9, 2007, who treated her for back pain. He diagnosed chronic pain syndrome, degenerative disc disease, low back pain, lumbosacral radiculitis, herniated disc of the lumbar spine and facet joint syndrome.

On January 30, 2008 OWCP requested that Dr. Fisher clarify whether appellant could work more than four hours per day since her treating physician has returned her to work six hours per day with restrictions. In a February 13, 2008 report, Dr. Fisher opined that appellant could work six hours per day with restrictions. On May 8, 2008 appellant underwent a functional capacity evaluation which revealed that her functional tolerance and lifting capabilities were below the requirement to return to full-time work as a clerk and noted that she had difficulty with sedentary demands. In reports dated May 2, 2008 to August 20, 2009, Dr. Minhas diagnosed chronic pain syndrome, degenerative disc disease, low back pain, lumbosacral radiculitis, herniated disc of the lumbar spine and facet joint syndrome. He noted that appellant was working four hours per day and stopped.

On December 2, 2009 OWCP referred appellant to Dr. Fisher for an opinion regarding whether she had disability or residuals attributable to the accepted work injury. In a December 9, 2009 report, Dr. Fisher reviewed her history and the medical record. Examination of the back revealed pain over the left lumbar region and sacral areas, no muscle spasms or atrophy, limited range of motion of the back, normal reflexes and normal motor power and sensation. Dr. Fisher opined that there were no objective findings showing that the accepted back conditions were present. He noted that the objective findings of decreased range of motion were not caused by the accepted lumbar sprain which resolved within two to three months after injury but rather due to degenerative disc disease. Dr. Fisher advised that clinical examination revealed no evidence of a herniated disc or radiculopathy over the lower extremities and indicated that the MRI scan in 2007 noted a disc bulge and not a herniation. He indicated that the MRI scan revealed degenerative disc disease, spondylosis, lumbar disc bulging and facet joint hypertrophy which were unrelated to the work injury but rather related to age and the normal degenerative progression. Dr. Fisher noted that appellant had no objective findings to support residuals of the accepted lumbar strain and herniated disc. He found that she did not require further treatment for her accepted conditions since they resolved several years ago; but she required treatment for nonwork-related conditions due to the normal aging process. In a work capacity evaluation, Dr. Fisher noted that appellant could return to work full time without restrictions related to her work injuries but restrictions related to her nonwork-related conditions.

By letter dated December 28, 2009, OWCP requested that Dr. Bertram review the report of Dr. Fisher and address whether appellant had residuals of her accepted work condition. In a report dated January 22, 2010, Dr. Bertram noted the history of the work injury and listed findings of tenderness of the lower back, muscle spasms, limited range of motion, normal strength in the lower extremities, diminished reflexes and normal sensory examination. He noted diagnoses left-sided back and buttock pain, an underlying lumbosacral sprain, degenerative disc disease and protrusion in the lumbar spine and myofascial pain. Dr. Bertram opined that appellant's symptoms were the same as she had with her original injury and were directly related to the original injury. He advised that appellant could work light duty, four hours per day with a lifting restriction of 15 pounds. Dr. Bertram continued submitting treatment notes reporting appellant's status, findings, diagnoses and work restrictions.

OWCP found that a conflict in medical opinion arose between Dr. Bertram, appellant's treating physician, who found she had residuals of her work-related injuries and could work part time, four hours per day, limited duty, and Dr. Fisher, the referral physician, who determined that appellant's work-related conditions had resolved and she could return to work with restrictions related only to her nonindustrial lumbar degenerative disc disease.

On March 23, 2010 OWCP referred appellant to Dr. Alan R. Kohlhaas, a Board-certified orthopedic surgeon, to resolve the conflict. In an April 7, 2010 report, Dr. Kohlhaas indicated that he reviewed the records provided to him and examined appellant. He noted her history, the work injury and her treatment following the injury. Appellant reported that her pain was located in her low back over the left sacroiliac joint and radiated proximally up her back on the left side and down into the back of her knee. On examination, Dr. Kohlhaas found her slightly obese and standing straight with a normal, although slow gait. There was no muscle atrophy. Appellant had tenderness to palpation on the left side over the S1, limited range of lumbar motion and intact sensation. Straight-leg raising in the supine position was negative to 80 degrees on both

sides while, in the sitting position, she could straight-leg raise to 90 degrees with good active leg and ankle motion. Dr. Kohlhaas noted there were no objective findings to show residuals of the work-related lumbar strain and herniated lumbar disc. He indicated that the available MRI scan reports did not reveal a herniated disc. Dr. Kohlhaas advised that his examination showed that the point of maximum tenderness appeared to be over an area which was not part of the accepted condition, which was also consistent with Dr. Bertram's January 22, 2010 findings. He opined that there were no residuals of the work-related lumbar strain and herniated disc and noted that appellant could return to work in her original job as a file clerk, full time and without restrictions. Dr. Kohlhaas noted that she did not have any restrictions based on her work-related conditions and required no further treatment for her accepted conditions. He indicated that appellant's current treatment was for conditions not accepted by OWCP.

On May 5, 2010 OWCP issued a notice of proposed termination of compensation benefits based on Dr. Kohlhaas' report.

From May 5 to June 4, 2010 Dr. Bertram treated appellant for ongoing back and left buttock pain related to underlying disc pathology as well as lumbosacral and sacroiliac joint sprain. He recommended a sacroiliac joint injection which was performed on May 17, 2010. Dr. Bertram advised that appellant could not work due to severe pain. In a May 11, 2010 report, he noted that she was treated for a lumbosacral sprain which included the sacroiliac joint and underlying disc protrusion. Dr. Bertram advised that appellant's symptoms had been consistent since her work injury and he disagreed with Dr. Kohlhaas' characterization of his previous findings. He noted that appellant's condition was still symptomatic which impaired her ability to stand, walk or sit for prolonged periods. Dr. Bertram diagnosed ongoing chronic left-sided back and buttock pain, underlying lumbosacral sprain with pain, degenerative disc disease and disc protrusions at L2-3, L4-5, and L5-S1 with discogenic pain and overlay myofascial pain.

By decision dated June 7, 2010, OWCP terminated appellant's compensation benefits effective that date, finding that Dr. Kohlhaas' report represented the weight of the medical evidence. It established that appellant had no continuing residuals of her accepted injuries.

Appellant requested a telephonic hearing which was held on September 29, 2010. She submitted reports from Dr. Bertram dated March 29 to June 4, 2010, previously of record. In a May 25, 2010 report, Dr. Bertram reviewed Dr. Kohlhaas' opinion and disagreed with his findings concerning appellant's pain in the lumbosacral region and left sacroiliac joint region. He noted that she experienced pain in the lumbosacral junction and the sacroiliac joint region since the original injury. Dr. Bertram indicated that appellant's symptoms had not significantly improved and she was unable to return to full duty but could continue at her previous work restrictions. In an October 5, 2010 report, he noted the history of the work injury and her continuing symptoms in the same region as the work injury. Dr. Bertram noted findings, diagnoses and recommended further testing. In an October 18, 2010 letter to appellant's attorney, he noted the findings of the September 16, 2005 MRI scan.

In a decision dated November 22, 2010, the hearing representative affirmed the June 7, 2010 OWCP decision.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying 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.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁵

ANALYSIS

OWCP accepted appellant's claim for work-related lumbar strain and herniated lumbar disc. OWCP determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Bertram, who indicated that appellant had residuals of her work-related injuries and could work part time, four hours per day with restrictions, and Dr. Fisher, an OWCP referral physician, who determined that appellant's work-related conditions had resolved and she had no work restrictions due to her work injury. Consequently, OWCP referred appellant to Dr. Kohlhaas to resolve the conflict.⁶

Dr. Kohlhaas reviewed appellant's history, reported findings and noted that she exhibited no objective complaints or findings due to the accepted conditions. He noted that there were no objective findings to show residuals of the work-related lumbar strain and herniated lumbar disc. Dr. Kohlhaas noted appellant's complaints of pain on palpation on the left side over the S1 but there was no muscle atrophy and sensation was intact. He also noted that the area of her most intense symptoms did not correlate with the conditions accepted by OWCP. Dr. Kohlhaas opined that there were no residuals of the work-related lumbar strain and herniated disc and noted that appellant could return to work in her original job as a file clerk, full time and without restrictions. He advised that appellant had no restrictions based on her work-related conditions and required no further treatment for her accepted conditions.

The Board finds that the opinion of Dr. Kohlhaas is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that residuals of appellant's work-related lumbar strain and herniated lumbar disc have ceased. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁵ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

⁶ In situations when there exists opposing medical report 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.

for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁷

Thereafter, appellant submitted reports from Dr. Bertram who treated her for ongoing back and left buttock pain related to underlying disc pathology as well as lumbosacral and sacroiliac joint sprain. In a May 11, 2010 report, Dr. Bertram made diagnoses and noted that appellant's condition was still symptomatic and impaired her ability to stand, walk or sit for prolonged periods. In a May 25, 2010 report, he noted reviewing Dr. Kohlhaas' report and disagreed with his findings. Dr. Bertram stated that Dr. Kohlhaas was incorrect in stating that appellant had a new pain area as she experienced pain in the lumbosacral junction and the sacroiliac joint region since he started treating her. However, the Board notes that Dr. Kohlhaas did not find that appellant had a "new" pain area but rather observed that the area of maximum tenderness reported by appellant was not in an area that was consistent with the accepted conditions. In reports dated July 2 to October 18, 2010, Dr. Bertram noted diagnoses and treatment. However, none of Dr. Bertram's reports specifically provide new medical reasoning to explain how any continuing condition or disability was causally related to the August 15, 2005 work injury. Furthermore, Dr. Bertram was on one side of a conflict that was resolved by Dr. Kohlhaas. Such reports are generally to overcome the weight of the impartial medical examiner or to create a new conflict.⁸ Appellant submitted no other current medical evidence supporting that her work-related conditions had not resolved.

Consequently, this medical evidence is insufficient to overcome the weight accorded Dr. Bertram's report or to create a new conflict in the medical evidence. The Board finds that Dr. Kohlhaas opinion constitutes the weight of the medical evidence and establishes that appellant's work-related conditions and disability have resolved.

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 has met its burden of proof to terminate benefits effective June 7, 2010.

⁷ *Solomon Polen*, 51 ECAB 341 (2000). See 5 U.S.C. § 8123(a) (if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination).

⁸ See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 22, 2010 is affirmed.

Issued: November 21, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board