

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

C.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Cleveland, OH, Employer)

**Docket No. 15-0882
Issued: July 24, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2015 appellant filed a timely appeal from a November 17, 2014 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 10, 2014 as she had no residuals or disability causally related to her March 30, 2001 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the November 17, 2014 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On March 31, 2001 appellant, then a 38-year-old distributions operations supervisor, filed a traumatic injury claim alleging that on March 30, 2001 she experienced back pain in the middle of her back when she sat on a stool that fell down. She stopped work. OWCP accepted appellant's claim for aggravation of L5 radiculopathy. It paid wage-loss compensation and medical benefits. Appellant was placed on the periodic rolls as of June 16, 2002.

The record reveals that appellant had a history of chronic low back pain. In 1995 appellant was involved in a motor vehicle accident and underwent four back surgeries in 1996, 1997, 1998, and 1999. On July 27, 2000 she sustained a lumbar strain in the performance of duty. At the time of the March 30, 2001 employment incident appellant was on various pain medications for her back condition, which included a morphine pain pump.

On April 16, 2003 OWCP terminated appellant's compensation benefits finding that she no longer had residuals of the accepted injury. An OWCP hearing representative reversed the termination of compensation benefits on February 23, 2004. Appellant's periodic rolls compensation benefits were resumed.

Appellant continued to treat with Dr. Mark Allen, a Board-certified anesthesiologist, from 2004 through 2010. Dr. Allen provided treatment including refills of her pain pump medication and nerve root blocks.

In a report dated September 3, 2010, Dr. Paul C. Shin, Board-certified in anesthesiology and pain medicine, related that appellant had been seen for back pain with radicular pain symptoms to her lower extremities. He proceeded to treat appellant with a caudal epidural steroid injection. On September 28, 2010 Dr. Shin noted that appellant had moderate improvement following the caudal steroid injection that motor and sensory examinations were within normal limits, and diagnosed failed back syndrome and lumbar radiculopathy. He again examined appellant on January 11, 2011 where she complained of persistent pain, but remained in an active lifestyle. Appellant's motor and sensory examinations were again found to be within normal limits and he diagnosed postlaminectomy syndrome and lumbar degenerative disc disease.

Pursuant to her requirement, under Form EN1032, to obtain annual medical reports, appellant sought medical treatment with Dr. Todd S. Hochman, a Board-certified internist. In his report dated June 4, 2013, Dr. Hochman noted that appellant had a previous low back injury as a result of a motor vehicle accident in 1995. Appellant received medical treatment, which included spinal injections, an intrathecal pain pump insertion, physical therapy, and several surgeries. She had returned to work until a March 30, 2001 employment incident when a stool on which she sat collapsed at work and she fell to the floor. Appellant experienced a significant increase in her low back pain. Upon examination of appellant's lumbar spine, Dr. Hochman observed well-healed scars over the lumbar region. He noted spasm to the right and left of the midline and flattening of the normal lumbar lordosis. Straight leg raise testing demonstrated complaints of pain into the posterolateral lower extremity on the left and posterolateral discomfort on the right. Dr. Hochman diagnosed aggravation of lumbosacral neuritis. He opined that it was "evident that appellant remained symptomatic from the aggravation of

lumbosacral neuritis.” Dr. Hochman explained that appellant had significant pain, which interfered with her ability to function in many of her daily activities and to sleep. He concluded that appellant was unable to return to her previous position of employment and would not be able to return to and sustain remunerative employment.

OWCP referred appellant, along with a statement of accepted facts and the medical record, to Dr. Manhal Ghanma, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of appellant’s continuing disability related to her March 30, 2001 employment injury. In a June 20, 2013 report, Dr. Ghanma reviewed appellant’s history, including the statement of accepted facts, and noted that appellant had a preexisting back condition as a result of a 1995 motor vehicle accident and a previous 2001 work-related injury. He described the medical treatment that she received. Upon physical examination of appellant’s lumbosacral spine, Dr. Ghanma reported no evidence of spinal listing, lumbar swelling, lumbar spasm, or localizing tenderness. He noted that appellant had 30 degrees of left lateral bend and 20 degrees of right lateral bend.

Dr. Ghanma opined that there was no objective evidence to support that appellant still suffered from aggravation of L5 radiculopathy as related to the March 30, 2001 employment injury. He noted that a February 20, 2013 computerized tomography (CT) scan of the lumbar spine revealed mild diffuse disc bulges and facet degeneration but did not show any specific compression of the L5 nerve root. Thus, Dr. Ghanma concluded that any aggravation of L5 radiculopathy caused by the March 30, 2001 fall at work had resolved. He explained that although appellant continued to have subjective complaints of lumbar pain she had these complaints prior to the March 30, 2001 employment injury. Dr. Ghanma concluded that appellant no longer had residuals related to the March 30, 2001 work injury and that appellant was capable of sedentary and light duty. He provided a work capacity evaluation form with her work restrictions.

In August 1 and 22, 2013 reports, Dr. Garrett LaSalle, a Board-certified internist, examined appellant for complaints of low back pain radiating into her legs and refilled her intrathecal pump. He noted that appellant had a history of chronic low back pain following a motor vehicle accident in 1995 and reviewed her medical treatment. Dr. LaSalle diagnosed lumbar sprain, postlaminectomy syndrome, and chronic continuous use of opioids.

OWCP determined that a conflict in medical evidence existed between appellant’s treating physicians and Dr. Ghanma, OWCP’s referral physician, regarding whether appellant continued to suffer residuals and remained totally disabled from work as a result of the March 30, 2001 employment injury. It referred her claim, along with a statement of accepted facts and the medical record, to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the conflict in medical opinion.

In a December 26, 2013 report, Dr. Kaffen noted appellant’s accepted condition of aggravation of L5 radiculopathy and reviewed her history of chronic low back pain. He related that on August 3, 1995 appellant sustained a herniated disc at L5-S1 as a result of an automobile accident and had undergone four back surgeries. Appellant had continued to receive medical treatment which included oral medication, implantation of a pain pump, physical therapy, and spinal injections. Dr. Kaffen stated that appellant returned to work but experienced increased

low back pain following the March 30, 2001 employment incident when she fell off a stool. He noted appellant's complaints of constant low back pain which radiated to the anterior aspect of both thighs to just above the knees. Appellant described the "burning pain" as different from the low back pain she experienced prior to the March 30, 2001 employment incident.

Dr. Kaffen reviewed appellant's medical records and conducted an examination. He observed marked tenderness on palpation in the midline of the lumbar spine and over the right and left paraspinal muscles. Voluntary range of motion of the spine demonstrated flexion to 30 degrees, extension to neutral only, right and left lateral bending less than 10 degrees each. Dr. Kaffen stated that all motions were accompanied by complaints of pain. Straight leg raise testing was negative bilaterally, producing low back pain without radicular pain. Dr. Kaffen reported that neurological examination revealed patellar tendon reflexes to be 2+ and equal bilaterally with no weakness in the lower extremities on manual testing. He further noted no sensory deficit in the lower extremities.

Dr. Kaffen opined that appellant no longer suffered residuals of the accepted aggravation of the L5 radiculopathy condition as a result of the March 30, 2001 employment injury. He explained that on examination, he found no objective findings of radiculopathy to indicate that she continued to suffer residuals of the accepted condition. Dr. Kaffen reported that a review of her medical records demonstrated that appellant's accepted condition resolved approximately July 2010 when on multiple examinations there were no objective findings of radiculopathy. He noted that appellant had a previous back injury, underwent four surgical procedures, and was under the care of a pain management facility. Dr. Kaffen further responded that he found no additional diagnoses that were causally related to the accepted work injury. He reported that, although appellant had no residuals remaining as related to the March 30, 2001 work injury, it was his medical opinion that appellant was not capable of returning to any form of employment even with restrictions, based on her preexisting condition involving her lumbar spine and the normal development of degenerative changes subsequent to the aging process and her prior fusion at L5-S1.

In a November 13, 2013 work capacity evaluation form, Dr. Kaffen noted appellant's accepted condition of aggravation of L5 radiculopathy. He indicated that she was unable to perform her usual job and that these restrictions were due to a preexisting condition.

Appellant continued to receive medical treatment from Dr. LaSalle. In reports dated November 7, 2013 to January 22, 2014 reports, Dr. LaSalle reviewed her history of her low back condition and noted diagnoses of lumbar facet arthropathy, myofascial pain, and chronic use of opioids. He related that appellant continued to complain of pain in the lumbosacral region with radiation down the bilateral lower extremities. Dr. LaSalle provided findings on examination and updated her pain medication. He noted that they were working on weaning down appellant's pain medication.

In a January 23, 2014 handwritten statement, appellant informed OWCP that for over the 10 years that she received pain management, she filled out various forms which indicated where she felt pain in her low back and legs. She questioned why Dr. Kaffen was not provided with these forms.

On February 4, 2014 OWCP proposed to terminate appellant's compensation and medical benefits based on Dr. Kaffen's December 26, 2013 impartial medical report which found that appellant's March 30, 2001 employment-related injury had resolved. It determined that the weight of medical evidence rested with Dr. Kaffen, as the impartial medical examiner, who determined that appellant no longer suffered residuals of her March 30, 2001 employment-related injury.

Appellant continued to receive medical treatment from Dr. LaSalle. In a March 4, 2014 report, Dr. LaSalle related that appellant's pain had worsened and was throbbing in nature. Upon examination of her back, he observed pain on palpation over the bilateral sacroiliac (SI) joints. In a March 4, 2014 report, Dr. LaSalle diagnosed lumbosacral neuritis and postlaminectomy syndrome.

On March 1, 2014 appellant wrote a letter stating her disagreement with the Notice of Proposed Termination. She described the March 30, 2001 employment incident and related that she had persistent chronic back and leg pain due to her job-related lumbosacral neuritis and lumbar sprain. Appellant alleged that she continued to suffer from this on-the-job injury and experienced pain level of nine. She contended that the job-related injury left her 100 percent totally and permanently disabled and unable to work.

By decision dated March 10, 2014, OWCP finalized the termination of appellant's disability compensation and medical benefits effective that day. It determined that the weight of the medical evidence rested with Dr. Kaffen's December 26, 2013 report, which determined that her employment-related injuries had resolved.

On March 17, 2014 counsel submitted a request for a telephone hearing. He submitted March 14 and September 16, 2014 reports by Dr. Hochman who described appellant's medical history regarding her back condition, including the 1995 motor vehicle accident and the March 30, 2001 work injury, and the medical treatment she received. Dr. Hochman stated that appellant had experienced increased pain since the March 30, 2001 employment incident and was unable to return to work. Upon examination of her lumbar spine, he observed tenderness to the left of midline and some spasm. Dr. Hochman noted that appellant complained of straight leg raise on the left and pain into the L5 distribution. He also found some weakness throughout the lower extremity, more so on the left. Dr. Hochman stated that it remained his "medical opinion that the aggravation of lumbosacral neuritis, a condition recognized in claim No. xxxxxx395, has caused the patient significant pain and interferes with her ability to function in her routine daily activities." He reported that appellant would be unable to return to and sustain employment.

In a September 10, 2014 CT scan of the lumbar spine, Dr. Jeffrey S. Unger, a Board-certified diagnostic radiologist, related appellant's complaints of back pain and noted that she had four previous back injuries. He stated that the L2-L3, L3-L4, and L4-L5 intervertebral discs demonstrated concentric bulging without focal herniation clearly projecting into the spinal canal. Dr. Unger diagnosed bulging discs at L2-L3, L3-L4, and L4-L5 without significant spinal stenosis and posterior fixation at L5-S1.

On September 30, 2014 a telephone hearing was held. Appellant reviewed the various medical doctors who had treated her for her back condition. She stated that although she had received treatment for her back pain, the pain worsened after the March 30, 2001 work accident to the extent that she was now totally and permanently disabled. Appellant noted that Dr. Kaffen agreed that she was totally disabled but he did not believe it was from the March 30, 2001 work injury. She contended that this was a constant disagreement she had with OWCP physicians. Appellant explained that she suffered from many other problems that were left out of Dr. Kaffen's report and that she continues to be treated for the identical condition from the March 30, 2001 injury.

In a letter dated October 15, 2014, appellant advised OWCP that she would be sending copies of letters from pain management doctors over the past 13 years about her back condition and her disability. She stated that she suffered from lumbar radicular pain, three bulging discs, and other back pain issues which were documented in all of her doctor visits and reports. Appellant noted that she was taking pain medication every day and had a pain pump implanted. She stated that the job injury had broken her beyond repair and that she could not walk or sit too long. Appellant submitted various reports from 2003, 2006, 2007, 2008, 2012 regarding treatment for her back condition.

By decision dated November 17, 2014, an OWCP hearing representative affirmed the January 13, 2014 decision terminating appellant's wage-loss compensation and medical benefits.

LEGAL PRECEDENT

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.³ OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ 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.⁷

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who

³ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

⁷ *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P.*, *id.*

shall make an examination.⁸ 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.⁹ When there exists 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.¹⁰

ANALYSIS

OWCP accepted appellant's claim for aggravation of L5 radiculopathy as a result of a March 30, 2001 employment incident. In a June 4, 2013 report, Dr. Hochman, appellant's treating physician, opined that appellant continued to suffer from residuals from the work-related condition and was unable to work. In a June 20, 2013 report, Dr. Ghanma, an OWCP referral physician, determined that appellant's accepted back condition had resolved and that she was capable of returning to work. To resolve the conflict between appellant's treating physician and the referral physician, OWCP referred appellant to Dr. Kaffen for an impartial medical examination.

In a December 26, 2013 report, Dr. Kaffen reviewed appellant's history of chronic low back pain following an August 3, 1995 automobile accident and reported that she had undergone four surgeries and was taking pain medication. He provided an accurate history of the March 30, 2001 work injury and noted that her claim had been accepted for aggravation of L5 radiculopathy. Upon examination of her lumbar spine, Dr. Kaffen observed marked tenderness on palpation in the midline of the lumbar spine and over the right and left paraspinous muscles. Voluntary range of motion of the spine demonstrated flexion to 30 degrees, extension to neutral only, right and left lateral bending less than 10 degrees each. Straight leg raise testing was negative bilaterally, producing low back pain without radicular pain. Dr. Kaffen opined that appellant no longer suffered residuals of her aggravation of L5 radiculopathy condition as a result of the March 30, 2001 employment injury. He explained that he found no objective findings of radiculopathy to establish that she continued to suffer residuals.

Dr. Kaffen further reported that a review of the medical record demonstrated that appellant's accepted condition had resolved in 2010 when on multiple examinations there were no objective findings of radiculopathy. He stated that he found no additional diagnoses that were causally related to the accepted work injury. Dr. Kaffen explained that, although appellant had no residuals of the March 30, 2001 work injury, it was his medical opinion that appellant was not capable of returning to any form of employment even with restrictions. He based this opinion on her preexisting lumbar spine condition, the normal development of degenerative changes in the aging process, and appellant's prior fusion at L5-S1.

⁸ 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

⁹ 20 C.F.R. § 10.321.

¹⁰ *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

The Board finds that Dr. Kaffen's opinion constitutes the special weight of the medical evidence and to justify the termination of appellant's compensation and wage-loss compensation benefits. The report was based on the complete medical record and statement of accepted facts. Dr. Kaffen performed a thorough, clinical examination and provided findings on examination. He opined that appellant's aggravation of L5 radiculopathy had resolved and provided medical rationale that she no longer suffered residuals of her accepted condition. Dr. Kaffen noted that, although appellant was unable to work, her disability was related to her preexisting back conditions, and degenerative changes due to aging.

The Board further finds that the medical evidence submitted after Dr. Kaffen's impartial medical evaluation report does not overcome the weight of his report or create a conflict in medical evidence.

Appellant submitted reports by Dr. LaSalle dated August 1, 2013 to March 4, 2014. Dr. LaSalle related appellant's complaints of low back pain that radiated into her legs and noted that she had a history of chronic low back pain following a 1995 motor vehicle accident. He diagnosed lumbar sprain, post-laminectomy syndrome, myofascial pain, lumbar facet arthropathy, lumbosacral neuritis, and chronic continuous use of opioids.

Although Dr. LaSalle provided a medical diagnosis, he did not offer any opinion on the cause of appellant's condition or whether appellant was still disabled from work because of her March 30, 2001 employment injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ The September 10, 2014 diagnostic report by Dr. Unger also fails to provide an opinion on the cause of appellant's current back condition and on her ability to work. These reports, therefore, are insufficient to establish that appellant continued to suffer residuals from her employment injury.

In reports dated March 14 and September 16, 2014, Dr. Hochman reiterated his prior opinion that appellant continued to suffer from aggravation of her back condition and was unable to return to work due to her accepted back condition. The Board has found, however, that reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.¹² Dr. Hochman was on one side of the conflict that Dr. Kaffen resolved and the Board finds his more recent reports are insufficient to overcome the weight accorded to Dr. Kaffen's impartial medical report.

On appeal, appellant alleges that several medical issues and medical evidence were not discussed during her telephone hearing. She stated that although she sustained a previous back injury after a car accident and had four back surgeries she was able to return to work full time. Appellant pointed out that she had not been able to return to work after her March 30, 2001 employment injury. She argued that this injury left her 100 percent permanently and totally

¹¹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹² *I.J.*, 59 ECAB 408 (2008); *Barbara Warren*, 51 ECAB 413 (2000).

disabled. Despite these allegations appellant has not submitted any objective medical evidence to establish that her current back symptoms and inability to work are causally related to her March 30, 2001 employment injury.

Accordingly, the Board finds that OWCP has met its burden of proof to establish that appellant no longer continues to suffer residuals of her March 30, 2001 employment injury and properly terminated appellant's rights to compensation and medical benefits.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 23, 2013.

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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