

out her vehicle at the end of the day. OWCP accepted the claim on January 26, 2012 for sacroiliitis. Appellant stopped working and began receiving wage-loss compensation.

OWCP prepared a statement of accepted facts (SOAF) and referred appellant, along with medical records, to Dr. Allan Brecher, a Board-certified orthopedic surgeon. In a report dated May 8, 2012, Dr. Brecher provided a history and results on examination. He noted that appellant had mild tenderness in the mid lumbar spine, with no real pain over the sacroiliac joints. Dr. Brecher reported that a magnetic resonance imaging (MRI) scan showed a L4-5 paracentral protrusion, with mild neuroforaminal narrowing L4-S1. He opined that the objective examination was essentially normal, with subjective complaints of pain. Dr. Brecher stated that there were no findings to suggest sacroiliitis, and no objective findings of residuals of the employment injury. He found appellant had no work restrictions.

In a report dated July 25, 2012, appellant's treating physician, Dr. Ernesto Padron, a Board-certified family practitioner, indicated that he had reviewed Dr. Brecher's report. He indicated that joint injections had provided only minimal relief, and appellant continued to have radicular symptoms. Dr. Padron provided results on examination and opined that she had not returned to baseline. He recommended a functional capacity evaluation (FCE). The record indicates appellant underwent an FCE on August 3, 2012.

In a report dated September 25, 2012, Dr. Padron stated that appellant remained symptomatic, with left lower radiculopathy and limited range of motion. He stated that she was injured on the job with positive MRI scan findings. Dr. Padron indicated that he had not reviewed the FCE. In a report dated October 10, 2012, he stated that appellant could return to work with restrictions. The record indicates that appellant returned to part-time, light-duty work on October 17, 2012 and received partial wage-loss compensation offset by her actual earnings.²

OWCP found a conflict existed with respect to whether appellant continued to have residuals of the employment injury. Dr. Robert Ellis, a Board-certified orthopedic surgeon, was selected as a referee physician to resolve the conflict. In a report dated March 20, 2013, he provided a history, reviewed medical records, and noted results on examination. Dr. Ellis reported some mild tenderness over the L4 and L5 spinous processes and right and left trochanteric regions, with diminished range of motion. He reported no palpable par spinal spasm, no pain on compression of pelvis, and no S1 joint tenderness. According to Dr. Ellis, an April 20, 2012 MRI scan showed chronic degenerative lumbar disc disease. He opined that appellant had sustained an aggravation of her preexisting degenerative condition on November 2, 2011. Dr. Ellis further stated,

“Based on a reasonable degree of medical certainty and based on the findings on examination, the claimant has no evidence of a diagnosis of a sacroiliitis. Based on a reasonable degree of medical certainty, [appellant] has no other residuals related to her injury of November 2, 2011. Based on a reasonable degree of

² OWCP did not issue a formal wage-earning capacity decision. By decision dated March 25, 2013, it found that appellant received total disability wage-loss compensation through October 20, 2012 and an overpayment of \$185.99 was created. Recovery of the overpayment was administratively terminated as it was less than \$200.00.

medical certainty, she is able to return to work and is able to carry out the duties of a rural mail carrier as defined in the SOAF.”

He concluded that appellant’s current symptoms were related to progression of her chronic degenerative lumbar disc disease and obesity.

By letter dated July 1, 2013, OWCP notified appellant that it proposed to terminate compensation for wage-loss and medical benefits. It stated that the weight of the medical evidence was represented by Dr. Ellis, and appellant should submit evidence within 30 days if she disagreed with the proposed action.

On July 23, 2013 appellant submitted a July 15, 2013 report from Dr. Padron, who indicated that Dr. Ellis had stated that appellant was not tender at the sacroiliac joint, but appellant did complain of pain to Dr. Ellis on palpation. Dr. Padron diagnosed lumbago, thoracic or lumbosacral neuritis or radiculitis, displacement of lumbar intervertebral disc, and sacroiliitis. On August 7, 2013 appellant submitted a July 29, 2013 report from him with results on examination and the same diagnoses as the July 15, 2013 report.

By decision dated September 9, 2013, OWCP terminated compensation for wage-loss and medical benefits. It found the weight of the evidence was represented by Dr. Ellis.

Appellant requested a hearing. At the March 11, 2014 hearing, she stated that Dr. Ellis found no residuals because he reported no tenderness in the sacroiliac region and that this was contrary to the findings of Dr. Padron.

By decision dated May 8, 2014, an OWCP hearing representative affirmed the September 9, 2013 termination of wage-loss compensation and medical benefits. She found the weight of the medical evidence represented by Dr. Ellis.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.⁴

FECA provides that, 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 the examination.⁵ The implementing regulations state that if a

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

⁴ *Furman G. Peake*, 41 ECAB 361 (1990).

⁵ 5 U.S.C. § 8123(a).

conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee or impartial examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁶

To be of probative value, a medical opinion must be based on a complete factual and medical background, must be of reasonable medical certainty, and be supported by medical rationale.⁷ Medical rationale is a medically sound explanation for the opinion offered.⁸

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁹

ANALYSIS

In the present case, OWCP found that a disagreement existed between Dr. Padron, the attending physician, and Dr. Brecher, the second opinion physician, as to whether appellant continued to have residuals of the November 2, 2011 employment injury. Dr. Brecher found an essentially normal examination with no evidence of residuals of the employment injury. Dr. Padron indicated that appellant continued to have residuals of the employment injury that resulted in work restrictions.

In accord with 5 U.S.C. § 8123(a), OWCP properly referred the case to Dr. Ellis for a referee examination and an opinion as to whether appellant continued to have employment-related residuals. In a report dated March 20, 2013, Dr. Ellis provided a history, results on examination, and reviewed medical evidence. Based on an accurate factual and medical background, he opined that appellant did not have residuals of the employment injury. Dr. Ellis found no evidence of the accepted condition of sacroiliitis. He indicated that appellant had aggravated a preexisting degenerative lumbar condition on November 2, 2011, but he found no continuing aggravation.

In his July 15, 2013 report, Dr. Padron stated that Dr. Ellis based his opinion on a lack of S1 joint tenderness. At the March 11, 2014 hearing, appellant had argued that Dr. Ellis based his opinion on an inaccurate examination finding. However, Dr. Ellis reported his findings based on the physical examination he performed. A review of the March 20, 2013 report does not establish that his opinion was based on a single examination finding. As noted, Dr. Ellis provided results on examination that reported some lumbar tenderness and diminished range of motion. He based his opinion on all examination results, diagnostic studies, and medical history.

⁶ 20 C.F.R. § 10.321.

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁸ See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound, and logical).

⁹ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

Dr. Ellis explained that appellant had a preexisting degenerative condition and that current symptoms were related to the preexisting condition, not the employment injury. This represents a medically sound explanation of the opinion offered.

The Board therefore finds that Dr. Ellis provided a rationalized medical opinion in this case. As a referee physician, Dr. Ellis' report is entitled to special weight. The Board finds that OWCP met its burden of proof to terminate wage-loss compensation and medical benefits effective September 9, 2013.

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 met its burden of proof to terminate wage-loss compensation and medical benefits effective September 9, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 8, 2014 is affirmed.

Issued: March 13, 2015
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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