United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 10-1674**
	)	**Issued: June 9, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Lake City, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 9, 2010 appellant filed a timely appeal of the March 31, 2010 merit decision of the Office of Workers' Compensation Programs terminating her medical benefits. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly terminated appellant's medical benefits effective March 31, 2010 on the grounds that she no longer had any residuals causally related to her accepted employment-related orthopedic injuries.

On appeal, appellant contends that her ongoing pain, muscle spasms and emotional condition are causally related to her accepted conditions.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 18, 1992 appellant, then a 29-year-old physical therapy assistant, filed a traumatic injury claim under File No. xxxxxx275 alleging that on December 11, 1992 she developed a sore knot on the right side of her pelvis as a result of lifting a patient out of a Geri-chair. She underwent surgery on December 22, 1992 to repair a right femoral hernia. By letter dated January 12, 1993, OWCP accepted appellant's claim for a right hernia.

On November 8, 1993 appellant filed an occupational disease claim under File No. xxxxxx888 alleging that on October 19, 1993 she first became aware of her right inguinal hernia and realized it resulted from transferring a patient from a stretcher to a lifter to be placed in a whirlpool.[2] On November 19, 1993 she underwent surgery to repair a recurrent right inguinal hernia. By letter dated February 22, 1994, OWCP accepted appellant's claim for recurrent right inguinal hernia. Appellant returned to light-duty work on January 4, 1994.

On August 19, 1994 appellant underwent surgery to repair a recurrent right inguinal hernia. She returned to light-duty work on October 3, 1994.

Appellant returned to her regular work duties on January 20, 1993. OWCP accepted that appellant sustained a recurrence of disability on November 22, 1995 causally related to her December 11, 1992 employment injury.

On October 27, 1997 OWCP accepted appellant's claim for consequential adjustment disorder with depressed mood due to pain. Appellant stopped work as of June 5, 2009.

On June 23, 2009 OWCP referred appellant, together with a statement of accepted facts and medical record, to Dr. Alejandro T. Soler, a Board-certified general surgeon, and Dr. Wendy L. Vandemark, a Board-certified psychiatrist, for a second opinion on the nature and extent of her employment-related residuals and disability. In a July 8, 2009 report, Dr. Soler reviewed a history of the accepted employment injuries and appellant's medical treatment and test results. Appellant was initially interviewed in an examination chair. She moved with unexpected ease from the interview chair to an examination table. There was no hesitation, grimacing or limitations identified. Appellant lifted herself with ease and without need of assistance up and onto the examination table. She laid down without any restrictions or limitations. Appellant moved up on the table to reposition the head and foot rests. To Dr. Soler's surprise, she scooted cephalad with ease and performed a partial sit up without hesitation or evidence of pain. On physical examination of the lower abdominal area, he reported appellant's complaint of pain along the entire surgical incision which was basically a transverse lower abdominal Pfannenstiel incision. Appellant was tender across the entire incision and equally tender on the left side as compared to the right side where surgery on her accepted conditions was performed. She did not appear to exhibit any pain with coughing, straining and sitting up exercises unless she was touched. Dr. Soler advised that a recurrent hernia was not identified in the inguinal or femoral areas.

[2] OWCP combined the claims under File Nos. xxxxxx275 and xxxxxx888 into a master claim assigned File No. xxxxxx888.

Dr. Soler advised that appellant's demonstration of disabling pain was disproportionate to the mobility he observed in the examination room and her physical findings. There were subsequent psychological issues stemming from her initial pain which far outweighed her physical limitations. Dr. Soler opined that the 1993 employment-related hernia condition had resolved. He advised that no further diagnostic tests were necessary to provide objectivity. Dr. Soler was surprised upon his review of the surgical records that the actual volume of mesh and area of intervention were much less than expressed by appellant's recollection of her surgical experience. He advised that she could work eight hours a day with restrictions. Dr. Soler stated that from a psychological and pain management standpoint, it would be prohibitive for appellant to return to work in any position that required significant lifting, bending, twisting or operation of any motor vehicle. He, therefore, recommended a sedentary position based on vocational rehabilitation. Dr. Soler concluded that appellant had reached maximum medical recovery from a physical standpoint, but advised that she was still significantly impaired from a psychiatric/psychosocial standpoint.

In an August 21, 2009 report, Dr. Vandemark obtained a history of the accepted employment injuries and appellant's medical treatment and social background. She listed findings on mental examination and diagnosed somatization and bipolar disorder not other specified on Axis I, histrionic traits on Axis II, multiple injuries on Axis III, severe injuries on Axis IV and a global assessment functioning score of 55 on Axis V. Appellant advised Dr. Vandemark that pain was her biggest stressor. Dr. Vandemark stated that her sources of pain included chronic myofascial pain syndrome, fibromyalgia, Caesarian section, ectopic pregnancy, jaw surgery, hysterectomy, adhesions, chronic pelvic and shoulder pain, fibrositis, periostitus, sexual dysfunction, dyspaurenia and migraine headaches. She noted that appellant's employment-related injuries were not the source of the diagnosed conditions. Dr. Vandemark opined that she was totally disabled for work. Appellant could not function in her daily activities due to her depressed mood, sleeplessness, agitation, mood swings, anxiety, panic, suicidal thoughts and indecisiveness. Dr. Vandemark concluded that she had not reached maximum medical improvement.

On January 25, 2010 OWCP issued a notice of proposed termination of appellant's medical benefits related to her accepted orthopedic conditions, *i.e.*, femoral hernia and muscle spasms, based on Dr. Soler's medical opinion.[3]

In a January 29, 2010 letter, appellant disagreed with Dr. Soler's opinion. She contended that he had already formed an opinion about her condition prior to examination. Appellant requested that OWCP refer her to another physician.

In treatment notes dated January 14 through March 12, 2010, Paula S. Lovett, Ph.D., LMHC, and Dr. Ramon E. Pino, a Board-certified psychiatrist, addressed appellant's emotional condition and treatment. In a February 8, 2010 treatment note, Dr. Lovett advised that appellant was confused about OWCP's January 25, 2010 proposed termination. She wrote to support appellant's ongoing psychological symptoms and to continue her "no work" status from a psychological standpoint.

[3] On February 16, 2010 OWCP advised appellant that she would continue to receive wage-loss compensation benefits and medical benefits for her accepted emotional condition.

In a March 31, 2010 decision, OWCP terminated appellant's wage-loss compensation and medical benefits regarding her accepted orthopedic conditions effective that date. It found that Dr. Soler's opinion represented the weight of the medical evidence.[4]

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 her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was 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 for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.[7]

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits for the accepted orthopedic conditions as of March 31, 2010. It accepted that appellant sustained a right femoral hernia and recurrent right inguinal hernia while in the performance of duty. OWCP subsequently referred appellant to Dr. Soler for a second opinion evaluation.

Dr. Soler's July 8, 2009 report reviewed a history of appellant's accepted employment-related injuries and medical treatment and test results. He found that the accepted orthopedic conditions had resolved and that appellant could work eight hours a day with restrictions in a sedentary position to be determined by vocational rehabilitation. Dr. Soler's findings revealed that, despite her complaints of tenderness and pain about the incision, appellant was able to move with ease from the interview chair to the examination table. She did not exhibit any hesitation, grimacing or limitations and Dr. Soler stated that she lifted herself with ease or need of assistance up and onto the examination table. She laid down without any restrictions or limitations. Dr. Soler related that surprisingly, appellant moved up and onto the table to reposition the head and foot rests, scooted cephalad with ease and performed a partial sit up without hesitation or evidence of pain. He found no recurrent hernia in the inguinal or femoral area. Dr. Soler concluded that appellant's subjective complaints were not substantiated by his observations and physical examination findings.

[4] Following the issuance of OWCP's March 31, 2010 decision, OWCP received additional evidence. The Board may not consider evidence for the first time on appeal which was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

[5] *Jason C. Armstrong*, 40 ECAB 907 (1989).

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

[7] *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

The Board finds that Dr. Soler's report represents the weight of the medical evidence and that OWCP properly relied on his report in terminating appellant's compensation benefits for the accepted orthopedic conditions on March 31, 2010. Dr. Soler's opinion is based on a proper factual and medical history as he reviewed a statement of accepted facts and appellant's prior medical treatment and test results. He also related his comprehensive examination findings in support of his opinion that the accepted work-related conditions of right femoral hernia and recurrent right inguinal hernia had resolved and that appellant could perform sedentary work eight hours a day with restrictions.

The treatment notes submitted by Dr. Lovett are of no probative value as she is not a physician as defined in FECA.[8] Dr. Lovett is a clinical social worker. The other treatment notes from Dr. Lovett and Dr. Pino addressed appellant's emotional conditions, but failed to address whether she had any residuals or disability causally related to the accepted orthopedic injuries.[9]

There is no other medical evidence contemporaneous with the termination of appellant's benefits which supports that she has any continuing residuals or disability from her employment-related orthopedic conditions. OWCP, therefore, met its burden of proof to terminate.

The Board finds that appellant's contention on appeal, that her ongoing pain and muscle spasms are causally related to her accepted orthopedic conditions has not been established. As found, the weight of the medical evidence establishes that she has no continuing residuals or disability causally related to the employment-related orthopedic injuries and, thus, OWCP properly terminated her compensation benefits.

Appellant further contended on appeal, that her current emotional condition is causally related to the accepted orthopedic conditions. As noted, OWCP has advised appellant that she is still entitled to wage-loss compensation benefits and medical benefits for the accepted emotional condition.

Appellant may submit new evidence or argument with a written request for reconsideration to the Office 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 properly terminated appellant's compensation effective March 31, 2010 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related right femoral hernia and recurrent right inguinal hernia.

[8] 5 U.S.C. § 8101(2) defines physician to include: "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

[9] *Willie M. Miller*, 53 ECAB 697 (2002).

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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