United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 11-1205**
	)	**Issued: February 24, 2012**
U.S. POSTAL SERVICE, POST OFFICE, MORRIS BROWN STATION, Duluth, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 14, 2011 appellant, through her attorney, filed a timely appeal from a January 11, 2011 merit decision of the Office of Workers' Compensation Programs[1] (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) 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 compensation for wage-loss and medical benefits effective September 7, 2010 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

[1] Counsel specifically requested the Board to only review the January 11, 2011 decision concerning the termination of appellant's benefits. He did not request the Board to review an OWCP December 2, 2010 decision concerning the denial of authorization for a medical procedure. As appellant only identified the January 11, 2011 decision for review, the Board will not review the December 2, 2010 decision. *See* 20 C.F.R. § 501.3(a).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 22, 2003 appellant, then a 44-year-old clerk, filed a traumatic injury claim alleging that on that date she injured herself when she fell and landed on her knees. OWCP accepted the claim for lumbar strain, bilateral knee and leg sprain, right patella chondromalacia, left carpal tunnel syndrome, left upper arm/shoulder sprain/strain and bilateral wrist tenosynovitis.[3] It authorized neck spinal fusion surgery, which was performed on June 8, 2004 and left knee arthroscopic surgery, which was performed on December 9, 2008.

On February 18, 2010 Dr. Alexander Doman, a second opinion Board-certified orthopedic surgeon, reviewed a statement of accepted facts, medical evidence and performed a physical examination. He noted that OWCP had accepted the conditions of lumbar strain, bilateral knee strain, right knee chondromalacia, closed dislocation of the right patella, bilateral wrist and hands tenosynovitis and cervical disc displacement. Dr. Doman concluded that appellant's work-related conditions had resolved. He attributed her problems to her preexisting knee osteoarthritis and lumbar degenerative conditions. Dr. Doman also reported that appellant underwent successful carpal tunnel release and had no objective residuals. He also opined that she was disabled from performing the duties of her date-of-injury position due to her nonwork-related conditions of lumbar degenerative spondylosis and knee osteoarthritis.

On March 17, 2010 OWCP issued a notice proposing to terminate appellant's compensation based on the February 18, 2010 report from Dr. Doman, which found she had no disability or residuals from her accepted employment injuries.

In a March 25, 2010 report, Dr. Howard A. McMahon, a treating physician, reviewed Dr. Doman's report and disagreed with his conclusion that appellant's accepted employment conditions had resolved. He opined that appellant's preexisting cervical and lumbar degenerative disc disease had been exacerbated by her employment injury. In support of this conclusion, Dr. McMahon referenced a magnetic resonance imaging (MRI) scan and April 23, 2004 cervical and lumbar computerized tomography (CT) scans. Since her employment injury, appellant has complained of back and bilateral knee pain as well as some neck pain. Dr. McMahon opined that she continues to have ongoing problems from her employment injury and has not reached maximum medical improvement at this time.

In correspondence dated May 3 and June 8, 2010, OWCP referred appellant to Dr. Charles T. Hopkins, Jr., a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Drs. Doman and McMahon on the issue of whether appellant's accepted employment conditions had resolved and she no longer had any residuals or disability.

In a July 29, 2010 report, Dr. Hopkins, based upon a review of the medical evidence, statement of accepted facts and physical examination concluded appellant no longer had any residuals or disability due to her accepted employment injury, except possibly her cervical condition. A physical examination revealed a morbid obesity, normal upper extremity motor

[3] On November 20, 2006 OWCP issued a zero percent loss of wage-earning capacity decision. It found that appellant's employment as a modified clerk represented her wage-earning capacity.

strength, no upper extremity motor deficits and negative sitting and supine leg raising. Dr. Hopkins reported full range for both shoulders, wrists, fingers, hands and elbows. He reported negative straight leg raising, 1+ reflexes at knees and ankles, limited flexion of 90 degrees due to obesity, 1 to 2+ bilateral patellofemoral crepitus. Dr. Hopkins noted the physical examination of appellant's arms and legs was difficult due to her morbid obesity. He reported pain with forward flexion of the cervical spine and neck discomfort with range of motion. Range of motion was normal for both shoulders, elbows, wrists, fingers, hands and knees. A review of x-ray interpretations revealed bone on bone contact in the left medial compartment and some mild right knee degenerative changes. Cervical films revealed C4-5 fusion with possible C4-6 pseudoarthrosis, which Dr. Hopkins could not confirm from the x-ray interpretations. A review of a lumbar x-ray interpretation revealed L4-5 grade 2 spondylolisthesis. Diagnoses included chronic neck pain indicative of upper extremity radiculopathy, possible C5-6 pseudoarthrosis; left knee degenerative arthritis, which Dr. Hopkins attributed to appellant's morbid obesity; right knee mild degenerative changes and L4-5 grade 2 spondylolisthesis with back pain. He concluded that her knee problems were unrelated to her work injury and that her current bilateral knee pain was attributable to her morbid obesity. In support of this conclusion, Dr. Hopkins noted that appellant had a body mass of 46, left knee medial degenerative changes and a normal right knee MRI scan. He concluded that no further treatment was necessary for her knee condition as he attributed her symptoms to left knee arthritis and physical therapy for the right knee would not have any benefit. Dr. Hopkins concluded that appellant's hand injury had resolved based on a normal hand examination including no swelling or other pathology. He concluded that her lumbar strain had resolved and her current lumbar problems were due to her spondylolisthesis, which was preexisting. As to appellant's cervical condition and pain, Dr. Hopkins opined that the studies showing she had C5-6 pseudoarthrosis were questionable. As to continued medical treatment, he noted concern about a possible C5-6 pseudoarthrosis and explained that if the pseudoarthrosis existed, that it would explain some of the neck problems. Dr. Hopkins stated that appellant's cervical condition had resolved as she underwent successful cervical anterior fusion, but opined that she had not fully recovered from her cervical condition. In addition, he expressed concern as to "whether the fusion is solid at C5-6" and related there was "some objective evidence of pseudoarthrosis in the cervical spine." Lastly, Dr. Hopkins concluded that appellant's carpal tunnel syndrome has resolved based on a normal examination of her hands with no swelling or pathology and successful carpal tunnel release surgery.

By decision dated September 7, 2010, OWCP finalized the termination of appellant's compensation effective that day. It found Dr. Hopkins' opinion was entitled to the special weight accorded to an impartial medical examiner as it was well rationalized.

On September 13, 2010 Dr. McMahon reported that appellant was seen for her severe back and neck pain and bilateral knee pain. He reported limited lumbar range of motion and that she ambulated with a cane. An examination of the knees revealed full extension, no effusion or significant swelling. Dr. McMahon diagnosed prior lumbar strain, low back pain, herniated disc, degenerative disc disease with spondylolisthesis, persistent and chronic knee pain, bilateral patella chondromalacia, post-traumatic degenerative joint disease and status post left knee arthroscopy with partial meniscectomy and chondroplasty. He opined that appellant's back pain had been exacerbated by her employment injury and has not resolved.

On September 28 and 30, 2010 OWCP received appellant's request for an oral hearing before an OWCP hearing representative and her argument as to why termination of her benefits was in error.

In a November 15, 2010 report, Dr. McMahon reviewed Dr. Hopkins' report and disagreed with the conclusions found by Dr. Hopkins. He stated that he has followed appellant for years and her back, neck and bilateral knee pain has not resolved. Dr. McMahon opined that her chronic conditions were a result of her employment injury, that they have not resolved and that her preexisting degenerative disc disease has worsened.

By decision dated January 11, 2011, OWCP's hearing representative affirmed the September 7, 2010 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[4] After it has determined that an employee has disability causally related to 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.[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.[7] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[8]

Section 8123(a) of FECA[9] provides that, if there is 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.[10] When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such

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

[5] *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

[6] *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988); *I.R.*, Docket No. 09-1229 (issued February 24, 2010).

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

[8] *Kathryn E. Demarsh*, *supra* note 7; *James F. Weikel*, 54 ECAB 660 (2003); *B.K.*, Docket No. 08-2002 (issued June 16, 2009).

[9] 5 U.S.C. §§ 8101-8193.

[10] *Id*. at § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[11]

ANALYSIS

The Board finds that OWCP improperly terminated appellant's compensation and medical benefits effective September 7, 2010. Therefore, the January 11, 2011 decision must be reversed.

OWCP referred appellant to Dr. Hopkins to resolve the conflict in the medical opinion evidence between Dr. McMahon, a treating physician, who concluded that she continued to have disability and residuals from her accepted employment injuries and Dr. Damon, an OWCP referral physician, who concluded that appellant no longer had any residuals or disability due to her accepted employment injuries. The Board finds that it properly determined that a conflict existed with respect to whether appellant had any continuing disability or residuals. The Board further finds that Dr. Hopkins' referred report is insufficient to resolve the conflict.

In his July 29, 2010 report, Dr. Hopkins noted that minimal physical findings which included obesity, normal motor strength and range of motion. At the same time, he reported difficulty with obtaining accurate physical examination findings due to appellant's morbid obesity. The report contains a brief summary of the medical reports reviewed and findings from x-ray interpretations and MRI scans. Dr. Hopkins attributed appellant's current medical condition to her obesity and preexisting conditions without providing any explanation for this conclusion. He concluded that her accepted conditions had resolved except for the cervical condition, but provided no explanation for the basis of his conclusion. Dr. Hopkins in the same report concluded that the cervical condition had resolved because of successful cervical fusion. He also expressed concern about a possible C5-6 pseudoarthrosis while at the same time questioning the accuracy of the studies supporting a C5-6 pseudoarthorsis. While Dr. Hopkins statement that appellant did not require further medical treatment or had any disability due to her accepted conditions of lumbar strain, bilateral knee and leg sprain, right patella chondromalacia, left carpal tunnel syndrome, left upper arm/shoulder sprain/strain and bilateral wrist tenosynovitis, he failed to offer any medical reasoning in support of his conclusion that these conditions had resolved.[12] The only reasoning provided by him are cursory statements attributing the bilateral knee problems to obesity, the lack of swelling or other pathology in the hands and her lumbar condition to her preexisting spondylolisthesis. There is no explanation as to why the lumbar strain had resolved or why appellant's current lumbar condition was attributable solely to a preexisting condition. There is no explanation as to why Dr. Hopkins believes her current conditions are due to her obesity instead of the accepted lumbar strain, bilateral knee and leg sprain, right patella chondromalacia, left carpal tunnel syndrome, left upper arm/shoulder sprain/strain and bilateral wrist tenosynovitis. The certainty with which he expressed his opinion cannot overcome the lack of medical rationale.[13] In addition, the

[11] *J.M.*, *supra* note 6; *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002); *B.P.*, Docket No. 08-1457 (issued February 2, 2009).

[12] *See Cecelia M. Corley*, 56 ECAB 662 (2005); *F.T.*, Docket No. 09-919 (issued December 7, 2009).

[13] *See Willa M. Frazier*, 55 ECAB 379 (2004).

contradictory statements as to whether appellant's cervical condition had resolved further undermines the probative value of Dr. Hopkins report. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.[14] As Dr. Hopkins did not sufficiently explain his findings that appellant required no further medical treatment or disability as the accepted conditions had resolved and that her current condition was due to preexisting conditions and obesity, his opinion is insufficient to constitute the special weight of the evidence on this issue and the record contains an unresolved conflict in medical opinion on the issue of whether appellant continues to have residuals and disability from the accepted conditions. The Board consequently finds that OWCP did not meet its burden of proof to terminate appellant's medical benefits.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss and medical benefits effective September 7, 2010 on the grounds that she no longer had any disability or residuals due to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 11, 2011 is reversed.

Issued: February 24, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[14] *D.E.*, 58 ECAB 448 (2007); *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005); *T.M.*, Docket No. 08-975 (issued February 6, 2009).