

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

J.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Boston, MA, Employer**

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**Docket No. 12-1
Issued: July 12, 2012**

Appearances:

*Ronald L. St. Pierre, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 23, 2011 appellant, through her attorney, filed a timely appeal from a September 8, 2011 merit 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.

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation benefits effective August 28, 2011 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

FACTUAL HISTORY

On February 7, 1998 appellant, then a 32-year-old mail carrier, filed a traumatic injury claim alleging that on February 5, 1998 she sustained injuries to her tailbone and left side

¹ 5 U.S.C. § 8101 *et seq.*

buttocks when she fell down icy stairs at work. OWCP accepted her claim for contusion of coccyx and sacrum and thoracic or lumbosacral neuritis.² Appellant stopped work on February 6, 1998 and returned to limited duty on February 22, 1999. She stopped work again on September 1, 1999. OWCP accepted that appellant sustained a recurrence of her injury on December 5, 2001. Appellant was referred to vocational rehabilitation and returned to private employment on October 20, 2009. She stopped work on June 13, 2010 and was placed back on disability compensation.

In a July 14, 2010 report, Dr. Kay A. Ficht, a Board-certified internist, stated that in February 1998 appellant suffered from a complicated hip and back injury while performing her duties as a mail carrier. Appellant returned to work but was not able to continue her job as of June 13, 2010 due to her recurrent and persistent back pain. Dr. Ficht reported that appellant had been disabled from work since June 13, 2010.

On November 16, 2010 OWCP referred appellant, together with a statement of accepted facts, to Dr. Donald J. Thomson, a Board-certified neurologist, for a second-opinion medical examination. In a December 14, 2010 report, Dr. Thomson provided an accurate history of injury that on February 5, 1998 she slipped and fell down concrete steps while delivering mail and experienced pain in her low back, right hip and right flank. Appellant continued to complain of pain localized in the middle and right side of her low back, some pain in her left hip and abdominal pain in the area of the epigastrium. Dr. Thomson reviewed her records and conducted a neurological examination. He did not observe any bruits over the orbits or the carotid arteries and noted that appellant's neck was supple and had full range of motion. Straight leg raise tests of both legs were to 70 degrees and bent straight leg raise tests of both legs revealed her pain across the low back, right groin and right buttock. Examination of appellant's cranial nerves revealed normal optic discs, no facial weakness, intact sense of smell and normal retinal vasculature. Dr. Thomson explained that she had apparent limitation of range of motion of the low back and dullness over the right face, scalp, neck and upper extremity. He reported that the rest of the neurological examination was normal. Dr. Thomson stated that there were no objective findings of nervous system injury or disease and no magnetic resonance imaging (MRI) scan findings of traumatic injury. He opined that there was no evidence of appellant's work-related injury and that it was unclear when the residuals resolved. Dr. Thomson reported that her lumbosacral MRI scan studies revealed nonwork-related mild degenerative changes and concluded that she had reached maximum medical improvement. In an attached work capacity evaluation, he authorized appellant to work full time and limited her to one hour of twisting, bending and stooping and pushing, pulling and lifting up to 20 pounds.

On March 28, 2011 OWCP found that a conflict of medical opinion existed between Dr. Ficht, appellant's treating physician, and Dr. Thomson, the second-opinion examiner, regarding whether appellant continued to suffer residuals of her work-related injuries and whether she was capable of returning to work. It referred appellant to Dr. Joe Ordia, a Board-certified neurological surgeon, for an impartial medical examination (IME).

² OWCP also accepted that appellant sustained a recurrence on December 31, 1998.

In a May 24, 2011 report, Dr. Ordia provided an accurate history of injury regarding the February 5, 1998 work-related injury and noted appellant's complaints of lower back to right hip and groin pain. He reviewed her history and pointed out that a January 26, 1999 MRI scan examination of the lumbar spine revealed degenerative disc changes at L5-S1 with loss of signal and small central bulge. Upon examination of her lower extremities, Dr. Ordia did not observe any ankle edema, cyanosis, erythema, swelling or temperature changes. Appellant's trochanteric bursa was nontender on the right and left. She also had normal muscle tone in all four extremities and walked with a normal gait. Dr. Ordia observed decreased perception on the right side on light touch and pin prick testing. Examination of the spine revealed no deformity, tenderness, sacroiliac joint tenderness or paraspinal muscle spasm. Active range of motion was limited to 60 degrees in forward flexion and 20 degrees in extension. Straight leg raise test was to 90 degrees. Dr. Ordia stated that appellant's subjective complaints were not supported by objective findings as the MRI scan did not show nerve compression. He concluded that, based on the objective findings and records reviewed, appellant did not suffer any residuals of the February 5, 1998 work-related injury and did not suffer from any other work-related conditions. Dr. Ordia opined that her injuries resolved on or about July 1999 since 70 percent of soft tissue spinal complaints resolve in two to three weeks and 90 percent resolve in six weeks. He authorized appellant to return to work and stated that any back pain she experienced resulted from her preexisting, nonwork-related degeneration of lumbosacral intervertebral disc. In an attached work capacity evaluation, Dr. Ordia authorized her to work full time with breaks and limited her to four hours of reaching about her shoulders and operating a motor vehicle and one hour of pushing, pulling and lifting up to 10 pounds.

On July 11, 2011 OWCP issued a notice of proposed termination of appellant's wage-loss and disability compensation based on Dr. Ordia's IME report. It found that Dr. Ordia's report established that appellant no longer had any disability or suffered residuals of her accepted February 5, 1998 injuries. Appellant was advised that she had 30 days to submit additional evidence in response to the proposed termination.

In a July 20, 2011 letter, appellant's counsel objected to the proposed termination of her benefits and requested a hearing. He objected to Dr. Ordia's findings in his referee examination and pointed out that appellant had received workers' compensation benefits for over 13 years and had ample medical evidence from treating physicians over the years to support her ongoing disability. Appellant's counsel stated that Dr. Ordia's report was questionable in light of the objective evidence of disability and prior medical reports.

Appellant submitted various reports and examination notes from Dr. Ficht regarding her medical treatment from 2004 to 2011. Dr. Ficht noted appellant's complaints of back, right hip and right buttock pain since the February 1998 work-related injury and described the medical treatment she received. She diagnosed chronic pain syndrome and low back pain. Dr. Ficht reported that appellant's conditions had not resolved since 1998 and that she was not able to perform the job she held at the time of injury.

By decision dated September 8, 2011, OWCP finalized appellant's termination for medical and wage-loss compensation benefits effective August 28, 2011 based on the IME report of Dr. Ordia.

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

ANALYSIS

OWCP accepted that on February 5, 1998 appellant sustained back and left side buttock contusions and lumbosacral neuritis. Appellant received disability compensation and has not returned to work since June 13, 2010. In a decision dated September 8, 2011, OWCP terminated her compensation benefits based on the report of the IME, Dr. Ordia, who determined that her employment-related conditions had resolved. The Board finds that OWCP properly terminated appellant's compensation benefits effective August 28, 2011 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

On March 28, 2011 OWCP found that a conflict of medical opinion existed between appellant's attending physician, Dr. Ficht, who determined that appellant was still disabled due to her work-related injuries and Dr. Thomson, an OWCP referral physician, who found no residuals or disability due to her work-related injuries. It referred appellant to Dr. Ordia to resolve the conflict. In a May 24, 2011 report, Dr. Ordia provided an accurate history of injury and reviewed her medical records. He noted that a January 26, 1999 MRI scan examination of the lumbar spine revealed degenerative disc changes at L5-S1 with loss of signal and small central bulge. Upon examination, Dr. Ordia observed no deformity, tenderness, sacroiliac joint tenderness, or paraspinal muscle spasm of appellant's spine. He reported that appellant's subjective complaints were not supported by objective findings. Dr. Ordia concluded that based on the objective findings and records reviewed she did not suffer any residuals of her February 5, 1998 work-related injuries and did not suffer any other work-related conditions. He opined that appellant's work-related injuries resolved on or about July 1999 since 70 percent of soft tissue spinal complaints resolved in two to three weeks and 90 percent resolve in six weeks. Dr. Ordia

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

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

explained that any back pain appellant experienced resulted from a preexisting, nonwork-related degeneration of her lumbosacral intervertebral disc and authorized her to return to work full time with restrictions.

The Board finds that Dr. Ordia's May 24, 2011 IME report is sufficiently detailed and well reasoned to constitute the weight of the medical opinion evidence. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist 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.⁸ Dr. Ordia had full knowledge of the relevant facts and reviewed appellant's medical records. He conducted an examination and concluded that appellant no longer suffered residuals or disability from her work-related injuries. The Board finds that Dr. Ordia's opinion, as set forth in the May 24, 2011 report, was found to be probative and reliable evidence. Accordingly, Dr. Ordia's opinion constituted the special weight of evidence and is sufficient to justify OWCP's termination of wage-loss and compensation benefits for the accepted conditions.⁹

The Board further finds that the medical evidence submitted after Dr. Ordia's IME report was insufficient to overcome the weight of this report or to create another conflict in medical evidence. Appellant submitted various reports by Dr. Ficht regarding her medical treatment beginning in 2004. Because Dr. Ficht was on one side of the conflict which Dr. Ordia resolved, the additional reports are insufficient to overcome the weight accorded Dr. Ordia's report as the IME or to create a new conflict.¹⁰ There is no other medical evidence contemporaneous with the termination of appellant's benefits which supports that she has any continuing residuals or disability related to her accepted work-related injuries.

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 appellant's compensation and medical benefits effective August 28, 2011.

⁸ *Solomon Polen*, 51 ECAB 341 (2000).

⁹ *See J.D.*, Docket No. 11-2008 (issued May 7, 2012).

¹⁰ *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the September 8, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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