

FACTUAL HISTORY

On November 30, 1988 appellant, then a 46-year-old nursing assistant, filed a traumatic injury claim alleging that on November 14, 1988 she sprained her back while attempting to turn a patient. OWCP accepted the claim for lumbar sprain and aggravation of lumbar stenosis. Appellant was placed on the periodic rolls for temporary total disability effective February 2, 1989.

In a May 9, 2008 report, Dr. Fernando Rojas, a second opinion Board-certified orthopedic surgeon, reviewed the statement of accepted facts, medical reports and made findings on examination. He reported that appellant sustained an injury at work on November 14, 1988 while attempting to turn a patient and that her claim had been accepted for lumbar strain and aggravation of spinal stenosis. Dr. Rojas reported that subsequent to appellant's employment injury she sustained a broken hip and elbow and has a left hip prosthetic device. He opined that lumbar strain probably aggravated her congenital spinal stenosis, but any aggravation "was probably not enough to cause the severe aggravation" she currently experiences. Dr. Rojas concluded that the spinal stenosis had also been aggravated by appellant's severe diabetes, other health conditions and her advancing age. He concluded that the lumbar strain and spinal stenosis resolved and that her residuals were due to her long-standing illnesses. Dr. Rojas found that appellant's employment injury accelerated her congenital problem which developed into almost complete bilateral leg sciatic nerve denervation. Appellant's diabetes also contributed to her condition but her employment injury was not a significant contributing factor to her congenital deformity and final outcome. Dr. Rojas concluded that there was "little contribution to [appellant's] current state of disability" by the employment injury. In concluding, he opined that she was permanently totally disabled and required no further medical treatment for her accepted employment injury.

In an October 23, 2008 report, Dr. Nelson J. Aldiva Hernandez, a treating physician, concurred with Dr. Rojas that appellant was totally disabled from work. He attributed her disability to her severe diabetes with neuropathy, major depression, peripheral vascular disease, hypercholesterolemia, generalized anxiety, chronic gastritis, insomniuous and hypertension. As to appellant's accepted lumbar strain and aggravation of spinal stenosis, Dr. Hernandez related that diabetes, age, osteoarthritis, decrease in bone density and spondylosis can aggravate spinal stenosis.

On August 27, 2009 OWCP referred appellant to Dr. Fausto Boria Carcano to resolve the conflict in medical opinion between Dr. Rojas and Dr. Hernandez. In its August 27, 2009 correspondence to appellant, it indicated that there was a conflict on the issues of causal relationship and continuing disability due to the accepted work injury. OWCP selected Dr. Carcano as the impartial medical examiner. On September 17, 2009 Dr. Carcano examined appellant and reviewed her medical records, but did not request or administer any additional objective studies. He noted that appellant arrived by ambulance and was transferred to his office on a stretcher. Dr. Carcano related that appellant's gait was not examined because she was unable to stand up due to her lower limb weakness. He reviewed her history of injury, occupational history and prior medical history. Dr. Carcano's diagnoses included lumbosacral strain; L4-5 and L5-S1 herniated discs; diabetes mellitus, lower limbs weakness; severe peripheral lower extremities neuropathy; and cervical and lumbar canal stenosis. He advised that

the lumbar strain and/or spinal stenosis aggravation had resolved and that appellant's current disability was unrelated to her accepted employment injury. Examination findings included normal sensory motor and deep reflexes; no obvious abnormality or gross deformity; decreased sensory pinprick; and normal lower limb range of motion. Under objective findings, Dr. Carcano reported "[p]ositive physical findings included absent deep tendon reflexes." He indicated that there were no objective findings that the accepted conditions were still active. Dr. Carcano attributed appellant's current disability to peripheral neuropathy, complications from diabetes mellitus and psychiatric disorder. He concluded that her accepted injuries had resolved and further medical treatment was unnecessary.

On June 17, 2010 OWCP received an undated addendum from Dr. Carcano in which he reiterated that appellant had no residuals or continuing disability as a result of her accepted employment injuries. Dr. Carcano also indicated that he had reviewed her position description and addendum to the statement of accepted facts and his opinion remained unchanged. He opined that appellant's current work restrictions were not due to her accepted employment injuries and that her disability was due to nonemployment-related conditions.

On August 2, 2010 OWCP issued a notice of proposed termination of compensation and medical benefits based on Dr. Carcano's September 17, 2009 impartial medical evaluation and addendum. It afforded appellant 30 days to submit additional evidence or argument to the extent she disagreed with the proposed termination of benefits.

In response appellant submitted an undated attending physician's report (Form CA-20) and a previously submitted June 24, 2010 work capacity restriction form (OWCP-5c) from Dr. Hernandez.

By decision dated September 13, 2010, OWCP terminated appellant's compensation and medical benefits effective that day. It found that the medical evidence she submitted did not outweigh the impartial medical examiner's opinion as the reports were either mostly illegible or illegible in their explanation for appellant's disability.

On September 28, 2010 appellant's attorney requested an oral hearing before an OWCP hearing representative and a telephonic hearing was held on February 23, 2011.

By decision dated May 4, 2011, an OWCP hearing representative affirmed the termination of appellant's compensation.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² After it has determined that an employee has disability causally related to his federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

² *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.³ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ 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.⁶

ANALYSIS

The Board finds that a conflict in medical opinion did not arise between Dr. Rojas and Dr. Hernandez regarding either causal relationship or continuing employment-related disability.⁷ Dr. Hernandez concurred with Dr. Rojas that appellant was totally disabled, but was nonresponsive to OWCP's question regarding whether her accepted lumbar strain and aggravation of spinal stenosis had resolved. Dr. Rojas' opinion was equivocal on the issue of whether the accepted employment conditions had resolved. He stated that the employment injury accelerated and probably aggravated appellant's preexisting spinal stenosis; but concluded that the lumbar strain and spinal stenosis aggravation must have resolved. The Board finds that Dr. Rojas provided little rationale for his conclusion. He noted that the employment injury contributed a "little" to appellant's disability; thereby implying there was some employment-related disability. Absent a conflict in medical opinion, there was no reason to refer the case to an impartial medical examiner in August 2009. Dr. Carcano's designation as an impartial medical examiner was inappropriate.⁸ His September 17, 2009 findings and undated addendum, therefore, may not be afforded the special weight of an impartial medical specialist and should be considered for its own intrinsic value.⁹

Dr. Carcano provided minimal findings on examination and a one-sentence description under objective findings. He noted that appellant's gait was not examined because she was unable to stand up due to her lower limb weakness. Dr. Carcano failed to explain why he believed that appellant's accepted lumbar sprain and aggravation of lumbar stenosis had

³ *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁵ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁶ *Kathryn E. Demarsh*, *supra* note 5; *James F. Weikel*, 54 ECAB 660 (2003).

⁷ FECA provides in pertinent part: 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. 5 U.S.C. § 8123(a); *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006). Where OWCP has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁸ Moreover, the record does not establish Dr. Carcano's Board-certification.

⁹ *See Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

resolved. The fact that Dr. Carcano was unable to provide specific objective evidence or physical findings upon which he relied for this conclusion further diminishes the probative value of his opinion. While his statement that appellant's accepted lumbar strain and aggravation was clear and unequivocal, he failed to offer any medical reasoning in support of his conclusion.¹⁰ The certainty with which Dr. Carcano expressed his opinion cannot overcome the lack of medical rationale.¹¹ As he did not sufficiently explain his finding that the accepted lumbar sprain and aggravation of lumbar stenosis had resolved with no residuals, his opinion is insufficient to constitute the weight of the evidence. Thus, OWCP did not meet its burden of proof to terminate wage-loss compensation and medical benefits.

CONCLUSION

OWCP improperly terminated appellant's benefits effective September 13, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 4, 2011 is reversed.

Issued: May 21, 2012
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

¹⁰ See *S.D.*, 58 ECAB 713 (2007); *Cecelia M. Corley*, 56 ECAB 662 (2005) (medical opinions not fortified by medical rationale is of little probative value).

¹¹ See *Willa M. Frazier*, 55 ECAB 379 (2004).