United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 12-1414**
	)	**Issued: February 25, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 18, 2012 appellant filed a timely appeal from an April 9, 2012 decision of the Office of Workers' Compensation Programs (OWCP) affirming the prior termination of appellant's compensation benefits. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation benefits effective November 20, 2010 on the grounds that her work-related disability had ceased; and (2) whether appellant established that she remained disabled for work on and after November 20, 2010 due to the accepted injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on June 29, 2005 appellant, then a 46-year-old letter carrier, sustained a cervical sprain, lumbar sprain, lumbar radiculitis, adhesive capsulitis of the right shoulder and right shoulder pain in a work-related motor vehicle accident.[2] Under claim File No. xxxxxx900, OWCP previously accepted that she sustained bursitis, calcific tendinitis and rotator cuff syndrome of the right shoulder due to repetitive reaching on or before March 1, 2001.[3] Appellant accepted a light-duty position in April 2001.

Dr. Scott J. Frost, an attending orthopedic surgeon, diagnosed right acromioclavicular osteoarthritis on March 1, 2001.[4] Dr. Scott Fillmore, an attending Board-certified physiatrist, submitted reports from February 12 to August 29, 2002 diagnosing adhesive capsulitis of the right shoulder and possible C5 radiculopathy. He restricted appellant to working four hours a day. Appellant accepted a full-time limited-duty job in August 2003 based on Dr. Frost's updated restrictions. In an October 27, 2003 report, Dr. Fillmore diagnosed right posterior shoulder capsulitis. He submitted reports through June 2005 noting continued symptoms, treated with trigger point injections.

Following the June 29, 2005 motor vehicle accident, appellant was followed by Dr. Edward B. McClendon, an attending family practitioner, who submitted reports from July 1 to April 18, 2007 diagnosing right bicipital tendinitis, cervical and lumbar strains.[5] Dr. Robert S. Bell, an attending Board-certified orthopedic surgeon, submitted reports from April 18 to May 31, 2007 recommending right shoulder surgery. On July 31, 2007 he performed arthroscopic debridement of the right shoulder with anterior acromionectomy. Dr. Bell noted that there was no rotator cuff tear. OWCP approved the procedure. Appellant worked between four and six hours a day from September 17, 2007 to April 10, 2008 and received wage-loss compensation for the remaining hours.

In a July 14, 2008 report, Dr. Bell diagnosed chronic impingement of the right shoulder and lumbar pain due to the combined effects of the March 2001 conditions and June 29, 2005 motor vehicle accident. He permanently restricted lifting to five pounds, with reaching above the shoulder no more than two hours a day.

---

[2] OWCP originally assigned the motor vehicle accident claim File No. xxxxxx569. It later combined File No. xxxxxx569 with File No. xxxxxx928, accepted for a single episode of major depression with anxiety occurring on or before February 13, 2001.

[3] OWCP combined claim File No. xxxxxx900 with claim File No. xxxxxx569.

[4] An April 5, 2001 magnetic resonance imaging (MRI) scan showed a right rotator cuff tear with tenosynovitis of the biceps tendon. A January 14, 2002 right shoulder arthrogram showed no rotator cuff tear in the right shoulder. An October 3, 2002 MRI scan showed mild tendinosis of the right supraspinatus tendon, a Type 2 acromion, a posterior-superior glenoid labrum tear with labral cyst and a spontaneous joint rupture. An April 17, 2003 functional capacity evaluation demonstrated that appellant could perform full-time light-duty work. A November 11, 2003 electromyogram (EMG) and nerve conduction velocity (NCV) study of her right upper extremity was normal.

[5] An April 16, 2007 MRI scan of the right shoulder showed moderate acromioclavicular joint impingement with moderate tendinopathy or strain of the distal supraspinatus tendon.

OWCP accepted a recurrence of disability beginning on October 3, 2008 due to the accepted lumbar injury. Appellant received appropriate compensation. She returned to limited-duty work four hours a day on December 20, 2008. Appellant accepted a January 9, 2009 job offer for four hours a day limited duty, entailing sedentary clerical tasks such as nixie processing. In reports from May 4 to April 5, 2010, Dr. Bell found that she was able to perform the limited-duty job for four hours a day, noting that she still had pain and weakness in the right shoulder as well as lumbar pain.

On March 24, 2010 OWCP obtained a second opinion report from Dr. James F. Hood, a Board-certified orthopedic surgeon. It also obtained a March 19, 2010 functional capacity evaluation, demonstrating that appellant could perform sedentary work with restrictions but cautioning that she did not put forth maximal effort. Dr. Hood opined that appellant's neck, right shoulder and low back complaints did not prevent her from working eight hours a day sedentary duty with lifting up to 25 pounds. He found that she should not return to her date-of-injury position due to lumbar pain and nonoccupational plantar fasciitis.

In a May 20, 2010 report, Dr. Bell related that appellant complained of unrelenting lumbar pain although a May 13, 2010 lumbar MRI scan showed no abnormalities that would explain her symptoms.[6] As serology was negative for arthritic conditions, he opined on May 27, 2010 that appellant's lumbar symptoms were "simply related to her work problems" and held her off work. OWCP accepted a recurrence of disability from May 20 to July 31, 2010.

OWCP found a conflict of medical opinion between Dr. Bell, for appellant and Dr. Hood, for OWCP, regarding the nature and extent of appellant's work-related conditions. To resolve the conflict, it selected Dr. Frank Barnes, a Board-certified orthopedic surgeon. A copy of the record and statement of accepted facts were provided for his review. In a June 17, 2010 report, Dr. Barnes reviewed the medical record and a statement of accepted facts. On examination, he found limited cervical and lumbar motion, normal strength and sensation in all extremities. Regarding the right shoulder, Dr. Barnes observed 80 degrees flexion and abduction and 90 degrees internal and external rotation, no instability or effusion and negative impingement tests. He diagnosed cervical and lumbar strains and right shoulder impingement. Dr. Barnes opined that the accepted lumbar, neck and shoulder conditions had resolved without objective residuals. He found appellant able to return to her date-of-injury position without restrictions.

In a July 14, 2010 report, Dr. Bell noted reviewing Dr. Barnes's report and concurred that appellant was able to work eight hours a day without restrictions. In a September 7, 2010 report, he opined that, as Dr. Barnes found no objective findings on testing, appellant could be released to work eight hours a day full duty.

By notice dated October 7, 2010, OWCP advised appellant that it proposed to terminate her medical and wage-loss compensation benefits, based on Dr. Barnes's report indicating that she could resume her date-of-injury job without restrictions.

In response, appellant submitted October 12, 2010 reports from Dr. Bell finding appellant unable to return to full duty due to multiple medical problems. Dr. Bell permanently restricted

[6] A May 13, 2010 lumbar MRI scan showed a minimal annular bulge at L4-5 with facet arthropathy.

her to working four hours a day with lifting limited to five pounds and a 10-minute break every 90 minutes. In a November 2, 2010 report, he asserted that he should not have allowed Dr. Barnes's opinion to alter his opinion. Dr. Bell stated that although appellant had no objective clinical findings or imaging studies supporting her severe lumbar pain symptoms, he believed that she was not malingering and required permanent work restrictions. Appellant also submitted her November 4, 2010 statement disagreeing with the proposed termination.

By decision dated November 9, 2010, OWCP terminated appellant's wage-loss compensation benefits effective November 20, 2010 on the grounds that the accepted injury had ceased without disabling residuals, based on Dr. Barnes as the weight of the medical evidence. It noted that her medical benefits remained unaffected.

In a November 30, 2010 letter, appellant requested a hearing, held March 8, 2011. At the hearing, she asserted that Dr. Barnes performed only a cursory examination and that OWCP did not accord sufficient weight to Dr. Bell's opinion as the attending physician. Appellant submitted a December 2, 2010 report from Dr. Bell noting weakness in right shoulder abduction and his February 22, 2011 report finding her lumbar symptoms remained unchanged.

By decision dated and finalized May 10, 2011, OWCP's hearing representative affirmed the November 9, 2010 decision terminating appellant's wage-loss compensation benefits. The hearing representative found that the additional evidence submitted was insufficient to outweigh Dr. Barnes's opinion as impartial medical examiner.

In a January 2, 2012 letter, appellant requested reconsideration. She asserted that new testing showed objective abnormalities competent to cause her ongoing lumbar symptoms. Appellant submitted additional evidence. In May 19, 2011 reports, Dr. Bell renewed work restrictions permanently limiting her to working four hours a day. He explained that appellant needed additional imaging studies as prior findings did not reveal the source of her lumbar pain. A May 27, 2011 MRI scan of the pelvis showed mild bilateral trochanteric bursitis with mild arthritic changes in the sacroiliac joints bilaterally. In a June 14, 2011 report, Dr. Bell opined that the May 27, 2011 MRI scan showed irregularities of the sacroiliac joints. He restricted appellant to working four hours a day. On July 11, 2011 Dr. Bell diagnosed sclerosis of the sacroiliac joints bilaterally that could account for her lumbar pain symptoms. In an August 9, 2011 report, he related appellant's account of spending the previous 10 days in bed due to back pain and that she was pursuing retirement. Dr. Bell noted on November 15, 2011 that she was wearing a back brace and could not return to her previous job. In February 14, 2012 reports, he limited appellant to working four hours a day with restrictions.

By decision dated April 9, 2012, OWCP affirmed its May 10, 2011 decision on the grounds that the additional evidence submitted was insufficient to outweigh that of Dr. Barnes as impartial medical examiner. It noted that Dr. Bell frequently changed his opinion and did not explain how any objective findings were occupationally related or competent to disable appellant for work.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[7] Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[8]

Section 8123(a) of FECA provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.[9] When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.[10] In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[11]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a cervical sprain, lumbar sprain, lumbar radiculitis, bursitis, adhesive capsulitis, calcific tendinitis and rotator cuff syndrome of the right shoulder.

Through April 2007, appellant was followed for neck pain, low back pain and adhesive capsulitis of the right shoulder by Dr. Frost, an orthopedic surgeon, Dr. Fillmore, a Board-certified physiatrist and Dr. McClendon, a family practitioner. Dr. Bell, an attending Board-certified orthopedic surgeon, performed arthroscopic debridement of the right shoulder with anterior acromionectomy on July 31, 2007. As of July 14, 2008, he permanently restricted appellant to lifting no more than five pounds, with reaching above the shoulder limited to two hours a day. Appellant performed part-time light-duty work through April 2010 within Dr. Bell's restrictions.

Later, OWCP referred appellant to Dr. Hood, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Hood submitted a March 24, 2010 report finding no objective evidence of the accepted cervical, lumbar and right shoulder injuries. He opined that appellant could perform full-time sedentary work. Dr. Bell submitted May 2010 reports holding her off work due to lumbar pain of undetermined etiology.

---

[7] *Bernadine P. Taylor*, 54 ECAB 342 (2003).

[8] *Id*.

[9] 5 U.S.C. § 8123(a); *Robert W. Blaine*, 42 ECAB 474 (1991).

[10] *Delphia Y. Jackson*, 55 ECAB 373 (2004).

[11] *Anna M. Delaney*, 53 ECAB 384 (2002).

OWCP found a conflict of opinion between Dr. Bell, for appellant and Dr. Hood, for OWCP, regarding the nature and extent of any work-related disability. It selected Dr. Barnes, a Board-certified orthopedic surgeon, to resolve the conflict. Dr. Barnes submitted a June 17, 2010 report finding no objective clinical findings of the accepted neck, back and right shoulder conditions. He opined that appellant could therefore return to her date-of-injury position without restrictions.

Based on this report, OWCP issued an October 7, 2010 notice of proposed termination. Appellant submitted October and November 2010 reports from Dr. Bell asserting that appellant was not malingering although there was no pathophysiologic explanation for her symptoms. OWCP then issued a November 9, 2010 decision terminating appellant's compensation benefits, based on Dr. Barnes's opinion as the weight of the medical evidence.

The Board finds that Dr. Barnes' opinion was sufficient to represent the weight of the medical evidence as it was detailed, well rationalized and based on a complete factual and medical history.[12] Dr. Barnes reviewed the evidence and indicated that he found no objective findings to support work-related disability. Appellant's physicians did not provide medical rationale supporting a continuing disability related to the accepted injuries. Although Dr. Bell found appellant partially or totally disabled for work, he did not explain how and why objective residuals of the accepted injuries continued to disable her for work. He stated repeatedly that he could find no objective cause for her subjective complaints. Thus, the Board finds that OWCP met its burden of proof in terminating appellant's compensation benefits.

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.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.[13] For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation.[14] The fact that a condition's etiology is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence, nor shifts the burden of proof of OWCP to disprove an employment relationship.[15]

[12] *Conard Hightower*, 54 ECAB 796 (2003).

[13] *See Virginia Davis-Banks*, 44 ECAB 389 (1993); *see also Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

[14] *Alice J. Tysinger*, 51 ECAB 638 (2000).

[15] *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

ANALYSIS -- ISSUE 2

By November 9, 2010 decision, OWCP terminated appellant's wage-loss compensation effective November 20, 2011 on the grounds that the accepted injuries had ceased without residuals. The burden now shifts to appellant to demonstrate that she continued to be disabled for work on and after November 20, 2011 due to the accepted June 29, 2005 and March 1, 2011 injuries.[16]

Pursuant to a November 30, 2010 request for hearing and a January 2, 2012 request for reconsideration, appellant submitted additional reports from Dr. Bell, an attending Board-certified orthopedic surgeon. In reports from December 2, 2010 to February 14, 2012, Dr. Bell found her partially or totally disabled for work. He opined on June 14 and July 10, 2011 that bilateral sacroiliac joint changes/irregularities could account for appellant's lumbar pain. However, Dr. Bell did not explain if or why he believed these changes were related to the accepted injuries. OWCP denied modification by decision dated April 9, 2012, finding that Dr. Barnes' opinion as impartial medical examiner established that the accepted injuries had ceased without residuals.

The Board finds that OWCP properly found that appellant did not establish a continuing disability for work on and after November 20, 2011, based on Dr. Barnes' opinion as impartial medical examiner. Dr. Barnes provided a detailed report, based on a complete and factual medical history, explaining that there were no objective signs of the accepted injuries. Although Dr. Bell supported continuing disability for work, he did not explain how and why the accepted cervical, lumbar and right shoulder injuries would disable appellant on and after November 20, 2011. Furthermore, the Board has held that submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.[17] Therefore, OWCP correctly found that appellant did not establish continuing work-related disability on and after November 20, 2010.

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation benefits effective November 20, 2010 on the grounds that her work-related disability had ceased. The Board further finds that appellant has not established that she remained disabled for work on and after November 20, 2010 due to the accepted injuries.

[16] *Virginia Davis-Banks*, *supra* note 13.

[17] *S.J.*, Docket No. 09-1794 (issued September 20, 2010).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 9, 2012 is affirmed.

Issued: February 25, 2013
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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