

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

C.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
New Paris, OH, Employer)

**Docket No. 12-1572
Issued: February 21, 2013**

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

MICHAEL E. GROOM, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 16, 2012 appellant, through her attorney, filed a timely appeal from a June 13, 2012 decision of the Office of Workers' Compensation Programs (OWCP) affirming the termination of her compensation benefits. 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 the case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's compensation benefits for her accepted injury effective March 16, 2011.

FACTUAL HISTORY

On May 9, 2006 appellant, then a 31-year-old part-time flexible carrier, filed an occupational disease claim alleging low back pain as a result of carrying a heavy mailbag and

¹ 5 U.S.C. §§ 8101-8193.

walking distances. She became aware of her condition on September 24, 2004 and realized it was causally related to her employment on May 9, 2006. OWCP accepted appellant's claim for aggravation of mild lumbar scoliosis with intermittent left S1 radiculitis over multilevel bulging lumbar discs. Appellant stopped work on August 20, 2008 and returned to limited duty on May 11, 2009.

Appellant was treated by Dr. David K. Johnson, a Board-certified physiatrist, from July 19, 2006 to March 23, 2007. Dr. Johnson diagnosed mild scoliosis, intermittent left S1 radiculitis with multilevel bulging discs in the lower lumbar spine and aggravation of the above condition associated with her work activities. He performed an electromyogram (EMG), which revealed no abnormalities and recommended medications and physical therapy. A July 13, 2006 magnetic resonance imaging (MRI) scan of the lumbar spine revealed mild multilevel circumferential disc bulging from L3-4 through L5-S1 and mild disc desiccation at L5-S1. A June 10, 2008 MRI scan revealed L5-S1 degeneration of the intervertebral disc without evidence of herniation, stenosis or significant nerve root encroachment.

Appellant came under the treatment of Dr. James B. Hoover, a Board-certified orthopedic surgeon, for low back pain which developed after years of carrying a mailbag and prolonged walking at work. Dr. Hoover diagnosed lumbosacral neuritis, scoliosis, lumbosacral or sacroiliac sprain and sacroiliac dysfunction on the left side. He opined that appellant's work duties including delivering mail aggravated her back problems and that she was totally disabled from August 19, 2008 to May 11, 2009 when she returned to a limited-duty position.² On May 19, 2009 Dr. Hoover opined that she reached maximum medical improvement. In reports February 18 and March 2, 2010, he diagnosed lumbosacral neuritis and scoliosis. Dr. Hoover noted that appellant experienced an exacerbation of her condition and was disabled from February 28 to March 9, 2010.

On March 4, 2010 OWCP referred appellant to Dr. Gregory Fisher, a Board-certified orthopedic surgeon, to determine if the accepted conditions had resolved. In a March 25, 2010 report, Dr. Fisher reviewed the records provided and statement of accepted facts. He noted findings on examination of decreased range of motion of the lumbar region, positive Faber test on the left side and minimally positive straight leg raises on the left side. Dr. Fisher diagnosed mild degenerative disc disease at L5-S1 as noted on the MRI scan of June 2008 and myofascial pain syndrome from chronic left sacroiliitis. He noted that the mild scoliosis over the lumbar area was only noted on an x-ray by a chiropractor in 2006 and not confirmed on three MRI scans taken in 2007 to 2008 and therefore was no longer present. Dr. Fisher asserted that the intermittent left S1 radiculitis healed and resolved as it was not present on examination or the EMG in 2007. He opined that the accepted work-related condition of aggravation of mild lumbar scoliosis with intermittent left S1 radiculitis over multilevel bulging discs resolved as the MRI scan in June 2008 revealed no disc herniations, stenosis or nerve root encroachment but simply mild degenerative disc disease over L5-S1. Dr. Fisher noted that there were no objective findings to support work-related residuals and appellant's complaints of left S1 joint pain was

² On August 11, 2009 the employing establishment offered appellant a limited-duty customer service/administrative support position, which she accepted.

due to chronic left sacroiliitis and unrelated to the September 28, 2004 work injury. He advised that since the work-related conditions resolved medical treatment was not medically necessary.

OWCP found that a conflict of medical opinion existed between Dr. Hoover, who found that appellant had residuals of her work-related injuries and was partially disabled and Dr. Fisher, who determined that her accepted conditions had resolved and she could return to work without restrictions.

On May 3, 2010 OWCP referred appellant to a referee physician, Dr. Alan R. Kohlhaas, a Board-certified orthopedic surgeon. In a May 19, 2010 report, Dr. Kohlhaas reviewed the record, including the history of her work injury and statement of accepted facts. In reviewing the record, he detailed findings of diagnostic testing, including the normal July 2006 EMG and the July 2006 lumbar MRI scan, which made no mention of scoliosis. Examination revealed ambulation without difficulty, no sign of scoliosis, tenderness of the left S1 joint, limited range of motion of the lumbar spine and negative straight leg raises. Dr. Kohlhaas opined that appellant did not have residuals of the accepted aggravation of mild lumbar scoliosis with intermittent left S1 radiculitis as the physical examination was normal. He noted that there was no x-ray confirmation of scoliosis and the left S1 radiculitis was no longer present on examination or EMG study. Dr. Kohlhaas further noted that multilevel bulging discs were present based on the lumbar MRI scans but they had resolved clinically and were no longer symptomatic. He advised that appellant could not return to her regular duties as a part-time flexible letter carrier because of the lifting required but could return to work subject to restrictions. Dr. Kohlhaas advised that she required no further treatment for the accepted work conditions of September 28, 2004.

Appellant submitted reports from Dr. Hoover dated March 24 to August 6, 2010. Dr. Hoover diagnosed lumbosacral neuritis, scoliosis, sacroiliitis and sacroiliac dysfunction as a consequence of her work injury. He opined that all the diagnoses were a direct result of appellant's work injury and work activities. In a May 3, 2010 duty status report, Dr. Hoover diagnosed neuritis and advised that she could return to work part time with restrictions.

OWCP requested a supplemental report from Dr. Kohlhaas clarifying his findings. In a November 12, 2010 report, Dr. Kohlhaas noted that the physical findings of tenderness of the left S1 joint were not related to the accepted work injury and were subjective in nature.

In reports dated November 12, 2010 and January 17, 2011, Dr. Hoover diagnosed lumbosacral neuritis, scoliosis and sacroiliitis and opined that she was temporarily disabled due to her work injury. He advised that her employer had no modified work for her starting September 8, 2010.

On January 28, 2011 OWCP proposed to terminate appellant's compensation benefits finding that Dr. Kohlhaas found that her work-related condition had resolved without residuals.

In a February 10, 2011 statement, appellant asserted that she could no longer carry mail. She disagreed with the proposed termination, contending that her lumbosacral neuritis had not resolved. In a January 26, 2010 report, Dr. Hoover diagnosed scoliosis, lumbosacral neuritis, sacroiliitis, myofascial pain syndrome, nonallopathic lesions in the sacral region and sacroiliac

region sprain. He opined that the diagnosed conditions were the result of the work injury of September 2004 and they remained symptomatic and caused disability. In a February 4, 2011 report, Dr. Hoover reiterated the diagnosed conditions requiring work restrictions.

In a decision dated March 16, 2011, OWCP terminated appellant's compensation benefits effective that day finding that the medical evidence established that she had no continuing residuals of her accepted conditions.

On March 25, 2011 appellant requested an oral hearing, which was held on June 21, 2011. In reports dated March 16 and April 27, 2011, Dr. Hoover listed her diagnoses and opined that she was permanently disabled due to her work injury. In a May 20, 2011 report, he reviewed Dr. Fisher's report and disagreed with his conclusion that appellant's work-related condition resolved. Dr. Hoover noted objective evidence supported that her conditions were active.

In a decision dated August 30, 2011, an OWCP hearing representative affirmed the March 16, 2011 decision.

Appellant appealed her claim to the Board. In a decision dated May 23, 2012, the Board set aside the August 30, 2011 decision, finding that OWCP failed to consider all the evidence submitted at the time of the decision.³

In a decision dated June 13, 2012, an OWCP hearing representative affirmed the March 16, 2011 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ After it has determined that an employee has disability causally related to his or 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 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, which requires further medical treatment.⁶

ANALYSIS

OWCP accepted appellant's claim for aggravation of mild lumbar scoliosis with intermittent left S1 radiculitis over multilevel bulging lumbar disc. It determined that a conflict

³ Docket No. 12-13 (issued May 23, 2012).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁶ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

in medical opinion existed between appellant's attending physician, Dr. Hoover, who indicated that she sustained residuals of her work-related injuries and was disabled from work and Dr. Fisher, who determined that her accepted conditions had resolved and she could return to work without restrictions related to her accepted injuries. OWCP referred appellant to Dr. Kohlhaas to resolve the conflict.

In a May 19, 2010 report, Dr. Kohlhaas reviewed appellant's history, reported findings and noted that she exhibited no objective complaints or findings due to the accepted conditions. He opined that the physical examination was normal and she did not have residuals of the accepted work-related condition of aggravation of mild lumbar scoliosis with intermittent left S1 radiculitis over multilevel bulging lumbar disc. Dr. Kohlhaas noted that there was no x-ray confirmation of scoliosis and the left S1 radiculitis was no longer present on examination or EMG study. He further noted that multilevel bulging discs were present based on the lumbar MRI scans; however, there were no clinical findings and therefore they were no longer symptomatic. Dr. Kohlhaas advised that appellant could not return to her regular duties as a part-time flexible letter carrier because of the lifting required but could return to work subject to restrictions. He advised that she required no further treatment for the accepted work conditions of September 28, 2004. In a supplemental report dated November 12, 2010, Dr. Kohlhaas noted that the physical findings were not related to the accepted work injury and were subjective in nature.⁷

The Board finds that, under the circumstances of this case, the opinion of Dr. Kohlhaas is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that disabling residuals of appellant's work-related conditions have ceased. 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

The Board finds that Dr. Kohlhaas had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Kohlhaas clearly opined that appellant had no work-related disability. His opinion as set forth in his reports of May 19 and November 12, 2010 is probative evidence and reliable. The Board finds that Dr. Kohlhaas' opinion constitutes the special weight of the medical evidence and supports OWCP's termination of wage-loss and medical benefits for the accepted conditions.

In reports from January 26 to February 4, 2011, Dr. Hoover set forth appellant's diagnoses and stated that they were the result of the work injury of September 2004. He set forth work restrictions that he attributed to residents of her accepted conditions. While Dr. Hoover generally supported that appellant continuing symptoms due to the work injury, his opinion on

⁷ See *Guiseppe Aversa*, 55 ECAB 164 (2003) (where OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original opinion).

⁸ *Solomon Polen*, 51 ECAB 341 (2000). See 5 U.S.C. § 8123(a).

causal relationship was conclusory without any additional explanation as to how the accepted conditions remained symptomatic or caused disability.⁹ The Board notes that OWCP did not accept lumbosacral neuritis or sacroiliitis as being work related.¹⁰ Moreover, Dr. Hoover was on one side of the conflict that gave rise to the referral to Dr. Kohlhaas. His reports are insufficient to overcome the opinion of Dr. Kohlhaas or to create a new medical conflict.¹¹

The Board finds that Dr. Kohlhaas' opinion constitutes the weight of the medical evidence.

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 benefits effective March 16, 2011.

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁰ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted or approved by OWCP, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury).

¹¹ See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Hoover's report did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 13, 2012 is affirmed.

Issued: February 21, 2013
Washington, DC

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

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

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