

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

L.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, New York, Employer**

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**Docket No. 13-1839
Issued: January 8, 2014**

Appearances:

*Thomas S. Harkins, 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 August 5, 2013 appellant, through her attorney, filed a timely appeal from a May 13, 2013 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 the case.

ISSUES

The issues are: (1) is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 21, 2012; and (2) whether appellant had continuing benefits after February 21, 2012.

FACTUAL HISTORY

On July 26, 2004 appellant, then a 43-year-old carrier, filed a traumatic injury claim alleging that on July 21, 2004 the freight elevator door closed while she was entering and it struck her head. She alleged injuries to her head, neck, back and shoulder. OWCP accepted

¹ 5 U.S.C. § 8101 *et seq.*

appellant's claim for the conditions of headache, cervical radiculopathy and lumbar radiculopathy. Appellant stopped work following the injury. She returned to limited duty for six hours a day on February 7, 2005 and stopped work the next day, February 8, 2005. On April 4, 2005 OWCP accepted appellant's recurrence of disability claim. Appellant has not returned to work.

OWCP referred appellant for a second opinion evaluation on September 13, 2011. In a September 23, 2011 report, Dr. Michael J. Carciente, a Board-certified neurologist, noted the history of her injury, reviewed the medical records and reported findings on neurological examination. He opined that appellant had a normal neurologic examination with no objective neurological findings such as myotomal weakness, dermatomal sensory deficits, asymmetric reflexes or atrophy supporting the presence of a radiculopathy. Therefore, Dr. Carciente found no evidence of disabling neurological residuals from the work injury and opined that she was capable, from a neurologic perspective, of performing her date-of-injury position without restrictions. He concluded his report by stating that no additional neurological care or diagnostic testing was needed to treat the accepted conditions as maximum medical improvement had been reached from a neurologic perspective as of September 13, 2011.

Following the second opinion examination, OWCP received several medical reports from Dr. Igor Stiler, a Board-certified neurologist, dated May 12, July 21, September 8, October 20 and December 15, 2011. In his May 12, 2011 report, Dr. Stiler stated that appellant still suffered from pain in her lumbar spine, greater than neck pain. He noted that she had been performing low impact type of physical activity at the gym. Dr. Stiler presented examination findings and concluded that appellant had a moderate permanent partial disability and could return to work with restrictions. His other reports indicated his findings on physical examination and that she has a moderate partial disability.

On December 22, 2011 OWCP requested that Dr. Carciente provide an addendum report after he reviewed the May 18, 2011 statement of accepted facts and the date-of-injury position description. In a December 29, 2011 addendum report, Dr. Carciente noted his review of the additional records and stated that his impression contained in his September 23, 2011 report was unchanged as appellant had a normal neurological examination with no objective neurological findings.

In a letter dated January 13, 2012, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Carciente's reports.

In a February 8, 2012 letter, appellant's attorney disagreed with OWCP's proposed termination.

By decision dated February 21, 2012, OWCP terminated appellant's compensation and medical benefits effective February 21, 2012 based on Dr. Carciente's reports.

On February 12, 2013 appellant's attorney requested reconsideration. He argued that the case should be expanded to include additional medical conditions and that a conflict in medical opinion exists between the new reports from Dr. Stiler and the second opinion physician.

In a September 11, 2012 report, Dr. Stiler noted that he first examined appellant on August 5, 2004 for her work-related injuries resulting from the July 21, 2004 incident and

summarized his examination findings throughout the years. Based on the history of injury, his examination findings of her and his review of records, including magnetic resonance imaging (MRI) scans from August 5 through 30, 2012, Dr. Stiler diagnosed traumatic cervical radiculopathy with C3-4 herniated disc, C4-5 herniated disc and C5-6 bulging disc; and traumatic lumbar radiculopathy with right L3-4 herniated disc and L4-5 bulging disc. He stated that, while appellant's symptoms had waxed and waned in severity over the years, they never completely improved. As of the last examination of August 30, 2012, Dr. Stiler indicated that there appeared to be deterioration in her status with further spasm and pain. He opined that appellant had permanent injuries to the cervical and lumbar spine as proven by the disc herniation and was totally disabled from employment.

In a January 15, 2013 addendum, Dr. Stiler indicated that, since his September 11, 2012 report, appellant had additional diagnostic studies performed. He indicated that the September 13, 2012 cervical spine MRI scan revealed disc herniations and that the disc herniation on the left at C5-6 was due to worsening progression of the cervical spinal pathology that was produced as a result of the July 21, 2004 traumatic injury. Dr. Stiler also indicated that the December 24, 2012 lumbar MRI scan revealed disc herniation and that the enlargement of the L3-4 disc herniation was due to worsening progression of the lumbar spinal pathology that was produced as a result of the July 21, 2004 traumatic injury.

OWCP determined that a conflict in medical opinion existed between Dr. Stiler and Dr. Carciente regarding continuing disability and need for treatment due to the July 21, 2004 employment injury and referred appellant, the medical record, a February 20, 2013 statement of accepted facts and a list of questions to Dr. Vladimir Zlatnik, a Board-certified neurologist, for an impartial medical evaluation.

In an April 3, 2013 report, Dr. Zlatnik noted the history of injury, his review of the medical records and provided examination findings. He provided an impression of status post-accident on the job. Dr. Zlatnik found no clinical signs of traumatic central nervous symptom or peripheral nervous system dysfunction. He indicated that the neurological examination was within normal limits with no focal traumatic motor, sensory or coordination deficits. Dr. Zlatnik stated that there was cervical and lumbar sacral sprain and herniated nucleus pulposus, possibly due to degenerative joint disease. Head trauma was without neurological deficit and left shoulder injury, contusion, with possible derangement. Dr. Zlatnik opined that appellant was not disabled from a neurological standpoint. He indicated that he could not comment on appellant's shoulder pain and her neck and back as they may represent degenerative joint disease and mechanical problems, such as mechanical low back pain, mechanical cervicgia and left shoulder derangement. Dr. Zlatnik recommended that questions related to problems with this pain should be addressed to an orthopedic specialist. He opined that appellant reached maximum medical improvement and there was no need for treatment related to neurological problems.

In an April 10, 2013 letter, OWCP requested an addendum from Dr. Zlatnik as he failed to respond to its questions. In an April 16, 2013 addendum, Dr. Zlatnik indicated that there was a causal relationship with appellant's condition and the work injury with an exception: the abnormalities on MRI scan of cervical and lumbar spine may be preexisting condition and which might contribute to her complaints and problems. He found that there were no signs of neurological disability because there was no specific neurological deficit on his neurological examination. Appellant was nonfocal with no signs of traumatic PNS or CNS dysfunction found

on examination. Dr. Zlatnik noted the abnormalities found on MRI scan, which may be a reflection of her age and hereditary predilection and related to her life and work, which is not transferred to neurological abnormalities and findings, but may be reflected in her pain and disability due to mechanical reasons.

Dr. Zlatnik opined that appellant was able to perform her regular work duties of her regular employment from a neurological standpoint. He could not comment on her shoulders and degenerative disc disease in the cervical and lumbosacral spine, as an orthopedic surgeon would be more appropriate. Dr. Zlatnik advised that appellant was under treatment for almost 10 years without significant improvement. If there was no significant improvement or benefit from treatment, then it was logical to conclude that conservative treatment should be discontinued.

Dr. Zlatnik indicated that appellant may suffer from degenerative joint disease due to multiple factors and this degenerative joint disease may interfere in her well-being and quality of life as well as performance. He again indicated that this question should be addressed to an orthopedic specialist as no neurologic deficit was found. Dr. Zlatnik opined that appellant reached maximum medical improvement from treatment and that she would be able to perform full duties from a neurological standpoint. He reiterated that she may suffer from other conditions which may interfere with her abilities, but those questions should be explored by an appropriate specialist.

By decision dated May 13, 2013, OWCP denied modification of its February 21, 2012 decision. It advised that the weight of the medical evidence, as represented by Dr. Zlatnik's impartial opinion, established that her accepted conditions had ceased and that she had no work-related residuals stemming from the conditions.²

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.³ It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴ OWCP's 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

² The February 21, 2012 effective date of the termination of appellant's compensation benefits remained the same.

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).

establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁷

Section 8123(a) provides that, if there is a 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.⁸ It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁹

ANALYSIS

OWCP accepted that appellant sustained the conditions of headache, cervical radiculopathy and lumbar radiculopathy as arising out of the July 21, 2004 employment incident. It also accepted a recurrence of disability of February 8, 2005 and she has remained out of work ever since. OWCP paid medical benefits and subsequently referred appellant to Dr. Carciente for a second opinion. Relying on Dr. Carciente's report as the weight of medical evidence, OWCP terminated her wage-loss and medical benefits effective February 21, 2012.

OWCP subsequently determined that a conflict in medical opinion evidence existed between appellant's treating physician, Dr. Stiler and its second opinion physician, Dr. Carciente, as to whether she had residuals of her July 21, 2004 work injury. It properly referred appellant to Dr. Zlatnik for an impartial medical evaluation as to whether her accepted neurologic conditions had ceased.¹⁰ Based on the opinion of Dr. Zlatnik, OWCP denied modification of its February 21, 2012 termination decision.

In an April 3, 2013 report, Dr. Zlatnik provided an accurate history of the July 21, 2004 employment injury and reviewed appellant's medical records. He found no clinical signs of traumatic central nervous symptom or peripheral nervous system dysfunction. Dr. Zlatnik also found that the neurological examination was within normal limits with no focal traumatic motor, sensory or coordination deficits. Head trauma was without neurological deficit and left shoulder injury, contusion, with possible derangement. Dr. Zlatnik opined that appellant reached maximum medical improvement, that she was not disabled from a neurological standpoint and did not need any treatment related to neurological problems. He noted that while there was cervical and lumbar sacral sprain and herniated nucleus pulposus and shoulder, back and neck pain, such conditions may be the result of other problems which an orthopedic specialist could address. In an April 16, 2013 addendum, Dr. Zlatnik responded to OWCP's specific questions. He reiterated that there were no signs of neurological disability on his neurological examination as there was no specific neurological deficit. Thus, Dr. Zlatnik opined that appellant reached maximum medical improvement and was able to perform her regular duties from a neurological deficit. He opined that an orthopedic specialist should be able to address her other conditions

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

⁸ *Regina T. Pellecchia*, 53 ECAB 155 (2001).

⁹ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

¹⁰ *See* 5 U.S.C. § 8123(a).

pertaining to her shoulders and degenerative disc disease in her cervical and lumbosacral spine. Dr. Zlatnik further opined that conservative treatment should be discontinued as appellant was under treatment for approximately 10 years without significant improvement.

The Board finds that Dr. Zlatnik's opinion represents the special weight of medical opinion evidence that appellant no longer had residuals or disability of the accepted conditions related to the July 21, 2004 employment injury. Dr. Zlatnik reviewed her history and accurately described the July 21, 2004 employment injury. He conducted an examination and found that the objective evidence did not establish that appellant continued to suffer residuals or disability from her work-related injury. Dr. Zlatnik explained that she had no signs of neurological disability as there was no neurological deficit on examination and that she had reached maximum medical improvement. He also concluded that no further medical treatment would be necessary or appropriate. While Dr. Zlatnik identified conditions pertaining to appellant's shoulders and degenerative disc disease in her cervical and lumbosacral spine, he indicated that an orthopedic specialist should be able to address any questions pertaining to those conditions. His opinion is sufficiently probative, rationalized and based on a proper factual background. Therefore, OWCP properly accorded Dr. Zlatnik opinion the special weight of an impartial medical examiner.¹¹ The Board therefore finds that his opinion constituted the weight of medical opinion.

On appeal, counsel argues that OWCP should have referred appellant to an orthopedic specialist prior to issuing its decision. Contrary to appellant's argument on appeal, OWCP does not have an obligation to refer appellant to an orthopedic specialist as the claim has not been accepted for any orthopedic conditions, such as degenerative joint disease and herniated disc. Counsel additionally contends that Dr. Zlatnik's report dated April 3, 2013 contained an inaccurate history of injury and submitted a May 28, 2013 statement by appellant. However, Dr. Zlatnik had a copy of her complete medical record and an accurate statement of accepted facts upon which he based his opinion. Appellant also argued that the class of accepted conditions should be expanded to include all conditions referenced by appellant's treating physician. However, for conditions not accepted by OWCP as being employment related, it is the claimant's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.¹²

The Board finds that OWCP met its burden of proof to terminate 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.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation and wage-loss benefits.

¹¹ *Gary R. Seiber*, 46 ECAB 215 (1994).

¹² *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2014
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