

FACTUAL HISTORY

This is the second appeal before the Board. In a May 16, 2014 decision, the Board set aside an OWCP decision dated January 22, 2013 and remanded the claim for further medical development.³ The Board found that there was a conflict in medical opinion between Dr. Peter J. Millheiser, OWCP's referral physician, and Dr. Eddie Sassoon, appellant's treating physician, regarding whether appellant had residuals of her accepted back contusion and whether she could return to work.⁴ The Board instructed OWCP to refer her to a referee physician to resolve the conflict of opinion. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.⁵

To resolve the conflict, on August 8, 2014, OWCP referred appellant to Dr. Orestes G. Rosabal, a Board-certified orthopedist. In a September 10, 2014 report, Dr. Rosabal noted reviewing the record and a history of her work-related injury and conducted an examination. Physical examination of the thoracolumbar spine revealed unrestricted motion without any significant pain behavior, mild tenderness along the midline from L4 to the coccyx, bilateral negative straight leg raises, and no focal motor or sensory deficits in the legs. Lower extremity deep tendon reflexes at the knees and ankles were absent without pathological reflexes. Dr. Rosabal opined that appellant's lumbar contusion had resolved without residuals. He noted that appellant reported persistent, significant low back pain on a fairly regular basis with significant ongoing right shoulder pain. Dr. Rosabal advised that these comments, coupled with her fairly benign physical findings, were consistent with symptom magnification. He noted that x-rays of the thoracolumbar spine revealed evidence of multilevel degenerative disc disease in the upper third and lower third of the thoracic spine with no other abnormalities. Dr. Rosabal diagnosed resolved lumbar contusion related to the December 4, 2009 incident, chronic low back pain associated with multiple lumbar disc herniations noted on a June 10, 2010 magnetic resonance imaging (MRI) scan, and symptom magnification. He noted the physical examination revealed appellant's cervical spine and right shoulder examination was completely benign. Dr. Rosabal opined that based on his review of appellant's x-ray, lumbar MRI scan reports, and medical records and the statement of accepted facts, he did "not have any significant objective conclusions that would support" appellant's disability from February 21, 2010 through May 6, 2011. He further opined that it was more likely than not that appellant was capable of working as a mail processing clerk during that period. Dr. Rosabal advised that the lumbar contusion had resolved without residuals.

In a September 30, 2014 decision, OWCP denied appellant's claim for wage loss on or after February 21, 2010 based on Dr. Rosabal's report finding no basis to support work-related disability after February 21, 2010.

³ Docket No. 13-1787 (issued May 16, 2014).

⁴ Dr. Sassoon consistently supported work-related disability and restrictions related to appellant's lumbar condition, while Dr. Millheiser found that appellant has no work-related residuals of the accepted injury and could return to full-time work. Therefore, the Board found that a conflict in medical opinion existed.

⁵ On December 4, 2009 appellant, then a 44-year-old mail processing clerk, injured her back when she fell on the workroom floor. OWCP accepted a contusion of the back.

LEGAL PRECEDENT

A claimant has the burden of proof to establish that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.⁶ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.⁷ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁸ To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.⁹

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and compensation entitlement. For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled for work as a result of the accepted employment injury.¹⁰

Section 8123 of FECA provides that, 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.¹¹ When there exist 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 upon a proper factual background, must be given special weight.¹²

ANALYSIS

OWCP accepted appellant's claim for contusion of the low back. Appellant stopped work on February 21, 2010 and claimed wage-loss compensation. OWCP denied her wage-loss claim for the period beginning February 21, 2010 based on the opinion of Dr. Millheiser, a second opinion physician. The Board found a conflict in medical opinion between appellant's

⁶ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Id.*

⁸ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ C.S., Docket No. 08-2218 (issued August 7, 2009).

¹⁰ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹¹ 5 U.S.C. § 8123.

¹² *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Bernadine P. Taylor*, 54 ECAB 336 (2003); *Karen L. Yeager*, 54 ECAB 317 (2003); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

treating physician and the second opinion physician as to whether appellant had work-related disability and restrictions related to her lumbar condition. To resolve the conflict, it properly referred her to Dr. Rosabal for an impartial examination and relied on his opinion to find that her disability as of February 21, 2010 was not causally related to her accepted lumbar contusion.

The Board finds that the opinion of Dr. Rosabal is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's total disability as of February 21, 2010 was not causally related to her accepted low back condition. As noted, 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.¹³

Dr. Rosabal provided findings on examination and conducted a thorough review of appellant's medical treatment. In his September 10, 2014 report, he diagnosed resolved lumbar contusion related to the incident on December 4, 2009 and chronic low back pain associated with multiple disc herniations. Dr. Rosabal conducted a thorough physical examination which revealed no deficits. He noted that x-rays of the thoracolumbar spine revealed evidence multilevel degenerative disc disease, but found no basis on which to support appellant's disability from February 21, 2010 through May 6, 2011. Dr. Rosabal further opined that it was more likely than not that she was capable of working as a mail processing clerk during that period. He noted that he based his opinion on his judgment and experience, his review of appellant's x-rays and lumbar MRI scan reports, his review of her history, and the fairly benign physical findings.

The Board has carefully reviewed Dr. Rosabal's opinion and notes that it has reliability, probative value, and convincing quality with respect to his conclusions regarding the relevant issue in this case. Dr. Rosabal's opinion is sufficiently rationalized and based on a proper factual and medical history in that he reviewed the medical record and statement of accepted facts, and provided a thorough and factual medical history. His report is entitled to special weight with regard to establishing whether appellant's disability as of February 21, 2010 was causally related to her work injury. Consequently, OWCP properly denied her claim for wage-loss compensation beginning February 21, 2010.

On appeal appellant asserts that OWCP's decision was incorrect and based upon flawed findings of fact and conclusions of law as the referee physician noted herniated discs on an MRI scan of the lumbar spine, but did not address whether the herniated discs were work related. The Board notes that Dr. Rosabal advised that thoracolumbar x-rays performed for him showed degenerative disc disease, but these conditions were not attributed to appellant's employment. OWCP has not accepted the herniated discs as employment related.¹⁴

¹³ *Id.* See 5 U.S.C. § 8123(a).

¹⁴ Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB 200 (2004).

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 appellant has failed to establish that his disability for the period beginning February 21 to July 23, 2010 is causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2014 is affirmed.

Issued: August 27, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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