United States Department of Labor
Employees' Compensation Appeals Board

D.Q., Appellant	)	
and	)	**Docket No. 17-1302**
	)	**Issued: March 12, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MI, Employer	)	

Appearances:
Stephen Larkin, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 28, 2017 appellant, through her representative, filed a timely appeal from a March 3, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 3, 2017.

FACTUAL HISTORY

On January 20, 2015 appellant, then a 64-year-old driver, filed a traumatic injury claim (Form CA-1) alleging that on December 31, 2014, she was struck by a "power ox," a mail moving machine, which knocked her down and caused foot, leg, back, and elbow injuries. The medical evidence reflects that she was treated in an emergency room by Dr. Brett A. Gamma, a Board-certified emergency room physician, on December 31, 2014, for right foot and right elbow pain. Appellant reported being knocked down by a mail moving power ox at work. An x-ray of the right foot revealed no evidence of displaced fracture. Dr. Gamma diagnosed acute foot pain of the right foot and arm contusion. On January 23, 2015 appellant saw Dr. Eric G. Dawson, an orthopedic surgeon, who treated her for low back pain, right elbow pain, and headaches. Dr. Dawson noted the December 31, 2014 incident and advised that she did not lose consciousness. He diagnosed lumbar discopathy.

OWCP accepted appellant's claim for sprain of the neck, thoracic spine, lumbar spine, and unspecified site of the right elbow and forearm. Appellant stopped work on December 31, 2014 and returned on January 12, 2015. She stopped work again on January 23, 2015 and returned to full-time duty with restrictions on March 30, 2015. OWCP paid appellant wage-loss compensation for this period.

Appellant came under the treatment of Dr. Eric L. Weisbrot, a family practitioner, from April 7, 2015 to May 18, 2016, for the neck and back injuries sustained at work on December 31, 2014. She reported being struck by a "power ox" that spun out of control and knocked her to the ground. Appellant landed on her right side, hitting her head. Her history was significant for left foot surgery in 2012 and lumbar fusion in 2001. Dr. Weisbrot noted findings of paracervical tenderness, restriction range of motion, increased cervicodoral discomfort, healed thoracic spine scars, paralumbar tenderness, tenderness of the right elbow, and decreased right hand grip strength. Diagnoses included sprains and strains of the neck, thoracic spine, lumbar spine, and right elbow and forearm as well as unspecified thoracic, lumbosacral, and cervical neuritis, radiculitis, and lumbar disc displacement. Dr. Weisbrot opined, within a reasonable degree of medical certainty, that appellant's injuries were causally related to the December 31, 2014 employment injury. He released her to return to modified-duty work and recommended physical therapy. In duty status reports (CA-17 forms) dated April 7, 2015 to May 18, 2016, Dr. Weisbrot restated his diagnoses and noted that appellant could return to work with restrictions.

Diagnostic testing of record includes a July 15, 2015 magnetic resonance imaging (MRI) scan of the lumbar spine showing a prior L5-S1 posterior spinal decompression and fusion, mild-to-moderate bilateral foraminal narrowing, and multilevel degenerative changes greatest at L2-3. A July 28, 2015 MRI scan of the cervical spine revealed mild degenerative disc disease, facet disease, and neural foraminal narrowing at C3-4.

On April 20, 2016 Dr. Weisbrot noted diagnoses of lumbar disc displacement, lumbar radiculopathy, lumbar sprain/strain, cervical neuritis, cervical sprain/strain, and right elbow strain and sprain. He related the history of injury and opined that appellant's work-related actions directly caused the injuries. Dr. Weisbrot noted that when one was hit unexpectedly it caused the body to jerk and move in an uncontrolled manner. The sudden movement caused various muscles in appellant's back and neck to quickly tighten as a reflex. Dr. Weisbrot noted that the second impact to the body when it hits the floor would cause sprained and strained tendons and ligaments. He noted that appellant had low back surgery in 2002 where she underwent a L5 fusion, but indicated that she was asymptomatic for over 10 years after surgery until this injury. Dr. Weisbrot noted that, with a sprain or strain injury of the muscles of the back, the lumbar vertebrae would lose juxtaposition with one another. This would cause extra strain to annular fibers of the intervertebral discs which would allow the nucleus pulposus to bulge or protrude causing irritation and inflammation of the nerve root and radiating pain in the legs. Dr. Weisbrot indicated that the MRI scan revealed degenerative changes and opined that exacerbation of degenerative arthritis changes was also causally related to the work injury. He asked that all diagnoses be accepted as causally related to her injury.

In a May 18, 2016 report, Dr. Weisbrot again asked that appellant's accepted conditions be expanded to include lumbar disc disorder with radiculopathy, cervical disc displacement, cervical radiculopathy, and exacerbation of an arthritic condition. He noted that she had benefited from her treatment and recommended an electromyogram (EMG) and nerve conduction velocity (NCV) study, and a functional capacity evaluation (FCE).

On May 24, 2016 OWCP referred appellant to Dr. Stuart J. Gordon, a Board-certified orthopedist, to determine whether the accepted conditions had resolved and whether the employment injury caused any additional conditions. In a June 8, 2016 report, Dr. Gordon indicated that he reviewed the records provided and he performed a physical examination. He noted findings on examination of the cervical spine, lumbar spine, left upper extremity, and right upper extremity revealed no abnormalities. With respect to the right elbow, he noted that appellant complained of pain through the lateral epicondyle region. Dr. Gordon noted x-rays of the cervical spine, with flexion-extension revealed spondylitic change. Radiographs of the lumbar spine with flexion-extension revealed pedicle screw instrumentation at L5-Sl and multi-level degenerative disease. Radiographs of the right elbow, right hand, and thoracic spine revealed degenerative disease. Dr. Gordon diagnosed preexisting cervical, thoracic, lumbar degenerative disease, unrelated; preexisting lumbar fusion, L5-S1, unrelated; preexisting degenerative disease right elbow and wrist, unrelated; December 31, 2014 chronic cervical, thoracic, and lumbar strain at maximum medical improvement (MMI); right elbow strain; and post-traumatic lateral epicondylitis, neurologic symptomology, right upper extremity. He concluded, with a reasonable degree of medical probability, that the only significant, objective findings were degenerative changes on radiographs. Dr. Gordon opined that there was no additional indication for therapy or chiropractic treatment. He recommended EMG and NCV studies of the right upper and lower extremities and lower extremity to assess the tremors in the right thumb and her left lower extremity complaints and an FCE. Dr. Gordon opined that appellant could work full time with restrictions. He further indicated that she was not at MMI. In a work capacity evaluation (OWCP-5c) dated June 8, 2016, Dr. Gordon noted that appellant could work full time, eight hours per day, with restrictions. He again noted that she had not reached MMI.

Appellant underwent ultrasound examination on June 9, 2016 which revealed no sonographic evidence of compromise of the bilateral posterior tibial nerves suggesting Tarsal tunnel syndrome.

Appellant submitted a July 7, 2016 report from Dr. Weisbrot who reviewed Dr. Gordon's report and disagreed with his findings. Dr. Weisbrot indicated that Dr. Gordon did not offer any medical support or rationale for discontinuing physical therapy. Rather, he clearly indicated that appellant had residuals as he recommended EMG and NCV testing. Dr. Weisbrot noted that the injury did not cause the degenerative changes, but indicated that the changes were aggravated by her being knocked down by the power ox at work. He noted that appellant had not reached MMI. In a duty status report (Form CA-17), dated July 21, 2016, Dr. Weisbrot noted that she could continue to work full time with restrictions.

On August 5, 2016 the employing establishment offered appellant a part time, two hours per day position as a scanner subject to restrictions. Appellant accepted the position and began working part time as a scanner two hours per day effective August 22, 2016.[3]

In a report dated October 6, 2016, Dr. Weisbrot indicated that a July 8, 2016 EMG revealed electrophysiologic evidence of C6 nerve root pathology bilaterally.[4] He noted that appellant was not at MMI. Dr. Weisbrot further noted that the FCE was performed and she did not meet the strength requirements to return to work as a truck driver. Appellant could continue to work with restrictions. On October 24, 2016 Dr. Weisbrot diagnosed thoracic or lumbosacral neuritis or radiculitis, sprain, and strain of the right elbow/forearm, neck, thoracic spine, and lumbar spine. He opined that appellant had not reached MMI and further treatment was medically necessary. Dr. Weisbrot continued her on modified duty for two-hour shifts per day.

On October 14, 2016 appellant underwent ultrasound examination of the bilateral wrists which revealed sonographic evidence of compromise of the right median nerve suggesting entrapment.

On November 15, 2016 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a list of questions, to Dr. Robert A. Smith, a Board-certified orthopedist, to determine the extent of any residuals or disability due to the accepted conditions. In a December 9, 2016 report, Dr. Smith related her history and reported findings on examination. Appellant's gait and station were normal. Examination of the neck and back revealed no finding of spasm, atrophy, trigger points, or deformity. Active range of motion was satisfactory and functional without spasm or rigidity. Dr. Smith noted that the elbow revealed no deformity or instability, active motion was essentially full except for the last five degrees of extension which appellant hesitated to do because of stated pain complaints. Neurologic examination from an objective standpoint was normal, although appellant reported painful paresthetic sensations around the base of her right thumb. Dr. Smith noted that there were no residual factors of

[3] The record indicates that appellant's medical restriction did not change, but instead, the amount of work available from the employing establishment within her restrictions changed. OWCP paid her compensation for wage loss resulting from her reduced work hours.

[4] The record contains the July 8, 2016 EMG testing.

disability or impairment with respect to the accepted conditions as a consequence of the December 31, 2014 employment injury. He opined that appellant's symptoms were the result of chronic degenerative disease unrelated to this accident either directly or by aggravation, precipitation, or acceleration. Dr. Smith noted that the accepted conditions outlined in the SOAF were medically related to the subjective loss by direct causation. He indicated that, based on the benign clinical findings noted on examination, these conditions had resolved without residuals. Dr. Smith further opined that there was no specific, current evidence that appellant continued to have right elbow post-traumatic lateral epicondylitis. He noted that there was no need for further treatment or surgery that would be indicated for any of the resolved conditions resulting from the work injuries. Dr. Smith advised that appellant had no total or partial disability due to any of the resolved accepted conditions. He further indicated that she did not require any work restrictions as a consequence of the work injury. Dr. Smith noted that appellant reached MMI. In an accompanying December 9, 2016 work capacity evaluation (Form OWCP-5c), he advised that she could work eight hours daily without restrictions.

Appellant submitted reports from Dr. Weisbrot dated November 21, 2016. Dr. Weisbrot diagnosed unspecified thoracic or lumbosacral neuritis or radiculitis, and sprain and strain of the right elbow/forearm, neck, thoracic spine, and lumbar spine. He opined that further medical treatment was needed. Dr. Weisbrot continued appellant's modified-duty restrictions.

Appellant was seen by Dr. Mark Coleman, a Board-certified anesthesiologist, on November 30, 2016, for chronic spine pain. She reported that on December 31, 2014 she was operating a motorized small truck when it suddenly broke and threw her to the ground knocking her out. Dr. Coleman diagnosed lumbar post laminectomy syndrome and cervical spondylosis without myelopathy or radiculopathy. He noted that appellant presented with a two-year history of back pain radiating into both legs as well as right neck pain radiating into the arm. Appellant noted being asymptomatic at the time of the accident. Dr. Coleman noted that she was currently restricted to two hours of light-duty per day. He recommended medial branch block: right C4-5, right C5-6, and right C6-7.

In December 19, 2016 and January 16, 2017 reports, Dr. Weisbrot noted findings of paracervical tenderness, restricted cervical spine motion, increased cervicodorsal discomfort on cervical spine motion, lumbar paraspinal tenderness inferiorly, and restricted lumbar spine motion. He diagnosed unspecified thoracic or lumbosacral neuritis or radiculitis, sprain and strain of the right elbow/forearm, neck, thoracic spine, and lumbar spine. Dr. Weisbrot noted outcome assessment questionnaire findings and continued appellant's modified duty with two-hour shifts per day.

On January 30, 2017 OWCP proposed to terminate all compensation benefits finding that Dr. Smith's December 9, 2016 report established no continuing residuals of her work-related conditions.

Appellant submitted January 10 and February 14, 2017 notes from Dr. Coleman who performed cervical medial branch blocks at left C3-4, C4-5, and C5-6. Dr. Coleman diagnosed cervical spondylosis and spondylosis without myelopathy or radiculopathy.

A February 13, 2017 report from Dr. Weisbrot noted no change in examination findings and restated his previous diagnoses and recommendations.

In another February 13, 2017 report, Dr. Weisbrot responded to the January 30, 2011 proposed termination. He indicated that he wrote numerous reports requesting appellant's case be expanded to include cervical disc displacement, cervical radiculopathy, lumbar disc disorder with radiculopathy, and exacerbation of a cervical spinal degenerative condition. Dr. Weisbrot noted the causal relationship based on objective medical evidence from MRI scan reports as well as the mechanism of injury. He advised that appellant's diagnoses were confirmed by EMG's of the cervical and lumbar spine showing nerve irritation causing symptoms of radiculopathy. Dr. Weisbrot opined that the trauma of being knocked down and hitting one's head on the cement floor would aggravate a prior degenerative condition. He disagreed with Dr. Smith's opinion that appellant's symptoms were the result of chronic degenerative disease unrelated to the accident. Dr. Weisbrot asserted that Dr. Smith failed to address the results of the EMG or the MRI scan findings. He noted that Dr. Smith found that appellant reached MMI, but he only saw her one time and there was no evidence he had her complete an outcome assessment questionnaire. Dr. Weisbrot opined that, based on the most recent outcome assessment questionnaire and the EMG findings, she continued to have residuals and that continued therapy was medically necessary.

By decision dated March 3, 2017, OWCP terminated appellant's compensation benefits effective that date. It based its decision on the report of Dr. Smith, the second opinion physician, who opined that her accepted work-related conditions had resolved and that her degenerative changes were unrelated to her work injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits. After it has determined that, an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[6]

ANALYSIS

OWCP accepted appellant's claim for sprain of the neck, thoracic spine, lumbar spine, and unspecified site of the right elbow and forearm. Appellant stopped work on December 31, 2014 and eventually returned to full-time modified duty on March 30, 2015 which she continued until August 22, 2016, when she began a part-time modified position when the employing establishment could no longer accommodate her restrictions.

[5] *Kenneth R. Burrow*, 55 ECAB 157 (2003).

[6] *Furman G. Peake*, 41 ECAB 361 (1990).

On November 15, 2016 OWCP referred appellant for a second opinion evaluation by Dr. Smith. In his December 9, 2016 report, Dr. Smith opined that there were no residual factors of disability or impairment of the accepted conditions as a consequence of the December 31, 2014 employment injury. He opined that appellant's symptoms were the result of chronic degenerative disease unrelated to the work injury directly or by aggravation. Dr. Smith indicated that, based on the benign examination findings, these conditions resolved without residuals. He opined that there was no specific evidence currently to suggest that appellant continued to suffer from post-traumatic lateral epicondylitis of the right elbow. Dr. Smith noted that further treatment was not indicated for any of the resolved conditions. He advised that appellant had no total or partial disability with respect to any of the resolved conditions accepted for this claim. Dr. Smith further indicated that she did not require any work restrictions as a consequence of the work injury and indicated that she could work full time.

The Board finds that Dr. Smith had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Smith is a specialist in the appropriate field. His opinion represents the weight of the evidence and establishes that appellant's work-related conditions have resolved. Dr. Smith indicated that she did not have residuals from the conditions of sprain of the neck, thoracic spine, lumbar spine, and unspecified site of the right elbow and forearm. His opinion, as set forth in his report of December 9, 2016, is found to be probative evidence and reliable. The Board finds that Dr. Smith's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of wage-loss compensation and medical benefits for the accepted conditions. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing disability and medical residuals.

Appellant submitted reports from Dr. Weisbrot dated November 21, 2016 to February 13, 2017 who diagnosed unspecified thoracic or lumbosacral neuritis or radiculitis, sprain and strain of the right elbow/forearm, neck, thoracic spine, and lumbar spine. Dr. Weisbrot asserted that she had impairment, needed further treatment, and required continued modified duty with two-hour shifts per day. However, he did not specifically address how any continuing condition or medical restrictions were causally related to the accepted December 31, 2014 employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[7] Additionally, OWCP did not accept appellant's condition for thoracic or lumbosacral neuritis or radiculitis.[8]

On February 13, 2017 Dr. Weisbrot requested that appellant's case be expanded to include cervical disc displacement, cervical radiculopathy, lumbar disc disorder with radiculopathy, and exacerbation of a cervical spinal degenerative condition. He advised that her diagnoses were confirmed by diagnostic testing. Dr. Weisbrot disagreed with Dr. Smith's opinion that appellant's symptoms were the result of chronic degenerative disease unrelated to the accident. He noted that Dr. Smith only saw her one time. Dr. Weisbrot noted that the recent

[7] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[8] *See T.M.*, Docket No. 08-0975 (issued February 6, 2009) (where a claimant claims that a condition not accepted or approved by OWCP was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

outcome assessment questionnaire and the EMG findings revealed that appellant had continued residuals. Although he supported that she had continuing symptoms, he did not specifically explain how her current condition and continuing disability were causally related to the accepted employment injuries of December 31, 2014.[9] Dr. Weisbrot did not provide sufficient medical rationale to explain why appellant continued to have residuals causally related to her employment injury. The need for rationale is particularly important where appellant was diagnosed with preexisting degenerative disc disease of the neck, cervical and lumbar spine, and had prior lumbar fusion.[10] Additionally, as noted above, OWCP did not accept her condition for thoracic or lumbosacral neuritis or radiculitis and there is no evidence in the record to support such a conclusion.

Other notes from Dr. Coleman dated November 30, 2016 to February 14, 2017, diagnosed lumbar post laminectomy syndrome and spondylosis without myelopathy or radiculopathy, cervical region. Appellant reported that her symptoms were the result of a workplace accident which occurred on December 31, 2014 when she was operating a motorized small truck when it suddenly stopped and threw her to the ground, knocking her out.[11] However, Dr. Coleman did not specifically address how any continuing condition or medical restrictions were causally related to the accepted December 31, 2014 employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[12]

On appeal, appellant, through her representative, asserts that OWCP improperly terminated her benefits as she continued to have residuals of her accepted conditions. As found, the December 9, 2016 report from Dr. Smith represents the weight of the medical evidence and establishes that her work-related conditions have resolved. There was no contemporaneous medical evidence of equal or greater weight supporting that appellant had continuing disability and medical residuals of the accepted conditions. She alleges that OWCP did not properly expand her claim to include lumbar neuritis/radiculitis, lumbar disc displacement and cervical neuritis, and post-traumatic lateral epicondylitis. However, the Board notes that since OWCP did not issue a final decision within 180 days of the appeal on whether these additional conditions were causally related to the December 31, 2014 work injury, the Board does not have jurisdiction over the matter.[13] Appellant also asserts that the SOAF provided to Dr. Smith was inaccurate as Dr. Gordon's diagnosed post-traumatic lateral epicondylitis should have been included as accepted. The Board notes that the SOAF properly listed the conditions that OWCP

[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 S.C.*, Docket No. 17-0490 (issued June 27, 2017) (where the Board held that the need for rationale is particularly important where the evidence indicated that appellant had a preexisting condition).

[11] This report appears to be based on an inaccurate history as initial medical reports of record do not indicate that appellant experienced a loss of consciousness on December 31, 2014. *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

[12] *Jimmie H. Duckett*, *supra* note 7.

[13] *See* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from seeking a final adjudication from OWCP on this separate matter.

accepted as employment related. OWCP has not accepted the claim for post-traumatic lateral epicondylitis. Thus, this condition was not included in the SOAF. Dr. Smith properly based his opinion on accepted conditions as accurately related in the SOAF. Appellant asserts that the claims examiner was retaliatory and did not properly handle her claim. The record does not support this allegation. There is no evidence that OWCP improperly developed the claim. As explained, OWCP met its burden of proof in terminating appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 3, 2017.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2018
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board