

FACTUAL HISTORY

On November 4, 2021 appellant, then a 43-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on October 24, 2021 she injured her sacroiliac (SI) joint when unloading heavy wires full of magazines from a truck and felt a cramp while in the performance of duty. She stopped work on October 27, 2021, and returned to work on November 3, 2021. OWCP accepted the claim for SI strain and aggravation of lumbar disc disease. It paid appellant wage-loss compensation.

In a January 26, 2022 medical report, Dr. Yan Liu, a Board-certified physiatrist, noted that appellant related complaints of right-sided low back pain, which she attributed to pushing a heavy container at work on October 24, 2021. She indicated that she had a history of a prior work injury with a different employer involving her lower back, after which her symptoms improved but never completely resolved. Dr. Liu noted that appellant related that her symptoms worsened significantly after the October 24, 2021 employment incident. She reviewed a magnetic resonance imaging (MRI) scan of the lumbar spine dated February 15, 2020, which she indicated demonstrated multilevel loss of intervertebral disc height and disc desiccation, a two-millimeter disc protrusion at L4-L5, L5-S1, and mild neural foraminal stenosis. On physical examination Dr. Liu documented tenderness to palpation in the right lower lumbar region near the SI joint, unrestricted range of motion of the lumbar spine with no complaints of pain, normal strength throughout the lower extremities, no evidence of radicular pain in the lower extremities, normal sensation, and normal reflexes. She diagnosed lumbar muscle strain and lumbar spondylosis. Dr. Liu recommended modified duty and physical therapy. In a work activity status report of even date, she released appellant to return to full-time work with restrictions of no lifting, pushing, or pulling greater than 20 pounds on an occasional basis.

In follow-up reports dated March 23 and May 25, 2022, Dr. Liu noted that appellant related complaints of lower back and right gluteal area pain with prolonged walking and lifting. She diagnosed a lumbar muscle strain and recommended work restrictions of no lifting, pushing, or pulling greater than 20 pounds.

In a report dated June 29, 2022, Dr. Liu indicated that appellant had undergone an updated MRI scan of the lumbar spine on May 22, 2022, which demonstrated a small disc bulge measuring one millimeter in the lower lumbar area with disc degeneration; no frank disc extrusion, stenosis, or foraminal narrowing; and no evidence of nerve root impingement. She noted that she experienced increased pain after she attempted to return to full-duty work. On physical examination, Dr. Liu documented subjective complaints of tenderness to palpation of the right lower back and right gluteal area but an otherwise normal physical examination. She opined that appellant had reached maximum medical improvement (MMI). Dr. Liu diagnosed lumbar muscle strain and right sciatica syndrome and released appellant to return to work with permanent restrictions of no lifting greater than 20 pounds. She noted that appellant would need future medical care for the next year, including nonsteroidal anti-inflammatory medication as needed.

On August 26, 2022 appellant accepted a position as a part-time modified mail handler. The position involved prepping and sorting mail on a flat surface and required lifting, pushing, and pulling up to 20 pounds for up to three hours and intermittent standing and walking.

OWCP thereafter paid appellant wage-loss compensation for partial disability on the supplemental rolls, effective August 17, 2022.

On September 13, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of appellant's employment-related injuries.

In an October 27, 2022 report, Dr. Einbund reviewed the history of injury and noted appellant's current complaints of aching and stabbing pain in the lower back, which radiated to her right leg and right foot. He also noted a history of a prior lower back injury, from which appellant claimed she made a complete recovery. Upon examination of the lower back, Dr. Einbund observed reduced forward flexion and positive straight leg raise on the right and normal gait, strength, sensation, and reflexes bilaterally. He obtained x-rays of the lumbar spine, which were negative for fracture, dislocation, or degenerative changes. Dr. Einbund opined that the findings on the prior February 15, 2020 MRI scan were not clinically significant and that he was not provided with the May 22, 2022 MRI scan. He diagnosed right SI strain, improved, and aggravation of lumbar degenerative disc disease, improved. Dr. Einbund noted that appellant's subjective complaints outweighed the objective findings and that the abnormal examination findings were within appellant's control. He opined that the work-related conditions had resolved, that her examination findings were benign, and that she had reached MMI. Dr. Einbund also opined that appellant was not in need of any further medical care for the accepted employment injuries, and that she was capable of returning to her full-duty position without restrictions.

In a follow-up report dated December 14, 2022, Dr. Liu noted that she reviewed Dr. Einbund's report. She indicated that appellant related right-sided lower back pain which radiated to the right lower extremity. On physical examination, Dr. Liu documented mild tenderness to palpation in the right lower lumbar and gluteal muscles, unrestricted range of motion without pain, full and normal strength throughout, negative supine straight leg raise bilaterally, normal sensation, normal reflexes, and normal gait. She noted that appellant felt she was unable to perform heavy lifting due to persistent pain and that she requested medication for pain. Dr. Liu diagnosed lumbar muscle strain and right sciatica syndrome and prescribed ibuprofen, lidocaine patches, and a home exercise program. She continued to recommend permanent restrictions of no lifting greater than 20 pounds.

On January 19, 2023 OWCP declared a conflict in medical opinion between Dr. Liu and Dr. Einbund regarding whether appellant continued to suffer from residuals of the accepted conditions and the extent of her work capabilities.

On January 27, 2023 OWCP referred appellant, a copy of the medical record, a SOAF, and a series of questions to Dr. James Fait, a Board-certified orthopedic surgeon, for an impartial medical examination.

In an April 25, 2023 report, Dr. Fait, the impartial medical examiner (IME), concurred with Dr. Einbund that the accepted SI strain and aggravation of lumbar disc disease had resolved. He noted that appellant's physical examination revealed tenderness to palpation in the right lower lumbar paravertebral musculature; reduced forward flexion and internal rotation; mild discomfort on the right during Fabere testing; no spasm; negative straight leg raising; normal reflexes; full strength and normal sensation; and no visible atrophy. Dr. Fait noted that he reviewed Dr. Liu's summary of the findings of the February 15, 2020 and May 22, 2022 MRI scans but was not provided with the actual studies. He indicated that "the comparison between two MRI reports, one from 2020, the other from 2022, actually notes interval improvement in the size the disc bulging

of the lower lumbar spine,” and that “this would suggest that the disc bulges are likely positional in nature and do not represent an actual structural protrusion or herniation.” Dr. Fait also noted that the May 22, 2022 MRI scan did not reveal evidence of spondylolisthesis or SI joint abnormalities. He diagnosed a temporary aggravation of preexisting degenerative disease in the lumbar spine and a temporary SI sprain or strain on the right side, which had resolved. Dr. Fait agreed with Dr. Einbund that appellant’s subjective complaints appeared to be out of proportion to the objective findings on the diagnostic studies, and that the slightly restricted range of motion of the lumbar spine during examination was secondary to effort put forth by appellant. He also explained that although there may be reproduction of buttock pain with Fabere testing on the right side, there was no mention of acute sacroiliitis on the May 22, 2022 MRI scan and no objective evidence to support residual or worsening pathology when compared to the MRI scan of 2020. Dr. Fait opined that appellant was not in need of further medical care and could return to full-duty work.

In a notice dated April 4, 2024, OWCP proposed to terminate appellant’s wage-loss compensation and medical benefits because she no longer had disability or residuals causally related to her accepted October 24, 2021 employment injury. It found that the special weight of the medical evidence rested with Dr. Fait who found that appellant no longer had any disability or residuals causally related to her accepted employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

In duty status reports (Form CA-17) dated February 23, March 27, and April 25, 2024, Dr. Aimee French, a Board-certified internist, indicated that appellant had permanent restrictions of no lifting greater than 20 pounds. She diagnosed sciatica and lower back pain.

By decision dated May 23, 2024, OWCP finalized the notice of proposed termination of appellant’s wage-loss compensation and medical benefits, effective that date. It found that the special weight of medical evidence rested with Dr. Fait, the IME, who indicated in his April 25, 2023 report that appellant no longer had disability or residuals due to her October 24, 2021 employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.³ It may not terminate compensation without establishing either that the disability has ceased or that it is 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

³ *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

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

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.⁸ For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."⁹ When OWCP has referred the case to an IME 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.¹⁰

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 23, 2024, as she no longer had disability or residuals causally related to her accepted October 24, 2021 employment injury.

OWCP properly found a conflict in the medical opinion evidence between Dr. Liu, appellant's treating physician, and Dr. Einbund, an OWCP second opinion examiner, regarding the status of appellant's October 24, 2021 employment injury as to disability causally related to the October 24, 2021 employment injury. It referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Fait for an impartial medical examination and an opinion to resolve the conflict.

In an April 25, 2023 report, Dr. Fait reviewed appellant's history of injury, provided examination findings, and noted that appellant's claim was accepted for SI sprain and aggravation of lumbar disc disease. He reviewed Dr. Liu's summary of the findings of the February 15, 2020 and May 22, 2022 MRI scans and noted interval improvement in the size the disc bulging of the lower lumbar spine and no evidence of spondylolisthesis or SI joint abnormalities. Dr. Fait explained that this change between the two studies suggested that the disc bulges were likely positional in nature and did not represent an actual structural protrusion or herniation attributable to the October 24, 2021 employment injury. He noted normal examination findings with the exception of subjective tenderness to palpation and reduced range of motion, which he opined were within appellant's control and secondary to her effort during examination. Dr. Fait opined that the work-related SI sprain and aggravation of lumbar disc disease had resolved and, therefore, appellant no longer had any disability associated with the accepted employment conditions.

⁶ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

⁸ 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

⁹ *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *C.H.*, Docket No. 18-1065 (issued November 29, 2018); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

¹⁰ *S.S.*, Docket No. 19-0766 (issued December 13, 2019); *W.M.*, Docket No. 18-0957 (issued October 15, 2018); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy, or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹¹ The Board finds that Dr. Fait's opinions constitute the special weight of the medical opinion evidence and establish that appellant no longer had employment-related disability or residuals causally related to the accepted October 24, 2021 employment injury. Dr. Fait based his opinions on a proper factual and medical history, and physical examination findings. He noted that appellant's physical examination revealed that the accepted employment-related conditions resolved, and that appellant could return to full-duty work. Accordingly, OWCP properly relied on Dr. Fait's opinions in terminating appellant's wage-loss compensation and medical benefits.

As the special weight of the evidence established that appellant's accepted conditions had resolved, the Board finds that OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation and medical benefits, effective May 23, 2024.¹²

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 23, 2024, as she no longer had disability or residuals causally related to her accepted October 24, 2021 employment injury.

¹¹ See *P.J.*, Docket No. 22-0905 (issued November 15, 2022); *K.R.*, Docket No. 22-0019 (issued July 11, 2022); *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

¹² *S.A.*, Docket No. 20-1168 (issued March 29, 2023); *P.J.*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2024
Washington, DC

Alec J. Koromilas, 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