

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

OWCP accepted that on June 27, 2000 appellant, then a 46-year-old food service worker, sustained a cervical sprain as a result of reaching overhead to get bread while working at the employing establishment. On June 30, 2000 he returned to full-time limited-duty work. On September 6, 2005 OWCP accepted that appellant sustained a recurrence of disability on January 18, 2005 causally related to the June 27, 2000 employment injury. Appellant returned to limited-duty work five hours a day. On January 7, 2008 he returned to full-time limited-duty work. On October 24, 2008 OWCP accepted that appellant sustained a recurrence of disability on February 21, 2008 due to the accepted employment injury. Appellant returned to limited-duty work five hours a day. On December 16, 2008 OWCP accepted that he sustained a recurrence of disability on September 29, 2008 causally related to the accepted injury.

Appellant stopped work on April 26, 2009 and filed a recurrence claim. In an August 11, 2009 decision, OWCP denied his claim, finding that the medical evidence was insufficient to establish that he sustained a recurrence of disability on April 26, 2009 due to the accepted employment injury.<sup>2</sup> Appellant did not return to work.

In an April 28, 2010 prescription note, Dr. Surinder P. Jindal, an attending Board-certified neurologist, advised that appellant was unable to perform his regular work duties for one month.

On June 11, 2010 OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Edward J. Kirby, a Board-certified orthopedic surgeon, for a second opinion on the nature and extent of his employment-related residuals and disability. In a June 28, 2010 medical report, Dr. Kirby listed findings on physical examination and reviewed diagnostic test results. He diagnosed cervical strain causally related to the June 27, 2000 employment injury. Dr. Kirby also diagnosed progressive degenerative disease of the cervical spine resulting in foraminal stenosis and radicular symptoms of the left arm that were not related to the accepted injury. Although appellant was permanently incapable of performing the duties of his date-of-injury position, his disability was not causally related to the accepted injury. Rather, he found it was caused by his continuing worsening cervical degenerative disc disease which required medical treatment. Dr. Kirby concluded that appellant had reached maximum medical improvement with regards to the accepted condition and that no further medical treatment was warranted for this condition.

In a July 26, 2010 report, Dr. Jindal listed his findings on physical and neurological examination. He advised that appellant had cervical muscle spasm with cervical myofascial pain, cervical radicular and myofascial pain and recurrent spastic trigger points. Dr. Jindal addressed his treatment plan.

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<sup>2</sup> On August 26, 2009 appellant requested an oral hearing regarding the August 11, 2009 OWCP decision. On September 1, 2009 he appealed the August 11, 2009 decision to the Board. By decision dated October 20, 2009, the Branch of Hearings and Review denied appellant's request for a hearing on the grounds that OWCP and the Board may not have simultaneous jurisdiction over the same issue in the same case. In an order dated April 15, 2009, the Board dismissed his appeal in accordance with his request to seek reconsideration before OWCP. Docket No. 09-2180 (issued April 15, 2010).

On August 16, 2010 OWCP determined that there was a conflict in medical opinion between Dr. Kirby and Dr. Jindal regarding the extent of appellant's employment-related residuals and disability, and need for further medical treatment. By letter dated October 22, 2010, it referred him, together with a statement of accepted facts and the medical record, to Dr. Robert P. Mantica, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a November 11, 2010 report, Dr. Mantica obtained a history of the June 27, 2000 employment injury and appellant's medical treatment and diagnostic test results. Physical examination of the cervical spine was essentially normal with the exception of limitation to the cervical spine and lower back, decreased sensation to touch in the lateral left arm and hand and border of the left forearm and tenderness to percussion in his back.

Dr. Mantica advised that appellant currently had no residuals of the June 2000 employment-related cervical sprain. He noted that appellant returned to his regular work duties three days following the accepted injury. The lower level of resistance in the injury indicated that appellant had healed from this grade 1 cervical sprain within three days and was able to resume the same type of work that he performed prior to the accepted injury. Dr. Mantica advised that appellant's radiculopathy was caused by his cervical spondylosis and not the June 27, 2000 employment injury. The cervical spondylosis, including degenerative disc disease and facet joint arthritis were already present in 2000. It caused irritation to the nerve roots and can give a radicular pain pattern along the distribution of C5-6 and C6-7 nerve roots. Appellant also had a pain pattern along the distribution of the C3-4 and C4-5 levels. Dr. Mantica advised that there were no objective findings related to the accepted employment condition. No treatment was required for the accepted condition. Dr. Mantica advised that appellant was totally disabled from performing his regular food service worker duties due to his underlying cervical spondylosis which had not worsened or been aggravated by the accepted injury. He concluded that appellant had fully recovered from the accepted condition by June 30, 2000 and that his continued pain was due to the progression of the underlying cervical spondylosis.

On January 27, 2011 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits related to his accepted cervical sprain based on Dr. Mantica's medical opinion.

In a February 10, 2011 report, Dr. Jindal reiterated his prior diagnosis of cervical radiculopathy and radicular myofascial pain. He advised that appellant could perform light-duty work which could progress to full-time work based on his tolerance level. Dr. Jindal addressed his treatment plan.

In a March 2, 2011 decision, OWCP terminated appellant's wage-loss compensation and medical benefits regarding his accepted condition effective that date. It found that Dr. Mantica's opinion represented the special weight of the medical evidence.<sup>3</sup>

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<sup>3</sup> Following the issuance of its March 2, 2011 decision, OWCP received additional evidence. Also, on appeal appellant submitted new evidence. The Board may not consider evidence for the first time on appeal which was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup> Furthermore, 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 that requires further medical treatment.<sup>6</sup>

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 (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>7</sup> In cases where OWCP has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>8</sup>

### **ANALYSIS**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits as of March 2, 2011. OWCP accepted that appellant sustained a cervical sprain on June 27, 2000 as a result of reaching overhead to get bread. The Board notes that a conflict arose in the medical opinion evidence between Dr. Jindal, an attending physician and Dr. Kirby, an OWCP referral physician, on whether he had any residuals or disability causally related to the accepted condition and whether further medical treatment was warranted. OWCP properly referred appellant to Dr. Mantica for an impartial medical examination pursuant to section 8123(a) of FECA.<sup>9</sup>

In a November 11, 2010 report, Dr. Mantica provided an accurate history of the June 27, 2000 employment injury and reviewed appellant's medical treatment and diagnostic test results. He found that the accepted cervical sprain condition had resolved by June 30, 2000 and that appellant's continued pain and total disability were due to his underlying cervical spondylosis and not the accepted condition. Dr. Mantica advised that appellant's return to his regular work duties three days following the accepted injury indicated that his grade 1 cervical sprain had healed. He also advised that his preexisting spondylosis, which included degenerative disc

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<sup>4</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>5</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>6</sup> *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

<sup>7</sup> 5 U.S.C. § 8123(a); *see S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>8</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001); *B.P.*, Docket No. 08-1457 (issued February 2, 2009).

<sup>9</sup> *Bryan O. Crane*, 56 ECAB 713 (2005); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

disease and facet joint arthritis, were present in 2000 and caused irritation to the nerve roots. Dr. Mantica stated that the preexisting conditions caused his radicular pain pattern along the C3-4, C4-5 C5-6 and C6-7 nerve root distributions. He concluded that there were no objective findings related to the accepted condition and that no further medical treatment of the condition was warranted.

The Board finds that Dr. Mantica's opinion is entitled to special weight accorded an impartial medical specialist and is sufficiently well reasoned and detailed to resolve the conflict of medical opinion evidence. Dr. Mantica provided extensive findings on physical examination and explained why appellant's current symptoms and disability were not causally related to the June 27, 2000 employment-related cervical sprain. The Board finds, therefore, that OWCP met its burden of proof to terminate appellant's compensation and medical benefits effective March 2, 2011.

The Board further finds that appellant did not submit any rationalized medical evidence to overcome the weight of Dr. Mantica's opinion or to create a new conflict. Dr. Jindal's February 10, 2011 report found that appellant had cervical radiculopathy and radicular myofascial pain which required medical treatment. He also found that appellant could perform light-duty work and could eventually perform full-time work based on his tolerance level. Dr. Jindal did not provide any opinion addressing his disability for work due to the June 27, 2000 employment injury. Moreover, he did not provide any rationale explaining how appellant's diagnosed medical conditions and required treatment were causally related to the accepted condition.<sup>10</sup> The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.<sup>11</sup> Moreover, OWCP has not accepted the condition of cervical radiculopathy and Dr. Jindal's opinion is insufficiently rationalized to establish that any other condition is employment related.<sup>12</sup> The Board notes that Dr. Jindal formed one part of the conflict in the medical opinion evidence for which appellant was referred to Dr. Mantica and his report is insufficient to create a new conflict in the medical evidence or to overcome the well-rationalized medical opinion of Dr. Mantica, the impartial medical specialist.<sup>13</sup>

Appellant's contention on appeal that he continues to suffer from residuals of his accepted June 27, 2000 employment injury is not borne out by the evidence of record. The Board finds that the special weight of the medical evidence, as represented by Dr. Mantica, the impartial medical specialist, establishes that he has no continuing employment-related residuals or disability and, thus, OWCP properly terminated his wage-loss compensation and medical benefits.

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<sup>10</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

<sup>11</sup> *Robert Broome*, 55 ECAB 339 (2004); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

<sup>12</sup> See *G.A.*, Docket No. 09-2153 (issued June 10, 2010) (for conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not its burden to disprove such relationship).

<sup>13</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael Hughes*, 52 ECAB 387 (2001).

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 properly terminated appellant's wage-loss compensation and medical benefits effective March 2, 2011 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related cervical sprain.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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