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<b>D.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 12-1298</b>
	)	<b>Issued: November 7, 2012</b>
<b>U.S. POSTAL SERVICE, LOS ANGELES</b>	)	
<b>PROCESSING &amp; DISTRIBUTION CENTER,</b>	)	
<b>Los Angeles, CA, Employer</b>	)	
	)	

### Case Submitted on the Record

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

### **FACTUAL HISTORY**

This case was previously before the Board.<sup>2</sup> Appellant, a 52-year-old mail handler, has an accepted claim for lumbar strain which arose on April 29, 2007.<sup>3</sup> By decision dated October 16, 2008, OWCP declined to expand her claim to include L4-5 disc herniation. Appellant did not appeal OWCP's October 16, 2008 decision.

On July 7, 2009 OWCP terminated appellant's compensation and medical benefits based on the March 20, 2009 opinion of her treating physician, Dr. Tae M. Shin,<sup>4</sup> who found that her lumbar strain had resolved. Dr. Shin also noted that her then-current symptoms and restrictions were due to discogenic back pain.

By decision dated November 25, 2009, the Branch of Hearings & Review affirmed OWCP's decision terminating benefits. The Board similarly affirmed the termination of all benefits based on Dr. Shin's March 20, 2009 opinion. The Board's September 29, 2010 decision is incorporated herein by reference.

On June 9, 2011 counsel requested reconsideration. He submitted a January 26, 2011 report from Dr. Deborah A. Mendenhall, a Board-certified internist. OWCP also received a May 13, 2011 report from Dr. Shin.

Dr. Mendenhall saw appellant on January 26, 2011 for complaints of lower lumbar pain radiating to the back of the right leg and ankle. She noted that appellant sustained a job-related injury to her back about four years ago when she was "reaching/pulling." Dr. Mendenhall indicated that appellant's latest magnetic resonance imaging (MRI) scan revealed, *inter alia*, mild degenerative changes primarily from L3-4 to L5-S1 and small posterior disc bulges. She also noted that appellant's condition had continued to deteriorate over the past several years to the point that neurosurgery was entertained. However, it was doubtful that surgery would provide appellant any significant pain relief. Dr. Mendenhall identified 11 separate diagnoses, only four of which pertained to appellant's lumbosacral spine area. These included lumbar radiculopathy, sacroiliac ligament sprain, sciatica and low back pain. Dr. Mendenhall did not expect appellant to make any significant recovery and thus, declared her condition chronic/static. She imposed various restrictions. The restrictions ostensibly related to appellant's low back condition included limited lifting, limited standing, no prolonged sitting and limited walking.

In a May 13, 2011 report, Dr. Shin noted that appellant had received treatment from August 8, 2007 until January 7, 2009. He also noted that she had sustained a lower back injury on "May 15, 2007." A June 7, 2007 MRI scan reportedly revealed a disc bulge at L4-5 with nerve root impingement. Dr. Shin explained that appellant received physical therapy and epidural injections for her disc bulge and lumbar radiculopathy, but conservative management

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<sup>2</sup> Docket No. 10-576 (issued September 20, 2010).

<sup>3</sup> Appellant stated that she strained her lower back while attempting to connect a wire container to a mule.

<sup>4</sup> Dr. Shin is a Board-certified orthopedic surgeon.

did not resolve her pain and therefore, surgery was contemplated. In anticipation of surgery a repeat lumbar MRI scan was obtained on August 29, 2008. This MRI scan reportedly revealed that the L4-5 disc bulge had spontaneously decreased with no further evidence of nerve impingement. Dr. Shin indicated that appellant was advised not to proceed with surgical intervention. Because appellant had exhausted all modes of treatment and had reached maximum medical improvement, she was placed on permanent and stationary status. Dr. Shin further stated that the mechanism of injury which occurred on “May 15, 2007” involved her trying to move a cart. He noted at the time appellant was diagnosed with lumbar strain. Dr. Shin further indicated that this type of mechanism can cause a disc bulge, as noted on the original June 7, 2007 MRI scan.

Based on the newly submitted evidence, OWCP reviewed the merits of the claim and determined that appellant had not established continuing disability as of July 7, 2009.

### **LEGAL PRECEDENT**

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>5</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>6</sup> After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the employee. In order to prevail, the employee must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.<sup>7</sup>

### **ANALYSIS**

The Board previously affirmed OWCP’s reliance on Dr. Shin’s March 20, 2009 opinion as a basis for terminating appellant’s wage-loss compensation and medical benefits effective July 7, 2009. Currently, counsel has not presented any evidence or argument that would warrant revisiting the Board’s prior finding regarding the adequacy of the record as it existed on or before OWCP’s hearing representative’s November 25, 2009 decision. Accordingly, the Board reaffirms its earlier finding that OWCP satisfied its burden in terminating all benefits effective July 7, 2009.

Once OWCP has properly modified or terminated benefits, the burden of reinstating benefits shifts to the employee.<sup>8</sup> As to the evidence submitted since OWCP’s hearing representative’s last merit review, the Board notes that neither Dr. Mendenhall nor Dr. Shin

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<sup>5</sup> *I.J.*, 59 ECAB 408 (2008); *Anna M. Blaine*, 26 ECAB 351, 353-54 (1975); see *Fred Foster*, 1 ECAB 127, 132-33 (1948).

<sup>6</sup> *Id.*

<sup>7</sup> *I.J.*, *supra* note 5; *Gary R. Sieber*, 46 ECAB 215, 222 (1994); see *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>8</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542, 544 n. 5 (2004).

provided a current diagnosis of ongoing lumbar strain, which was the only condition that OWCP accepted as employment related. Moreover, Dr. Mendenhall did not identify a specific date of injury and her description of the cause of injury was too vague. Whereas appellant indicated that she was injured “while attempting to connect a wire container to a mule,” Dr. Mendenhall generally described the circumstances as “reaching/pulling.” It is also noteworthy that Dr. Shin’s latest report incorrectly identified appellant’s date of injury as “May 15, 2007.” A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.<sup>9</sup> The Board finds that the record does demonstrate that appellant continues to suffer from residuals of her April 29, 2007 employment injury.

### **CONCLUSION**

The Board finds that appellant failed to establish that she continues to suffer from residuals of her April 29, 2007 accepted lumbar strain.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2012 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: November 7, 2012  
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

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<sup>9</sup>*Victor J. Woodhams*, 41 ECAB 345, 352 (1989).