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<b>C.W., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 13-1897</b>
	)	<b>Issued: February 26, 2014</b>
<b>DEPARTMENT OF THE TREASURY,</b>	)	
<b>INTERNAL REVENUE SERVICE,</b>	)	
<b>Philadelphia, PA, Employer</b>	)	
	)	

### Case Submitted on the Record

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

## **FACTUAL HISTORY**

On December 22, 2008 appellant, then a 49-year-old contact representative, filed a traumatic injury claim alleging that on December 17, 2008 she sustained injuries to her shins, ankles, legs, back, left hip and right hand as the result of falling down six steps. He stopped work on December 17, 2008 and returned to full-duty work on February 24, 2009. On January 21, 2010 OWCP accepted the claim for cervical, thoracic and lumbar strain and sprain, bilateral trapezius sprain and strain; left shoulder sprain and strain, left knee sprain and strain; and right thumb strain and sprain.

Following the acceptance of her claim OWCP referred appellant for a second opinion evaluation with Dr. Robert Allen Smith, a Board-certified orthopedic surgeon. In a February 18, 2010 report, Dr. Smith concluded that appellant's accepted soft tissue sprains and strains had resolved based on the lack of any objective findings on physical examination. He noted that appellant stopped work on the date of injury, returned to her regular work on February 24, 2009 and then stopped work two weeks ago due to complaints of her body aching. A physical examination revealed no cervical or back atrophy, deformity, spasms or trigger points and normal trapezial muscles. There was no evidence of ongoing shoulder soft tissue sprain or internal derangement. There was no evidence of left knee internal derangement or evidence of right thumb sprain or strain. Appellant's left knee range of motion was satisfactory with no instability. Lastly, Dr. Smith reported a normal neurologic examination.

On March 5, 2010 appellant filed a claim for a recurrence of disability beginning January 29, 2010.

On March 9, 2010 OWCP proposed termination of medical benefits based upon Dr. Smith's opinion.

In a March 23, 2010 report, Dr. Brian Walsh, a treating Board-certified osteopathic family practitioner, noted the employment injury and medical history. Diagnoses included lumbar, cervical and thoracic sprain/strains; left medial meniscus tear; bilateral lumbar radiculopathy; diffuse bulging lumbar disc; left knee sprain/strain and bilateral trapezius sprain/strain. A review of a February 9, 2010 lumbar magnetic resonance imaging (MRI) scan showed L3-4 grade 1 retrolisthesis; L5-S1 disc bulge with hypertrophic disc disease; L3-4 broad-based disc protrusion with severe bilateral foramina narrowing; and L2-3 broad-based disc bulge. Dr. Walsh diagnosed a left knee posterior horn medial meniscus tear based upon review of a January 26, 2009 MRI scan. Physical examination findings on March 23, 2010 revealed moderate paravertebral lumbar muscle spasm, pain on flexion and extension; limited range of motion; positive straight leg raising bilaterally at 60 degrees; and slight swelling and tenderness on palpation of the left knee. Dr. Walsh reviewed Dr. Smith's report and disagreed with his conclusion that appellant was capable of returning to full-duty work with no restrictions. In support of his conclusion, he referred to examination findings and significant objective study findings. Dr. Walsh attributed appellant's injuries to the accepted December 17, 2008 employment incident.

On April 22, 2010 OWCP referred appellant to Dr. William C. Hamilton, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion between Drs. Smith and

Walsh on the issue of whether appellant's accepted conditions had resolved. In his May 1, 2010 report, Dr. Hamilton related that at the time of his physical examination there was no evidence of any residual musculoskeletal injury. Thus, he concurred with Dr. Smith's opinion that appellant no longer had any residuals or disability due to her accepted December 18, 2008 employment injury. He stated that he believed appellant was unconsciously embellishing her complaints and recommended treatment for her depression or anxiety reaction.

By decision dated July 1, 2010, OWCP denied appellant's claim for a recurrence beginning January 29, 2010.

By decision dated July 6, 2010, OWCP finalized the termination of appellant's compensation benefits effective June 30, 2010.

In correspondence dated July 7, 2010, appellant's counsel requested a telephonic hearing before an OWCP hearing representative on the denial of her recurrence claim.

By decision dated September 15, 2010, OWCP's hearing representative found the case was not in posture for review and vacated the July 1, 2010 decision. It found that clarification was required from Dr. Smith on the issue of whether appellant's accepted employment condition had materially worsened on and after January 29, 2010.

In a supplemental March 23, 2011 report, Dr. Hamilton stated that there was no evidence of any musculoskeletal problems due to the accepted December 17, 2008 employment injury at the time he examined appellant on May 1, 2010. He related that from a musculoskeletal viewpoint appellant had no disability or residuals at the time of his examination. With respect to whether appellant's injury-related condition had worsened or changed on January 29, 2010, Dr. Hamilton reiterated that there was no objective evidence of any residual musculoskeletal injury at the time of his evaluation.

By decision dated April 5, 2011, OWCP finalized the termination of appellant's compensation effective June 30, 2010. It also found that she was not entitled to recurrent compensation for wage-loss compensation.

On April 27, 2011 appellant's counsel requested a telephonic hearing, which was held on August 9, 2011.

By decision dated October 26, 2011, OWCP's hearing representative found Dr. Hamilton's opinion insufficiently rationalized on the issues of whether appellant continued to have residuals of her accepted employment injury. She affirmed the denial of appellant's claim for a recurrence of disability, but remanded for consideration of whether appellant continued to have residuals due to her accepted employment injuries. OWCP's hearing representative instructed OWCP on remand to refer appellant for an examination with a new impartial medical examiner.

On December 7, 2011 OWCP referred appellant to Dr. Richard G. Schmidt, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence regarding the cause and extent of appellant's impairment and residuals due to her accepted December 17, 2008 employment injury.

In a January 11, 2012 report, Dr. Schmidt, based upon a review of the medical records, statement of accepted facts and physical examination, concluded that appellant no longer had any residuals or disability from her accepted cervical strain, umbar sprain, thoracic sprain, left shoulder sprain, left knee sprain, right thumb sprain and bilateral trapezial sprain. A physical examination revealed no cervical spasm or tenderness, nontender lumbar, thoracic, trapezial and shoulder muscles and full bilateral overhead range of motion. An examination of the left knee showed no subjective or clinical evidence of any meniscal tearing, normal patellar flexion and extension and no evidence of any lateral or medial instability. Dr. Schmidt explained that there was no evidence of any sprains or strains based on a normal clinical examination.

By decision dated February 24, 2012, OWCP terminated appellant's wage-loss compensation and medical benefits effective that day.

In a March 26, 2012 letter, appellant's counsel requested a telephonic hearing before an OWCP hearing representative, which was held on July 6, 2012.

By decision dated August 15, 2012, OWCP's hearing representative affirmed the February 24, 2012 decision.

In a September 6, 2012 letter, appellant's counsel requested reconsideration on the termination of appellant's compensation benefits and submitted the following report in support of her request.

In a July 30, 2012 report, Dr. Gary R. Salzman, an examining osteopath, opined that appellant continued to have residuals of her accepted December 17, 2008 employment injury. A physical examination revealed decreased lumbar forward flexion, paravertebral muscle spasm in L1-5, pain with extension and flexion and positive straight leg raising at 30 degrees. Dr. Salzman reported left knee pain on extension and flexion. He diagnosed lumbar disc radiculopathy, left knee derangement, constant back pain, lumbar disc herniation which he attributed to the December 17, 2008 employment injury. Dr. Salzman found that appellant was disabled and sustained permanent lumbar damage as a result of falling down the steps on December 17, 2008.

By decision dated July 11, 2013, OWCP denied modification.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>2</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer

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<sup>2</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

related to the employment.<sup>3</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>5</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>6</sup>

Section 8123(a) of FECA provides in pertinent part: 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.<sup>7</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.<sup>8</sup>

In a situation where OWCP secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion. If the specialist is unwilling or unable to clarify and elaborate on his or her opinion, the case should be referred to another appropriate impartial medical specialist.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted appellant's claim for cervical, thoracic and lumbar strain and sprain, bilateral trapezius sprain and strain; left shoulder sprain and strain, left knee sprain and strain; and right thumb strain and sprain. It terminated her compensation benefits effective February 24, 2012 based upon the opinion of Dr. Schmidt, an impartial medical examiner, who concluded that appellant's accepted employment injuries had resolved. The issue on appeal is whether OWCP met its burden in terminating appellant's compensation benefits.

The initial medical conflict between the opinions of Dr. Walsh, appellant's treating physician, and the second opinion physician, Dr. Smith, was whether appellant's accepted conditions had resolved. Dr. Hamilton was selected to resolve the medical conflict. On September 15, 2010 an OWCP hearing representative requested clarification from Dr. Hamilton

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<sup>3</sup> *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>4</sup> *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>5</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>6</sup> *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

<sup>7</sup> 5 U.S.C. § 8123(a); *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>8</sup> *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

<sup>9</sup> *See Phillip H. Conte*, 56 ECAB 213 (2004); *Guiseppe Aversa*, 55 ECAB 164 (2003).

on the issue of whether appellant's condition had materially worsened on and after January 29, 2010. In a March 23, 2011 supplemental report, Dr. Hamilton noted that appellant had no disability or residuals at the time of his examination. By decision dated October 26, 2011, an OWCP hearing representative found Dr. Hamilton's report to be insufficiently rationalized regarding continuing disability and remanded the case to OWCP for referral to a new impartial medical examination.

Dr. Schmidt conducted the second impartial medical examination and; in a January 11, 2012 report, found no objective evidence of strains or sprains and no subjective evidence of any residuals. Thus, he concluded that appellant's accepted employment injuries had resolved without residuals. The Board finds that OWCP's determination that appellant's cervical strain, lumbar sprain, thoracic sprain, left shoulder sprain, left knee sprain, right thumb sprain and bilateral trapezial sprain had resolved by February 24, 2012 is supported by the well-rationalized medical opinion of Dr. Schmidt whose conclusion that appellant no longer had any work-related residuals, was supported by his examination of appellant, his review of the record and appellant's work history.<sup>10</sup> Thus, Dr. Schmidt's report constitutes the special weight of the medical evidence.

### **LEGAL PRECEDENT -- ISSUE 2**

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden to prove any continuing disability causally related to her accepted injury shifted to appellant.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not established any continuing residuals of her accepted condition on or after February 24, 2012.

After the termination of benefits on February 24, 2012 appellant's counsel requested reconsideration and submitted a July 30, 2012 report from Dr. Salzman who opined that appellant continued to have residuals of her accepted December 17, 2008 employment injury and reported diagnoses of lumbar disc radiculopathy, left knee derangement, constant back pain and lumbar disc herniation. However, Dr. Salzman provided no medical reasoning explaining how these diagnosed conditions were causally related to the accepted work incident. None of these conditions had been accepted by OWCP. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>12</sup> For this reason, this evidence is not sufficient to create a conflict in the medical opinion evidence with Dr. Schmidt's

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<sup>10</sup> *Richard O Brien*, 53 ECAB 234 (2001).

<sup>11</sup> *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>12</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001).

opinion<sup>13</sup> or to meet appellant's burden of proof. Consequently, appellant did not establish that he had any employment-related condition or disability after February 24, 2012.

While appellant's counsel argues the decision is contrary to fact and law, the medical evidence fails to support any residuals or disability due to the accepted conditions.

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 compensation benefits. The Board further finds that appellant has failed to meet her burden of proof in establishing any continuing disability or medical residuals on or after February 24, 2012 causally related to the accepted employment conditions.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 11, 2013 is affirmed.

Issued: February 26, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).