



## **FACTUAL HISTORY**

The record reflects that appellant has three accepted claims.<sup>2</sup> On August 13, 2011 appellant, then a 44-year-old city carrier, sustained injury to her low back while delivering mail. She stopped work on August 17, 2011. OWCP accepted appellant's claim for a lumbar sprain and she received wage-loss compensation.

A November 10, 2011 magnetic resonance imaging (MRI) scan by Dr. Alfonso Rivera, a Board-certified diagnostic radiologist, noted that appellant sustained a lumbar strain and complained of bilateral leg pain and numbness. The lumbar scan demonstrated a disc bulge with a central articular fissure at L4-5 and a small, left paracentral disc protrusion at L5-S1.

In a December 5, 2011 attending physician's report, Dr. Stephen Altic, a family practitioner, treated appellant for a twisting injury on August 13, 2011 while working as a mail carrier. He checked "yes" that her condition was caused or aggravated by the employment activity. Appellant would be totally disabled from August 18, 2011 to February 28, 2012.

On December 6 and 7, 2011 Dr. Altic noted appellant's complaint of ongoing lumbar pain with bilateral radicular symptoms and periodic numbness and paresthesias. He stated that the MRI scan revealed a central fissure at L4-5 and a leftward bulge at L5-S1 with abutment of the left S1 nerve root consistent with the mechanism of injury. Upon examination, Dr. Altic observed bilateral tenderness to palpation over the lumbar spine. Lumbar flexion was to 30 degrees and extension to 5 degrees. Straight leg raise testing was positive bilaterally at 70 degrees. Dr. Altic opined that the disc bulge, annular tear at L4-5 and disc protrusion of the L5-S1 were a direct and proximate result of her injury.

OWCP referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. Manhal Ghanma, a Board-certified orthopedic surgeon, for a second opinion examination. The SOAF described her work duties as a mail carrier and noted that her claim was accepted for lumbar sprain as a result of the August 13, 2011 injury. It also listed appellant's previous accepted claims for a right shoulder condition and cervical, thoracic and lumbar strains.

In a December 13, 2011 report, Dr. Ghanma reviewed a history of the August 13, 2011 injury and medical treatment, noting the statement of accepted facts. Examination of appellant's lumbar spine revealed no spinal listing or abnormal curvature. Left lateral lumbar bend was to 10 degrees and right lateral lumbar bend was to 30 degrees. Waddell's sign was positive bilaterally. Examination of appellant's right shoulder revealed no abnormality of the AC joints, subacromial bursa, biceps groove or head of humerus in either shoulder. Dr. Ghanma stated that there were no objective findings on physical examination to support her subjective complaints of

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<sup>2</sup> OWCP accepted that on December 13, 2005 appellant sustained a right shoulder strain and contusion and permanent aggravation of preexisting right acromioclavicular (AC) joint arthritis as a result of slipping on an icy driveway at work. (File No. xxxxxx895). She was intermittently disabled from February 24, 2006 to July 20, 2011. OWCP also accepted that on February 14, 2007 appellant sustained cervical, thoracic, and lumbosacral spine strains due to slipping on ice and falling backward in the performance of duty. (File No. xxxxxx727). OWCP accepted that on February 24, 2007 she sustained a right shoulder strain when a coworker snatched a tray of mail from her at work. (File No. xxxxxx987).

pain or that she still had from any residuals of the August 13, 2011 lumbar strain. He noted that a lumbar strain generally recovered within a period of a few days to several weeks at most and would not take several months to heal. Dr. Ghanma concluded that there was no objective evidence to support that appellant had any residuals of her previously accepted injuries. He found that she was capable of returning to full duty as a letter carrier without restrictions. In a December 19, 2011 work capacity evaluation form, Dr. Ghanma noted that appellant was capable of performing her usual job full time with no restrictions.

On January 24, 2012 appellant was placed on the periodic rolls.

In a January 30, 2012 letter, the employing establishment requested that OWCP stop appellant's compensation based on the fact that she refused a previous job offer and did not intend to return to work.

In a February 8, 2012 report, Dr. Robert H. Perkins, Board-certified in physical medicine and rehabilitation, examined appellant for complaints of low back pain that developed in August 2011. Appellant worked for the employing establishment and her job required lifting heavy objects, bending and pushing. Dr. Perkins reviewed appellant's treatment history and noted that a November 10, 2011 MRI scan of the lumbar spine revealed a central annular fissure at L4-5 with disc bulge in this region, a left disc protrusion at L5-S1 and mild facet arthropathy. Upon examination, he observed a mildly restricted lumbar range of motion and tenderness about the lumbar paraspinals bilaterally. Straight leg raise testing was negative bilaterally. Dr. Perkins diagnosed a lumbar strain/sprain, disc protrusion at L5-S1 and lumbar annular tear at L4-5.

OWCP determined that a conflict in medical opinion arose between Dr. Altic, for appellant, and Dr. Ghanma, the referral physician, as to whether she had ongoing residuals or disability from her accepted employment injuries. On March 6, 2012 it referred her, together with a statement of accepted facts and the medical record, to Dr. Ralph Rohner, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a March 7, 2012 report, Dr. Rohner stated that on August 13, 2011 appellant experienced increased pain in her back as she performed her regular work duties. Appellant related that there was no specific incident. Dr. Rohner reviewed the statement of accepted facts and addressed the accepted injuries to her right shoulder with sprains/strains of the cervical, thoracic and lumbar spine. He reported that a March 24, 2006 MRI scan demonstrated mild degenerative changes of the right shoulder AC joint with no rotator cuff tear. A February 27, 2007 MRI scan revealed normal tendons of the rotator cuff and no evidence of any labral or perilabral tears. A November 10, 2011 MRI scan of the lumbar spine demonstrated a disc bulge at L4-5 with annular fissuring and a small, left paracentral disc protrusion abutting the left S1 nerve root. Dr. Rohner noted that the purpose of his examination was to evaluate the difference in opinion between Dr. Altic and Dr. Ghanma, noting that neither of their reports was in the material provided to him.

Upon examination, Dr. Rohner observed a healthy appearing individual in no acute distress. Appellant's gait was nonantalgic and she walked well on her toes. Dr. Rohner provided range of motion findings of the cervical spine, with equal bilateral deep tendon reflexes. The posterior cervical musculature was tender but nonspastic and an axial load did not increase pain.

The thoracic spine exhibited tenderness in the interscapular area, more on the right than left, but without spasm. The sacroiliac joints were mildly tender bilaterally, but the sciatic notches were nontender. The knee extension test was unremarkable while, in the reclining position, straight leg raising was to 80 degrees bilaterally with low back pain. On Bragard's test there was evidence of plantar foot pain rather than pain along the sciatic nerve. Lumbar flexion was to 60 degrees and extension to 10 degrees. Patrick's test was mildly positive bilaterally.

Dr. Rohner opined that appellant did not sustain a lumbar spine strain on August 13, 2011. He noted that November 2011 MRI scan revealed degenerative disc disease of L4-5 and L5-S1 and the time period was too short from August 13, 2011 to attribute the x-ray findings to a sprain/strain. Dr. Rohner stated that appellant's symptomatology was the normal course of events for degenerative disc disease, not aggravated by her employment. He noted that the problems with her lumbar spine were a result of appellant's degenerative disc disease and not any work-related injury. Dr. Rohner also opined that she no longer had residuals of her previously accepted cervical or thoracic strains, but continued to experience residuals of her accepted right shoulder condition. He advised that appellant was not capable of returning to her letter carrier duties due to the pain to palpation and stress in the right shoulder rotator cuff. Dr. Rohner advised that she avoid repetitive motion use of the shoulder or any extended overhead use of the right shoulder. He also restricted appellant to lifting up to 30 pounds and to follow proper lifting techniques.

In a March 29, 2012 report, Dr. Gregory Z. Mavian, a Board-certified neurosurgeon, examined appellant for complaint of low back and radicular symptoms after the August 13, 2011 injury. He observed limitations and discomfort upon hyperextension, forward flexion and side bending. Straight leg raise testing was not met with any guarding, grimacing or intense pain. Dr. Mavian reviewed her records, including diagnostic images, and noted that a November 10, 2011 MRI scan revealed a broad-based disc bulge at L4-5 and L5-S1 without stenosis, foraminal compression or disc herniation. He diagnosed back pain with lower extremity radicular paresthesias and disc bulge at L4-5 and L5-S1.

On April 4, 2012 OWCP requested that Dr. Rohner clarify his medical opinion. It noted that it had accepted appellant's claim for an August 13, 2011 lumbar sprain, and thus, his opinion on whether she continued to be disabled as a result of the August 13, 2011 employment injury should be based on an accepted August 13, 2011 back injury.

In an April 4, 2012 report, Dr. Rohner stated that the diagnostic changes observed in November 2011 were too advanced to be caused by a 90-day-old injury. He reiterated his opinion that appellant no longer had residuals of the August 13, 2011 work injury and her current findings were related to the aging phenomenon as seen on the MRI scan. Dr. Rohner noted that there was no additional diagnosis caused, aggravated or accelerated by the August 13, 2011 employment injury. Appellant's medical diagnosis was degenerative disc disease at L4-5 and L5-S1, which was not aggravated or accelerated by the accepted mechanism of injury.

On April 5, 2012 Dr. Altic reported appellant's complaint of bilateral radicular pain, periodic numbness and paresthesias and noted that her attorney was seeking a rebuttal to the impartial medical examination. Upon examination, he observed tenderness to palpation over the lumbar region. Lumbar flexion was to 30 degrees and extension was to 5 degrees. Straight leg

raise testing was positive bilaterally at 70 degrees. Dr. Altic did not address the report or findings by Dr. Rohner.

In an April 5, 2012 attending physician's report, Dr. Altic noted that appellant sustained a twisting injury on August 13, 2011. He checked "yes" that her condition was caused or aggravated by the employment activity. Dr. Altic indicated that appellant was totally disabled from August 18, 2011 to July 5, 2012.

On May 2, 2012 OWCP advised Dr. Rohner that he failed to provide an OWCP-5 work capacity form specifying the restrictions based on appellant's right shoulder condition. In a May 3, 2012 work capacity evaluation form, Dr. Rohner noted that she was not capable of performing her usual job but could work within specified restrictions on reaching or reaching above the shoulder with the right arm and no repetitive motion.

On May 8, 2012 appellant contended that Dr. Altic had answered any questions relevant to her present condition. She stated that he had better knowledge of her condition since he treated her prior to and for the August 13, 2011 injury.

In a May 8, 2012 report, Dr. Altic stated that the November 10, 2011 MRI scan clearly revealed an annular tear at L4-5 and disc protrusion of L5-S1. While appellant had previous low back injuries before the August 13, 2011 incident, they were not as significant symptomatically as the August 13, 2011 injury. Dr. Altic noted that her previous lumbar problems were not terribly significant and that she did not have any MRI scans prior to 2011. He disagreed with Dr. Ghanma's opinion and stated that, since the injury occurred, appellant had significant symptomatic and functional problems with her lumbar spine consistent with the L4-5 and L5-S1 disc pathologies. Dr. Altic also disagreed with Dr. Ghanma's opinion that appellant had no significant physical findings and noted impaired range of motion in the lumbar spine and positive straight leg raise testing. He stated that the only reasonable medical conclusion for appellant's continuing lumbar and radicular complaints were the disc bulges and annular tear at L4-5 and disc protrusions at L5-S1, which were explained by the 2011 injury.

On June 28, 2012 the employing establishment offered appellant a modified job assignment as a letter carrier. Appellant refused the job offer.

In a July 12, 2012 report, Dr. Altic related that appellant continued to have low back pain with bilateral lower extremity radicular paresthesias and numbness. As he dictated in his December 7, 2010 report, appellant's disc bulge and annular tear at L4-5 and disc protrusion at L5-S1 were a direct and proximate result of the August 13, 2011 injury and was explained by the mechanism of injury. He opined that appellant remained temporarily totally disabled from any gainful means of employment.

On July 17, 2012 OWCP requested that Dr. Rohner clarify his opinion regarding whether appellant's work-related injuries had resolved and applicable work restrictions. It enclosed copies of the reports of Dr. Altic and Dr. Ghanma.

In a July 17, 2012 response, Dr. Rohner stated that he reviewed reports of Dr. Altic and Dr. Ghanma, noting that the difference of opinion was whether the bulging disc and annular tear were related to the accepted injury. Upon review of the additional materials, he stated that his

opinion had not changed. Dr. Rohner noted that appellant had pain develop while performing her work duties but there was no injury. According to the medical records, appellant had a preexisting lumbar condition that became symptomatic at work and was a normal course of events for the anatomic abnormalities of her back.

On July 25, 2012 OWCP issued a notice of proposed termination of appellant's compensation benefits based on the accepted August 13, 2011 lumbar strain. The weight of medical opinion was found to be represented by Dr. Rohner, the impartial medical examiner. OWCP noted that Dr. Rohner found residuals of the accepted right shoulder injury for which work limitations were provided, but that the termination of benefits related to her accepted lumbar strain.

In a September 27, 2012 attending physician's report, Dr. Altic indicated that on August 13, 2011 appellant sustained a low back injury. He noted positive straight leg raise testing and diagnosed a back condition. Dr. Altic again checked "yes" that appellant's condition was caused or aggravated by the employment activity and she remained disabled.

In a decision dated October 9, 2012, OWCP terminated appellant's compensation benefits effective that. It found that Dr. Rohner's impartial medical opinion represented the weight of the medical evidence and established that the August 13, 2011 lumbar strain had resolved.

On October 15, 2012 appellant's counsel requested a hearing which was held on February 6, 2013. He contended that Dr. Rohner's impartial medical examination report was of no evidentiary value because the physician refused to accept that appellant sustained a lumbar strain on August 13, 2011. Appellant's counsel stated that the termination decision was premature because there was no determination as to other back conditions, contending that she sustained a disc herniation as a result of the accepted injury. He also stated that Dr. Ghanma was improperly selected as a second opinion examiner.

By decision dated April 24, 2013, an OWCP hearing representative affirmed the October 9, 2012 decision. She found that the weight of the medical evidence rested with Dr. Rohner, the impartial referee, and established that appellant's accepted lumbar strain had resolved without disability.

### **LEGAL PRECEDENT**

Under FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.<sup>3</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> The burden of proof includes the necessity of furnishing rationalized medical

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<sup>3</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>4</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

opinion evidence based on a proper factual and medical background.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>6</sup> 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.<sup>7</sup>

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 impartial medical specialist) who shall make an examination.<sup>8</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>9</sup> When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist 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.<sup>10</sup>

### ANALYSIS

OWCP accepted that on August 13, 2011 appellant sustained a lumbar strain in the performance of duty. It previously accepted her claims for December 13, 2005 and February 24, 2007 right shoulder conditions and strains on February 14, 2007 to the cervical, thoracic and lumbosacral spine. Appellant stopped work on August 17, 2011 and received compensation benefits.

OWCP found that a conflict in medical opinion on continuing residuals and disability related to the August 13, 2011 lumbar strain. Appellant's attending physician, Dr. Altic, determined that she had residuals and was totally disabled due to the work-related lumbar condition. Dr. Ghanma, an OWCP referral physician, found that appellant no longer had residuals of the lumbar strain or disability related to the accepted injury. OWCP referred appellant to Dr. Rohner, selected as the impartial medical referee.

Dr. Rohner provided an accurate history of the August 13, 2011 employment injury and the previously accepted injuries to her right shoulder and cervical, thoracic and lumbar spine. He noted that appellant related experiencing pain in her low back region for several days prior to August 13, 2011 and informed him that there was no specific incident. Appellant performed her

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

<sup>6</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>7</sup> *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>8</sup> 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).

<sup>9</sup> 20 C.F.R. § 10.321.

<sup>10</sup> *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

regular work duties but did not stumble or fall, lift any unusual weight or misjudge a step. Dr. Rohner reviewed appellant's treatment by Dr. Altic, who prescribed physical therapy with some improvement of her symptoms. Dr. Rohner set forth findings on examination of her cervical, thoracic and lumbar spines and her right shoulder. He reviewed the diagnostic studies, noting that the November 10, 2011 MRI scan of the lumbar spine revealed a disc bulge at L4-5 with annular fissuring and a small left paracentral disc protrusion at the left S1 nerve root. Dr. Rohner also reviewed x-rays obtained by Dr. Altic on November 9, 2011 that he found to be unremarkable for bone, joint or disc pathology. Based on his review of the medical records, physical examination and diagnostic studies, Dr. Rohner concluded that appellant did not sustain a sprain/strain of the lumbar spine on August 13, 2011 nor could the findings from the November 2011 diagnostic studies be attributed to a sprain or strain. He found that she had degenerative disc disease of the lumbar spine at L4-5 and L5-S1 and that the MRI scan studies demonstrated that her symptomatology was normal for the course of the disease process. Dr. Rohner noted that appellant related performing her normal job duties and experienced pain that day while walking. He found that she had residuals of her right shoulder condition, noting pain to palpation with stressing of the rotator cuff and of the AC joint. Dr. Rohner found no residuals related to the cervical or thoracic spine and stated that the current lumbar findings related to the underlying degenerative disease. He provided physical limitations pertaining to the right shoulder that were work related but advised that her lumbar restrictions were not work related, but due to her degenerative disease. Appellant was found capable of returning to work under the restrictions set forth.

The Board finds that the opinion of Dr. Rohner is thorough and based on an accurate factual and medical background of the accepted claims. His opinion represents the special weight of medical evidence accorded to that of an impartial medical referee. Dr. Rohner reviewed the relevant medical records and diagnostic studies and provided an explanation for his opinion that the August 13, 2011 lumbar sprain had resolved without disability.

Appellant submitted additional reports from Dr. Altic, who reiterated his opinion that the August 13, 2011 injury caused the annular tear and disc protrusion as seen on the November 10, 2011 MRI scan. Dr. Altic stated that, while appellant had previous low back injuries prior to August 13, 2011, they were not as significant. It was more reasonable, he stated, that her functional problems arose after the accepted injury. Dr. Altic reiterated that appellant remained totally disabled. The Board notes that Dr. Altic was on one side of the conflict in medical opinion found in this case. His subsequent reports essentially repeated his stated findings and conclusion. It is to be noted that OWCP accepted the August 13, 2011 injury for a lumbar strain, not for the annular tear or disc protrusion revealed by subsequent diagnostic testing.

Dr. Rohner reviewed the reports of Dr. Altic and disagreed with the findings of the attending physician. The impartial specialist noted that the medical records documented a preexisting degenerative disease that became symptomatic at work. Dr. Rohner concluded that appellant's ongoing symptoms represented the normal course of the disease process based on the anatomic abnormalities at L4-5 and L5-S1 which were not aggravated or accelerated by the August 13, 2011 injury. The Board finds that OWCP properly relied on the opinion of the medical referee to terminate appellant's compensation benefits based on the accepted lumbar sprain.



**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits related to her accepted lumbar sprain.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 24, 2013 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Issued: January 16, 2014  
Washington, DC

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

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

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