



sufficiently well reasoned to carry the weight of the medical evidence or that there was a conflict of medical opinion evidence.

### **FACTUAL HISTORY**

On June 21, 2011 appellant, then a 44-year-old city carrier, filed an occupational disease claim alleging that she developed pain in her neck and shoulders, left arm and numbness in her left hand on April 1, 2011. She first attributed her condition to her employment duties of carrying a heavy mailbag on her left shoulder and carrying mail in her arm on May 3, 2011. Appellant underwent a cervical magnetic resonance imaging (MRI) scan on June 16, 2011 which demonstrated osteoarthritis at C4-5, C5-6 and C6-7. OWCP denied her claim by decision dated September 26, 2011.

Appellant requested an oral hearing before an OWCP hearing representative on October 13, 2011. Dr. Shahla Vakili, a Board-certified neurologist, examined her on October 5, 2011 and diagnosed cervical radiculopathy. He stated that appellant's condition was related to her lifting and carrying at work and noted that she did not have any problem or injury previously. Dr. William L. Chollak, a Board-certified orthopedic surgeon, completed a report on October 4, 2011 and diagnosed left cervical radiculopathy noting that her condition had been confirmed with electromyogram (EMG) and MRI scan studies. He stated that appellant experienced overuse at work including quick motions and lifting with her left arm. Dr. Chollak opined that the only cause for her condition was overuse as a letter carrier. Appellant underwent an EMG on June 1, 2011 which demonstrated mild irritation of the C5 roots bilaterally more on the left.

Appellant testified at the oral hearing on January 17, 2012. Dr. Vakili submitted reports dated January 11 and February 6, 2010 and listed his findings on May 25, 2011 including limitation of neck movement and spasms of the paraspinal muscles. He reviewed diagnostic testing and found C5-6 and C6-7 disc bulges and neuroforaminal stenosis. Dr. Vakili diagnosed cervical radiculopathy. He noted that appellant reported no problems prior to May 2011 and opined that her condition was related to her work duty of carrying mail. Dr. Vakili stated that she was totally disabled and that she could not carry heavy weights.

By decision dated March 27, 2012, OWCP's hearing representative affirmed the September 26, 2011 denial of appellant's claim.

Counsel requested reconsideration on August 8, 2012. Dr. Vakili completed a report on August 4, 2012. He stated that appellant's work activities resulting in overuse of her left arm as well as bending, twisting, lifting, reaching, sorting, casing, pushing, pulling and delivering mail were sufficient to cause disc displacement and compression of the nerve root. Dr. Vakili provided work restrictions for four hours a day of sitting, standing, walking, stooping, climbing stairs and simple grasping as well as performing a desk job with intermittent walking every 30 minutes.

OWCP referred appellant for a second opinion evaluation with Dr. Heist. In a report dated October 24, 2012, Dr. Heist reviewed her medical and factual history. He found that appellant's cervical spine showed a normal lordotic curve with no evidence of paravertebral

muscle guarding or cervical radiculopathy, gross muscle weakness or atrophy. Dr. Heist diagnosed cervical dorsal and lumbar sprains as well as left shoulder sprain. He stated, "Clinically, [appellant] demonstrated a slight restriction of motion that was caused by her mild preexisting degenerative changes. There were no objective signs of cervical or lumbar radiculopathy. There were no signs of radiculopathy on MRI scan studies." Dr. Heist opined that appellant's sprains had resolved and stated that she was capable of returning to work full time without restrictions.

On November 19, 2012 OWCP accepted appellant's claim for left shoulder sprain, thoracic sprain, lumbar sprain and neck sprain. Appellant then filed claims for compensation requesting wage-loss compensation from July 23, 2011 through November 16, 2012 and November 17 through 30, 2012. On June 6, 2012 the postmaster informed appellant that there was no light-duty work available within her restrictions.

In a letter dated November 30, 2012, counsel requested reconsideration and asked that OWCP expand appellant's claim to include herniated discs in the cervical and thoracic spines with radiculopathy based on the June 4, 2012 MRI scan and Dr. Vakili's reports.

Appellant filed an additional claim for compensation on December 18, 2012 requesting compensation for leave without pay from December 1 through 14, 2012.

By decision dated December 27, 2012, OWCP terminated appellant's compensation benefits effective that date. It stated that Dr. Heist's report established that she did not have residuals of the accepted conditions and that there were no objective clinical findings which correlated disability with her work injury. OWCP stated that the weight of the medical evidence demonstrated that appellant no longer had a disability from work due to her accepted conditions.

Counsel requested an oral hearing on January 3, 2012. Dr. Megha Mendriatta, a family practitioner, completed reports on October 2 and December 27, 2012 as well as January 24, 2013 and diagnosed cervical radiculopathy. She opined that appellant's preexisting cervical spondylosis was aggravated by heavy lifting in the performance of duty. Dr. Mendriatta stated that appellant could work with restrictions on overhead lifting. Counsel appeared at the oral hearing on April 10, 2013 and argued that appellant's claim should be expanded to include cervical radiculopathy.

By decision dated June 26, 2013, OWCP's hearing representative found that OWCP met its burden of proof to terminate appellant's entitlement to wage-loss compensation effective December 27, 2012. He found that Dr. Heist's report represented the weight of the medical evidence and established that there were no clinical or diagnostic findings of cervical radiculopathy and that appellant's restricted range of motion was caused by preexisting degenerative changes. The hearing representative stated that appellant was not disabled from work due to her accepted conditions.

## LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>3</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 related to the employment.<sup>4</sup>

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, 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 and resolve the conflict of medical evidence.<sup>5</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>6</sup>

## ANALYSIS

Appellant alleged that she developed an occupational disease in April 2011. OWCP accepted her claim for left shoulder sprain, thoracic sprain, lumbar sprain and neck sprain on November 19, 2012. Appellant then filed a series of claims for wage-loss compensation. By decision dated December 27, 2012, OWCP terminated her right to wage-loss compensation effective that date. On June 26, 2013 OWCP's hearing representative affirmed this decision.

The Board finds that this case is not in posture for decision. Appellant submitted medical evidence from her attending physicians, Drs. Vakili and Chollak, beginning in October 2011. The physicians reviewed her employment duties and provided a diagnosis of cervical radiculopathy based on electrodiagnostic studies including EMG and MRI scan. Both physicians opined that appellant's condition was due to her employment duties and offered some reasoning in support of their opinions noting that there was a relationship between her diagnosed condition and her employment. Dr. Vakili further opined that she was totally disabled due to her employment injuries for a period. Dr. Mendriatta began examining appellant on October 2, 2012 and diagnosed cervical radiculopathy. In brief reports, she opined that appellant's preexisting cervical spondylosis was aggravated by heavy lifting in the performance of duty and stated that appellant could work with restrictions on overhead lifting.

OWCP referred appellant for a second opinion evaluation with Dr. Heist, who examined her on October 24, 2012 and found that her physical examination demonstrated slight loss of range of motion, but no evidence of paravertebral muscle guarding or cervical radiculopathy, gross muscle weakness or atrophy. Dr. Heist diagnosed sprains of the cervical and lumbar spine

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<sup>3</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. §§ 8101-8193, 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

<sup>6</sup> *R.C.*, 58 ECAB 238 (2006).

as well as the left shoulder. He attributed appellant's loss of range of motion to "mild preexisting degenerative changes." Dr. Heist concluded that there were no objective signs of cervical or lumbar radiculopathy and no signs of radiculopathy on MRI scan. He opined that appellant's sprains had resolved and stated that she was capable of returning to work full time without restrictions at the time of his examination.

The Board finds that there is a conflict of medical opinion evidence between the opinions of Dr. Vakili, in his reports of February 6 and August 4, 2012 and Dr. Heist for OWCP on both the condition which was caused by appellant's employment and the degree and period of disability resulting from her employment-related conditions. The reports are based on a proper history of injury, provide physical findings and address the issue of causal relationship between appellant's employment and her diagnosed condition. The Board finds the outstanding medical issues must be addressed and resolved by an impartial medical examiner, pursuant to 5 U.S.C. § 8123(a).

Due to the existing conflict of medical opinion evidence, the Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation effective December 27, 2012.

### **CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's compensation benefits effective December 27, 2012 due to an unresolved conflict in medical opinion evidence.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 26, 2013 decision of the Office of Workers' Compensation Programs is reversed.<sup>7</sup>

Issued: July 28, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014.