



## **FACTUAL HISTORY**

On February 19, 2008 appellant, then a 50-year-old mail processor, filed an occupational disease claim (Form CA-2) indicating that her bilateral shoulder pain, neck pain, and low back pain were sustained as a result of her federal employment. OWCP accepted the claim for aggravated irregular disc bulge aggravated degenerative disc disease, and aggravated C5-6 radiculopathy.

By decision dated October 6, 2009, appellant received a schedule award for two percent right upper extremity impairment and two percent left lower extremity impairment. The date of maximum medical improvement was September 14, 2009 and the award ran for 12 weeks, for the period September 15 to December 7, 2009.

Appellant has received compensation benefits for total disability on the periodic rolls due to her work-related conditions since September 21, 2011.

Appellant was referred by OWCP for a second opinion evaluation to determine his work capacity and disability.

In an April 10, 2014 report, Dr. Richard R. Harris, a Board-certified orthopedic surgeon and OWCP referral physician, reviewed the statement of accepted facts (SOAF) and appellant's medical records and set forth examination findings. He noted that she presented in a wheelchair carrying a cane and was wheeled into the room by her sister. Dr. Harris noted that appellant had a well healed scar anteriorly on her neck with full range of motion.<sup>3</sup> There was decreased abduction and decreased extension and flexion of the right shoulder. Tenderness to palpation was present anteriorly in the right shoulder. The left shoulder had full range of motion as did the elbows, wrists, fingers, hips, knees, and ankles. Dr. Harris noted that appellant demonstrated difficulty rising from the wheelchair and was unable to toe and heel walk. He concluded that the accepted conditions had not returned to baseline levels since the original injury. Dr. Harris opined that a functional capacity evaluation (FCE) was needed to address appellant's work capacity and to determine maximum medical improvement.

In an April 30, 2014 report, Dr. Robert L. Pearlman, a Board-certified neurologist, determined that appellant's chronic and persistent problems with her neck had resulted in profuse arthritic changes which impacted her ability to walk because of compression on her spinal cord. He opined that this chronic, long-term injury resulted from her job of lifting heavy packages, and caused her symptomatology to begin.

On May 21, 2014 appellant underwent the requested FCE. The results reflected an inconsistent effort by appellant and therefore were to be interpreted as a minimum level of function, not representative of her true potential capabilities. Appellant was assessed as being able to perform a minimum light physical demand work. In a June 2, 2014 report, Dr. Harris opined that, based on the FCE results, which showed minimal effort, she could perform permanent light-duty work with restrictions for four hours a day.

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<sup>3</sup> The record indicates that appellant underwent a cervical surgery performed by Dr. Carter Morris, a Board-certified neurosurgeon, in October 1999. Specific details regarding this surgery are not of record.

On August 29, 2014 OWCP received a report of investigation from the employing establishment's Office of Inspector General (OIG). The report covered the period October 29, 2013 to August 27, 2014. The video revealed appellant driving, walking, pushing, lifting, bending, and running errands, without any presentation of pain. The OIG advised that Dr. Pearlman had declined to review the copy of the surveillance video delivered to his office on August 12, 2014. However, on August 27, 2014 he opined that appellant was unable to work.

In his August 27, 2014 report, Dr. Pearlman noted neurological findings pertaining to the arms and neck. He noted that it was harder for appellant to get up out of the chair, but she was able to do it. Dr. Pearlman provided an assessment of cervical spondylitic myelopathy and noted that she would undergo cervical surgery with Dr. Carter Morris, a Board-certified neurosurgeon. He also opined that appellant was totally disabled.

On September 16, 2014 OWCP requested that Dr. Pearlman clarify appellant's current medical status and disability based on an updated SOAF, his review of the surveillance video, and his examination. Also on September 16, 2014 it requested that Dr. Harris provide a supplemental report based on his review of the surveillance video and the updated SOAF. Appellant and her counsel were copied on these September 16, 2014 letters.

In a September 18, 2014 letter, Dr. Pearlman noted that appellant had cervical surgery on September 15, 2014 performed by Dr. Morris at St. Vincent's Hospital. He noted Dr. Morris would be a better person to answer OWCP's questions as he had not seen her postoperatively.

In an October 6, 2014 report, Dr. Harris reviewed the surveillance video of appellant's activities and opined that all of the accepted conditions had resolved. He opined that the subjective findings outweigh the objective findings and that there was evidence of malingering or symptom magnification. Dr. Harris opined that appellant had reached maximum medical improvement, she did not require any modified duties or work enhancements, and she should be returned to employment performing her mail processor duties as outlined in the updated SOAF.

On October 29, 2014 OWCP notified appellant of a proposal to terminate her medical and wage-loss compensation benefits based on the opinion of Dr. Harris, the second opinion physician, who had opined, after reviewing all the medical documentation and surveillance video footage and completing a physical examination, that the residuals of the accepted work-related aggravated L4-5 irregular disc bulge, aggravated L4-5 degenerative disc disease, and aggravated C5-6 radiculopathy conditions had ceased and she was no longer disabled from work as a result of the accepted conditions. Appellant was afforded 30 days to submit additional information.

In a November 25, 2014 letter, counsel argued that the evidence established that appellant was disabled due to her on-the-job injuries. He contended that Dr. Pearlman's April 30, 2014 note supported that she had objective symptoms from her injuries which made her disabled. Counsel noted that appellant had neck surgery on September 15, 2014 and again on November 21, 2014 due to her work injuries.

OWCP received further evidence on December 1, 2014 including a September 15, 2014 operative report for anterior cervical discectomy and fusion at C3-4 and a cervical myelogram dated November 11, 2014.

In a September 28, 2011 report, Dr. Pearlman had discussed the development of several conditions which caused disability from work. He had examined appellant many times since 2000. Appellant had experienced consistent problems involving her neck and back due to arthritic change, as well as cervical radiculopathy due to a herniated disc. Dr. Pearlman noted that he had written several letters where he has elaborated on her conditions. He opined that appellant's conditions were progressive and unremitting and that she was totally disabled from working.

In a later April 30, 2014 report, Dr. Pearlman diagnosed cervical spondylitic myelopathy and opined a significant need for surgical decompression. He noted that he had been addressing this issue with appellant's workman's compensation provider for over a decade and believed that her condition was causally related to her work injury. A duplicate copy of Dr. Pearlman's August 27, 2014 report was also received.

October 1 and November 18, 2014 postoperative status reports of appellant's surgical procedure were provided by Dr. Morris. In a November 20, 2014 report, Dr. Morris noted that she had surgery scheduled for the next day and would continue to be out of work. He also provided her current restrictions.

By decision dated December 12, 2014, OWCP terminated appellant's medical benefits and compensation for wage loss effective December 15, 2014 finding that the weight of the medical evidence rested with the opinion of Dr. Harris.

### **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 her 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>

### **ANALYSIS**

OWCP accepted that appellant sustained aggravated irregular disc bulge at L4-5, aggravated degenerative disc disease at L4-5, and aggravated C5-6 radiculopathy due to her May 11, 1995 work injury. Appellant received compensation on the periodic rolls for total disability since September 21, 2011.

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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).

Dr. Pearlman, appellant's treating neurologist, opined in his April 30, 2014 report that appellant's neck problem progressed to the point where she required surgery. Dr. Harris, OWCP's second opinion physician, opined in his June 2, 2014 report that her accepted conditions had not returned to baseline levels since the original injury. After appellant completed an FCE on May 21, 2014, which was noted to be minimum level of function as she had not performed with determine consistent effort, Dr. Harris concluded on June 2, 2014 that she could perform permanent light-duty work with restrictions at four hours per day.

OWCP subsequently obtained a surveillance video of appellant's activities from October 29, 2013 to August 27, 2014. Dr. Pearlman continued to opine that she was totally disabled as a result of her work-related conditions. OWCP requested supplemental opinions from both Dr. Pearlman and Dr. Harris based on their review of the surveillance video of appellant's activities and the SOAF.<sup>7</sup>

Dr. Pearlman continued to submit reports finding appellant unable to work, but declined to offer any opinion based on his review of the surveillance video of her activities from October 29, 2013 to August 27, 2014 or the updated SOAF. While he noted in his April 30, 2014 report that her cervical spondylitic myelopathy and the need for surgical decompression were causally related to her work injury, he failed to explain his medical reasoning for supporting causal relationship between the May 11, 1995 injury and the surgery at the C3-4 level, a condition not accepted by OWCP. As such, the Board finds his of opinion diminished probative value.<sup>8</sup>

The remainder of the medical evidence, including the diagnostic studies and operative report, fail to offer any opinion regarding the cause of appellant's current condition and is of limited probative value on the issue of causal relationship.<sup>9</sup> Dr. Morris offers no opinion on the causal relationship of appellant's current neck condition and the two surgeries performed at the C3-4 level. The Board has held that medical evidence without an opinion regarding the cause of an employee's condition is of limited probative value.<sup>10</sup> Thus, Dr. Morris' reports are of diminished probative value.

Following his review of the surveillance video of appellant's activities for the period October 29, 2013 to August 27, 2014 in conjunction with his previous examination findings and reports, which included the FCE, Dr. Harris opined that the residuals of the accepted work-related aggravated L4-5 irregular disc bulge, aggravated L4-5 degenerative disc disease and

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<sup>7</sup> The Board has held that a claimant should be advised if a surveillance video is provided to a physician. If the claimant requests a copy of the videotape, one should be made available and the claimant should give a reasonable opportunity to offer any comment or explanation regarding the accuracy of the recording. *See D.B.*, Docket No. 14-0451 (issued August 12, 2014). Although appellant and counsel were advised on September 16, 2014 that surveillance video was sent to Drs. Perlman and Harris, neither requested a copy of the video prior to OWCP's December 12, 2014 decision.

<sup>8</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>9</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

<sup>10</sup> *Id.*; *Ellen L. Noble*, 55 ECAB 530 (2004).

aggravated C5-6 radiculopathy conditions had ceased and appellant was no longer disabled from work as a result of the accepted conditions.

The Board has reviewed the opinion of Dr. Harris and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue in the present case.<sup>11</sup> Dr. Harris' opinion is based on a proper factual and medical history and he thoroughly reviewed the SOAF, the medical records, and a copy of a surveillance video.<sup>12</sup> He provided medical rationale for his opinion that the work-related conditions of aggravated L4-5 irregular disc bulge, aggravated L4-5 degenerative disc disease, and aggravated C5-6 radiculopathy conditions had resolved. In his reports of April 10, June 2, and October 6, 2014, Dr. Harris determined that appellant's symptoms and physical examination were invalid. He noted that, based on her presentation of symptoms and the activities she was performing on the surveillance video during the same time period, she no longer had residuals directly attributable to her work injury.

The Board finds that Dr. Harris' opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions. The Board also notes that there are no current reports from appellant's treating physicians establishing employment-related disability or supporting any continuing residuals of the accepted conditions. As noted, appellant's current neck condition and two surgeries have not been accepted by OWCP. Because she no longer had residuals or disability related to her accepted employment conditions, OWCP properly terminated entitlement to compensation and medical benefits effective December 15, 2014. Accordingly, its decision to terminate appellant's compensation and medical benefits is affirmed.<sup>13</sup>

On appeal, counsel argues the medical records support that appellant's current neck condition and need for surgery were due to her work-related injury. He also contends that she was undergoing physical therapy at the time of the decision. However, as indicated above, none of appellant's physicians provided a well-rationalized medical opinion to support that appellant continued with residuals or disability from her accepted conditions. As previously noted, a neck condition at C3-4 level has not been accepted by OWCP.

### **CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective December 15, 2014 because she no longer had any residuals or disability causally related to her accepted conditions.

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<sup>11</sup> See *R.W.*, Docket No. 12-375 (issued October 28, 2013).

<sup>12</sup> See *Melvina Jackson*, 38 ECAB 443 (1987).

<sup>13</sup> *L.C.*, Docket No. 12-1177 (issued August 19, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 12, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board