



## **FACTUAL HISTORY**

On May 8, 2008 appellant, then a 46-year-old postal police officer, sustained injuries to the back of her head and spine as a result of a motor vehicle accident when she was rear-ended. On June 19, 2008 OWCP accepted the claim for neck sprain and other back symptoms. It denied appellant's claim for compensation for the period June 30 to July 2, 2008 as they were considered waiting days under FECA. Appellant was placed on the periodic rolls.

A May 8, 2008 medical report by Dr. Yong H. Hahn, a Board-certified radiologist, indicated that a computed tomography of the cervical spine revealed no evidence of a cervical spine fracture.

In an October 8, 2008 medical report, Dr. Lata Bhansali, a Board-certified physical medicine and rehabilitation physician, diagnosed low back pain secondary to a herniated disc with neural foramina stenosis at L4-5 and radiculitis. She administered a trigger point injection to both gluteus medius muscles. Dr. Bhansali indicated that appellant's low back pain radiated to the hip, thigh and occasionally to the knees and bending activities were difficult and prolonged sitting was painful.

Appellant submitted reports by her attending physician, Dr. Sujata Vidyasagar, a neurologist. On September 3, 2008 Dr. Vidyasagar initially diagnosed lumbosacral musculoskeletal radicular pain syndrome and a lumbar disc herniation at L4-5. Appellant was found partially disabled. Dr. Vidyasagar stated that appellant's neck pain had resolved. Appellant had constant residual low back pain which radiated down her left lower extremity to the foot and toes, making it difficult for her to walk, climb steps or maintain prolonged sitting and standing positions. On November 3, 2008 Dr. Vidyasagar found that the radiating pain was less noticeable and seemed to radiate only to the left lateral thigh. Appellant's limitations included bending, lifting activities, sitting more than an hour and walking more than half an hour which precluded her from working.

To determine whether appellant continued to have residuals of her May 8, 2008 employment injury and her capacity for work, OWCP referred her to Dr. Michael J. Katz, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a November 19, 2008 medical report, Dr. Katz reviewed her medical records and a statement of accepted facts. He reported that appellant complained of low back pain when bending. Upon examination of the cervical spine, Dr. Katz found no tenderness and no paravertebral muscle spasm and Adson's test was negative. Upon examination of the lumbosacral spine, he found that the gait was normal without antalgic or Trendelenburg component and no paravertebral muscle spasm was present. Straight leg raising test was negative. Sensory examination revealed full sensation to light touch in the L3-S1 dermatomes. Reflexes of the quadriceps, tibialis posterior and Achilles tendon were 2+ and symmetric bilateral. Babinski was negative and there was no demonstrable clonus. Patrick was negative. Upon examination of the left shoulder there was no swelling, erythema or induration and no dislocation, clicking or grating with movement. Dr. Katz concluded that the diagnoses of cervical strain with radiculitis and lumbosacral strain were resolved. He found no further need for physical therapy or orthopedic care as there were no positive objective findings on physical examination. Dr. Katz opined that appellant was not disabled and was capable of resuming her work duties as a postal police officer without restrictions. In a November 19, 2008

work capacity evaluation, he advised that she had reached maximum medical improvement and was able to work her usual job without limitations.

Appellant submitted additional reports from Dr. Vidyasagar. On November 3, 2008 Dr. Vidyasagar advised appellant to resume work on December 4, 2008 with restrictions, but on December 3, 2008 she was not to return to work.

By letter dated March 9, 2009, OWCP referred appellant to Dr. James E.O. Hughes, a Board-certified neurosurgeon, for another second opinion evaluation. In a March 18, 2009 medical report, Dr. Hughes reviewed her medical records and a statement of accepted facts. Upon examination, he found that appellant's major pain was centered in her left gluteal region, not in her low back. Dr. Hughes concluded that her diagnoses of cervical sprain/strain and lumbar radiculopathy secondary to acute lumbar strain and preexisting L4-5 disc herniation and foraminal stenosis had resolved. He opined that there were no objective findings to support any residual compensable medical condition, that appellant had reached maximum medical improvement and was capable of performing her full-time regular-duty job without restrictions.

In a February 16, 2009 medical report, Dr. Vidyasagar reiterated her diagnoses and opined that appellant was totally disabled. In an April 2, 2009 progress report, she concluded that appellant's neck symptoms had fully resolved. Dr. Vidyasagar diagnosed chronic fluctuating low back pain and reported that appellant had difficulty bending and carrying more than 10 pounds. Appellant reported radiation of the pain in the left lower lumbar area radiating into her mid-gluteal area. Dr. Vidyasagar noted a suspicion that the problem was located in the gluteal area rather than in the lumbar spine.

OWCP referred appellant to New Rochelle Radiology for a magnetic resonance imaging (MRI) scan test. In a May 15, 2009 medical report, Dr. Mark R. Armstrong, a Board-certified radiologist, diagnosed mild greater trochanter bursitis. He noted that the left hip revealed mild increased signals along the greater trochanter and gluteus medius muscles appearing to represent a focal bursitis and was otherwise unremarkable.

In a June 30, 2009 medical report, Dr. Vidyasagar opined that appellant could not return to work due to persistent symptoms.

By letter dated August 7, 2009, OWCP notified appellant that her compensation case was undergoing a periodic review to verify that appropriate compensation payments were being made and requested additional medical evidence. It allotted 60 days for her to submit additional evidence and respond to its inquiries. By a second letter dated August 7, 2009, OWCP requested additional evidence in order to decide whether appellant was entitled to continue receiving her benefits or whether her benefits should be adjusted. It allotted 30 days for her to submit additional evidence and respond to its inquiries.

Appellant submitted progress reports by Dr. Vidyasagar dated May 13 to September 2, 2009. Dr. Vidyasagar reiterated that appellant was not capable of performing her regular job due to persistent disabling symptoms. Appellant was unable to work with restrictions due to poor tolerance to prolonged sitting, standing and walking. Dr. Vidyasagar stated that appellant had not reached maximum medical improvement.

On August 18, 2009 the employing establishment requested appellant's work capability as modified duties were available.

On November 2, 2009 OWCP found a conflict in medical opinion between Drs. Hughes and Katz, the second opinion physicians, and Dr. Vidyasagar, the attending physician, on the issues of disability and capacity for work. It referred appellant to Dr. Joel Stuart Cohen, a Board-certified neurologist, for an impartial medical examination, together along with the medical evidence of record and the statement of accepted facts.

Appellant submitted a November 23, 2009 duty status report in which Dr. Vidyasagar indicated that appellant was unable to return to work with restrictions and a November 23, 2009 attending physician's report in which Dr. Vidyasagar checked a box indicating that appellant could return to work.

On December 21, 2009 Dr. Cohen reported normal findings on examination. He concluded that the accepted diagnoses of cervical paraspinal spasm and left L4-5 radicular pain had resolved. Dr. Cohen noted that appellant continued to complain of subjective left-sided lower back discomfort but her neck pain and radicular symptoms had resolved. Although appellant continued to complain of subjective intermittent lower back discomfort, she had no objective deficits which would render her disabled. Given her previous lumbar radicular symptoms and reported L4-5 disc/neuroforaminal pathology, she was advised to refrain from heavy lifting, pushing or pulling. Although these work restrictions were permanent, they did not conflict with appellant's job description as a postal police officer. Dr. Cohen opined that she had reached maximum medical improvement and was medically able to return to her date-of-injury job for eight hours a day.

By letter dated February 22, 2010, OWCP advised appellant that it proposed to terminate compensation for wage-loss and medical benefits. It explained that it found the weight of the medical evidence rested with the referee physician and allotted 30 days for appellant to respond with additional evidence or argument.

In a March 11, 2010 report, Dr. Vidyasagar reiterated the diagnoses and her opinion that appellant was partially disabled. She reported that appellant's low back pain was localized predominantly to the left sacroiliac area and she described no more radicular pain. Appellant also had significant limitations with activities that involved bending, lifting, prolonged sitting, standing and walking. With regard to Dr. Cohen's determination that appellant should return to work full time without restrictions, Dr. Vidyasagar noted that appellant's capacity as a postal police officer required her to wear a bulletproof vest and a gun belt, which rested over the sacroiliac areas. Appellant also participated in defensive training which would cause exacerbation of her sacroiliac pain. Dr. Vidyasagar found that appellant was unable to return to work.

By decision dated March 31, 2010, OWCP terminated appellant's wage-loss and medical benefits. It found that the weight of the medical evidence was represented by Dr. Cohen.

On April 15, 2010 appellant, through her attorney, requested a telephonic hearing. She submitted work excuse notes dated June 14 and 21, 2010 from Mid-Hudson Comprehensive

Medical and Diagnostic, P.C. to support that appellant was unable to work. The notes contained illegible signatures.

On July 21, 2010 a telephonic hearing was held before an OWCP hearing representative. Appellant testified that Dr. Cohen indicated that she was experiencing muscle spasms and yet in his referee report, he stated that the cervical paraspinal spasm had resolved. She testified that he did not take an x-ray or MRI scan. Appellant noted that Dr. Vidyasagar had disagreed with Dr. Cohen's findings. An OWCP hearing representative advised appellant to submit a report by Dr. Vidyasagar with a detailed medical opinion and held open the record for 30 days.

In response, appellant submitted work excuse notes dated July 21, August 26 and October 18, 2010 from Mid-Hudson Comprehensive Medical and Diagnostic, P.C. They advised appellant was unable to work and contained illegible signatures.

By decision dated November 10, 2010, an OWCP hearing representative affirmed the March 31, 2010 termination decision, finding that the medical evidence established that the accepted employment-related injuries had resolved without disabling residuals.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of compensation 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 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 to compensation 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 requires further medical treatment.<sup>6</sup>

It is well established that, when a case is referred to a referee 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>7</sup>

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

<sup>3</sup> See *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003); 20 C.F.R. § 10.503.

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

<sup>5</sup> See *T.P.*, 58 ECAB 524 (2007).

<sup>6</sup> See *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>7</sup> See *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

## ANALYSIS

On June 19, 2008 OWCP accepted the claim for neck sprain and other symptoms referable to the back. It reviewed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Vidyasagar and OWCP referral physicians, Drs. Katz and Hughes. Dr. Vidyasagar indicated that appellant sustained residuals of her work-related injuries and was partially disabled and could not return to her preinjury position. Drs. Katz and Hughes determined that appellant's work-related conditions of cervical strain and lumbar radiculopathy secondary to acute lumbar strain and preexisting L4-5 disc herniation and foraminal stenosis had resolved and she had no residuals due to the May 8, 2008 employment injury and could return to her preinjury position as a postal police officer without restrictions related to her work injury. Consequently, the Board finds that OWCP properly referred appellant to Dr. Cohen to resolve the conflict pursuant to 5 U.S.C. § 8123(a).

The Board finds that the opinion of Dr. Cohen is sufficiently well rationalized and based upon a proper factual background such that it is entitled to the special weight. Dr. Cohen found that appellant's work-related conditions had resolved and there were no ongoing residuals that caused disability. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>8</sup>

In his December 21, 2009 referee report, Dr. Cohen noted an essentially normal physical examination. He concluded that the diagnoses of cervical paraspinal spasm and left L4-5 radicular pain, causally related to the May 8, 2008 employment injury, had resolved. Dr. Cohen noted that, although appellant continued to complain of subjective intermittent lower back discomfort, she had no objective deficits which would render her disabled. He noted that, given her previous lumbar radicular symptoms and reported L4-5 disc/neuroforaminal pathology, she should refrain from heavy lifting, pushing or pulling. The Board notes that these restrictions are prophylactic in nature to avoid future injury. Although permanent, they did not conflict with appellant's job description as a postal police officer. Dr. Cohen found that she had reached maximum medical improvement and was medically able to return to her date-of-injury job full time.

In a March 11, 2010 report, Dr. Vidyasagar reported that appellant was partially disabled. She indicated that appellant's low back pain was localized predominantly to the left sacroiliac area and stated that appellant continued to have significant limitations with activities that involved bending, lifting, prolonged sitting, standing and walking. Dr. Vidyasagar noted Dr. Cohen's determination that appellant should return to work full time without restrictions. She opined that appellant was unable to return to work because appellant's capacity as a postal police officer required her to wear a bulletproof vest and a gun belt, which rested over the sacroiliac areas and participate in defensive training which would cause exacerbation of her sacroiliac pain. However, Dr. Vidyasagar did not adequately address how any continuing

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<sup>8</sup> See *Solomon Polen*, 51 ECAB 341 (2000); *Y.P.*, Docket No. 10-1930 (issued July 13, 2011). See also 5 U.S.C. § 8123(a).

condition or medical restrictions and disability were causally related to the accepted employment injuries. She was on one side of the conflict that Dr. Cohen resolved and her opinion is insufficient to overcome the special weight accorded to Dr. Cohen or to create a new medical conflict.<sup>9</sup>

The Board finds that Dr. Cohen had a full factual history of injury, addressed the relevant facts and evaluated the course of appellant's condition. At the time appellant's compensation benefits were terminated Dr. Cohen found that appellant had no ongoing work-related disability. Dr. Cohen's opinion is found to be probative evidence and reliable. The Board finds that his opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted employment conditions of neck sprain and other symptoms referable to his back has ceased.

During a July 21, 2010 telephonic hearing appellant raised several concerns pertaining to the referee report. As noted, the Board finds that Dr. Cohen provided a well-reasoned opinion for his conclusions that the accepted conditions had resolved. An OWCP hearing representative held the record open for 30 days. In response, appellant submitted work excuse notes dated June 14 to October 18, 2010. However, the notes contained illegible signatures and the Board is unable to identify whether they were completed by a physician. As such, the Board finds that these notes are of no probative value.<sup>10</sup> Appellant did not establish that she had any employment-related condition or disability after March 31, 2010.

On appeal, counsel contends that OWCP's November 10, 2010 decision was contrary to fact and law. As explained, Dr. Cohen's report represents the special weight of the medical evidence and establishes that appellant's accepted conditions resolved.

### **CONCLUSION**

The Board finds that OWCP has met its burden of proof to terminate compensation benefits effective March 31, 2010 on the grounds that appellant's accepted complications resolved without disability or residuals.

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<sup>9</sup> See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>10</sup> See *Merton J. Sills*, 39 ECAB 572 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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