



## **FACTUAL HISTORY**

On February 12, 2008 appellant, then a 24-year-old security guard, filed a traumatic injury claim alleging that on that date, she slipped on an icy sidewalk and hurt her back in the performance of duty. She stopped work on that date. OWCP accepted the claim for cervical strain, neck sprain and multiple contusions. Appellant was placed on the periodic rolls and received compensation benefits.

Appellant had received treatment from Dr. George H. Drakes, a Board-certified internist. In a March 20, 2008 report, Dr. Drakes diagnosed cervical sprain, lumbosacral sprain/strain, myofascial pain and fibromyalgia. He requested physical therapy along with other treatment comprised of whirlpool, ultrasound, stretching, and hot and cold packs. A February 14, 2008 x-ray read by Dr. Verne F. Kemerer, Jr., a Board-certified diagnostic radiologist, revealed a normal left hand, cervical spine and left elbow. A June 3, 2008 magnetic resonance imaging (MRI) scan of the cervical spine, read by Dr. Nina J. Gordon, a diagnostic radiologist, showed reversal of normal cervical lordosis and desiccation at C3-C4. Dr. Kemerer noted that the lordosis reversal might be voluntary or due to muscle spasm. There was no significant spinal canal or neural foraminal stenosis or cervical abnormalities. On July 22, 2008 Dr. Drakes performed a medial branches block at the bilateral C4-C5, C5-C6 and C6-C7 levels. He diagnosed cervical facet syndrome and cervical sprain.

In a July 30, 2008 report, Dr. Nelson Henry, a Board-certified family practitioner, noted appellant's history and diagnosed other disorders of the cervical region, thoracic or lumbosacral neuritis or radiculitis. He referred appellant for physical therapy and advised that she would be disabled until October 12, 2008.

On September 16, 2008 OWCP referred appellant to Dr. Robert F. Draper, a Board-certified orthopedic surgeon, for a second opinion examination. In a September 25, 2008 report, Dr. Draper described appellant's history of injury and treatment, noting findings of diagnostic testing. He set forth his examination findings that included normal upper extremity motor strength, normal reflexes and normal light touch sensation in cervical spine dermatomes. Dr. Draper noted cervical range of motion findings and advised that there was no cervical spine muscle spasm or tenderness. He noted that there was no tenderness or deformities of the thoracic spine and she had a normal lumbar spine. Dr. Draper diagnosed a cervical strain and contusion of the left upper extremity to include left hand and left elbow. He advised that, while appellant clearly had soft tissue injuries as documented, she had recovered. Dr. Draper explained that his examination basically revealed no objective findings. He indicated that disability would have lasted 30 days from the date of the accident. Dr. Draper advised that appellant had no residuals, a negative physical examination and negative studies. He opined that appellant reached maximum medical improvement and could return to her full-duty position for eight hours per day. Dr. Draper stated that she had no physical limitations.

In an October 7, 2008 report, Dr. Jean-Marc Voyadzis, a Board-certified neurosurgeon, noted appellant's history of injury and treatment and examined appellant. His findings included normal cervical and lumbar range of motion. Dr. Voyadzis indicated there was some mild lumbar and cervical tenderness. He indicated that he had reviewed the diagnostic tests of the cervical spine from June 3, 2008. Dr. Voyadzis noted that there was no evidence of significant

degenerative disc disease, no evidence of canal or foraminal stenosis and no evidence of spinal cord or nerve root impingement, no evidence of degenerative disc disease, disc fracture or subluxation and a slight reversal of the normal cervical lordosis. He indicated that appellant did not need surgery but he opined that she “was suffering from cervical and lumbar strain as a result of the fall back in February.” Dr. Voyadzis advised that appellant would “likely get better over time.”

In an October 16, 2008 report, Dr. Drakes examined appellant and found that appellant’s cervical range of motion showed decreased flexion with pain, normal extension with pain, normal left tilt without pain, normal right tilt without pain, normal left rotation without pain, normal right rotation without pain. He advised that on palpation, appellant had pain on paracervical musculature upper trapezius bilaterally and cervical facet bilaterally. Dr. Drakes determined that appellant’s thoracic and lumbar motion were normal. He diagnosed cervical sprain, cervical facet syndrome, myofascial pain/fibromyalgia, lumbar strain/sprain, lumbar facet syndrome and recommended continued physical therapy.

On February 12, 2009 OWCP proposed to terminate compensation benefits based on Dr. Draper’s report which supported that residuals of the February 12, 2008 work injury had ceased.

In a February 24, 2009 duty status report, Dr. Henry indicated that appellant had a cervical and lumbar sprain, and checked the box “no” in response to whether she was able to resume work.

By decision dated March 19, 2009, OWCP terminated appellant’s compensation benefits effective March 19, 2009, on the grounds that she had no continuing residuals of her employment injury.

By letter dated March 10, 2010, appellant’s attorney requested reconsideration and submitted additional evidence. He submitted arguments that not all of appellant’s conditions caused by her February 12, 2008 employment incident were accepted. Counsel asserted that OWCP should expand the claim to include all of appellant’s medical conditions. He alleged that Dr. Draper’s report was insufficient to support the termination of benefits and that his report, at best, created a conflict in the medical evidence. Counsel also alleged that she continued to suffer from her employment-related conditions.

OWCP received a July 23, 2009 report from Dr. Drakes and a September 14 and 30, 2009 reports from Dr. Tristan J. Shockley, Board-certified in physical medicine and rehabilitation. Both physicians diagnosed cervical facet syndrome, neck sprain and strain, lumbar sprain and strain, lumbosacral facet syndrome, unspecified myalgia and myositis and spinal enthesopathy. OWCP also received copies of previously submitted reports.

In a letter dated March 26, 2010, appellant’s attorney alleged that appellant continued to suffer from disability causally related to her employment incident.

By decision dated June 16, 2010, OWCP denied modification of the March 19, 2009 decision.

## LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>2</sup> Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>4</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>5</sup>

## ANALYSIS -- ISSUE 1

At the time of OWCP's March 19, 2009 termination decision, the Board finds that the weight of the medical evidence was represented by the second opinion physician, Dr. Draper, a Board-certified orthopedic surgeon, who submitted a well-rationalized opinion based on a complete and accurate factual and medical history.

In a September 25, 2008 report, Dr. Draper determined that appellant's cervical strain and contusions resolved within 30 days from the date of the accident with no residuals. He detailed his findings on examination and explained that there were no objective findings that the accepted conditions continued. Dr. Draper also determined that appellant's essentially negative findings that her accepted conditions had resolved without residual and that disability from the accepted condition would have lasted 30 days. He determined that she could return to her regular duties and that she had no work limitations. The Board finds that the weight of the medical evidence rested with the report of Dr. Draper, who submitted a thorough medical opinion based on a complete and accurate factual and medical history. Dr. Draper performed a complete examination, reviewed the record and found no basis on which to attribute any continuing condition or disability to the February 12, 2008 injury. Thus, the Board finds that his report established that appellant ceased to have any disability or condition causally related to the accepted employment injuries, thereby justifying OWCP's March 19, 2009 termination of benefits, including medical benefits.

Although appellant submitted reports which included an October 7, 2008 report from Dr. Voyadzis, his findings included that she had normal cervical and lumbar range of motion. Dr. Voyadzis indicated that appellant did not need surgery. He noted that appellant was "suffering from cervical and lumbar strain as a result of the fall back in February." The Board initially notes that appellant's claim was accepted for a cervical strain and neck sprain. As noted, appellant's range of motion was normal. The lumbar strain was not an accepted condition. Where an employee claims that a condition not accepted or approved by OWCP was due to an

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<sup>2</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>5</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>6</sup> Dr. Voyadzis either did not identify objective findings to support those diagnoses or did not provide medical rationale to explain why the accepted condition continued or how any of the additional conditions were causally related to the accepted employment injury. For example, while he indicated that appellant had a cervical strain from the work injury, he did not explain this in light of his finding of normal finding for cervical range of motion. Dr. Voyadzis did not explain how any particular diagnosed condition, with accompanying objective findings, were attributable to her accepted employment injuries. His report is of little probative value.<sup>7</sup>

In an October 16, 2008 report, Dr. Drakes diagnosed cervical sprain, cervical facet syndrome, myofascial pain/fibromyalgia, lumbar strain/sprain, lumbar facet syndrome and recommended continued physical therapy. As noted above, the only condition accepted by OWCP was the cervical strain and multiple contusions and sprain of the neck. Dr. Drakes also did not address or explain why any of the diagnosed conditions were caused or aggravated by the February 12, 2008 work injury.

In these circumstances, OWCP properly accorded the weight of the evidence to Dr. Draper's September 25, 2008 report. Accordingly, it met its burden of proof to justify termination of compensation benefits on March 19, 2009.

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

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.<sup>8</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>9</sup>

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<sup>6</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>7</sup> *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>8</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>9</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

## ANALYSIS -- ISSUE 2

Subsequent to OWCP's March 19, 2009 decision, appellant requested reconsideration. It received a July 23, 2009 report from Dr. Drakes and a September 14 and 30, 2009 reports from Dr. Shockley. Both physicians noted diagnoses including ones that were never accepted as being work related by OWCP.<sup>10</sup> Furthermore, these reports do not offer any opinion on whether appellant's continuing conditions or disability are causally related to the February 12, 2008 work injury.

Other medical reports submitted by appellant also did not address the cause of her condition. Appellant also submitted on reconsideration reports that were previously submitted and considered by OWCP.

Consequently, appellant has not established that her condition on and after March 19, 2009 was causally related to her accepted employment injury.

On appeal and before OWCP, appellant's attorney asserts that appellant continues to suffer from her employment-related conditions and that Dr. Draper's opinion was insufficient to meet OWCP's burden of proof. However, as noted above, OWCP met its burden of proof to justify termination of benefits on March 19, 2009, as the medical evidence established that appellant ceased to have any disability or condition causally related to the accepted employment injuries.<sup>11</sup> Counsel also requested that OWCP expand her claim as not all of her conditions caused by her February 12, 2008 employment incident were accepted. As noted, appellant has the burden of proof to establish that conditions not accepted by OWCP are employment related.<sup>12</sup>

## CONCLUSION

The Board finds that OWCP met its burden of proof in terminating appellant's benefits effective March 19, 2009 and that appellant did not meet her burden of proof to establish that she had any injury-related condition or disability after March 19, 2009 causally related to the February 12, 2008 employment injury.

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<sup>10</sup> See *supra* note 6.

<sup>11</sup> Counsel also asserted that, at a minimum, Dr. Draper's report created a conflict in the medical evidence. However, as explained, *infra*, reports from appellant's physicians were of limited probative value. The Board has also held that a simple disagreement between two physicians does not, of itself, establish a conflict. *John D. Jackson*, 55 ECAB 465 (2004). The reports of appellant's physicians were insufficient to create a medical conflict.

<sup>12</sup> The Board notes that the record does not contain a final OWCP decision regarding appellant's claim to expand her claim. Therefore, the Board does not have jurisdiction over that issue. See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 16, 2010 decision of Office Workers' Compensation Programs is affirmed.

Issued: October 4, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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