



## **FACTUAL HISTORY**

Appellant, a 50-year-old transportation security officer, was injured on December 5, 2009 when she fell from a 20-inch high platform and landed on her back. OWCP accepted her claim for cervical, thoracic and lumbar sprains. Appellant stopped work the day of her injury. She received continuation of pay through January 19, 2010. Afterwards, OWCP paid wage-loss compensation from January 20 through February 1, 2010.

After initially receiving treatment in the emergency room, appellant sought treatment from Dr. Mark M. Weisberg, a Board-certified family practitioner, who examined her on December 10, 2009, and noted that she had been injured in a fall on December 5, 2009. Dr. Weisberg diagnosed cervical strain, thoracic strain, lumbar strain and contusion of the lumbar region. He recommended physical therapy and advised appellant to return for follow-up in five days. Dr. Weisberg saw appellant on three more occasions through December 28, 2009. Medication and physical therapy did not improve appellant's condition, and therefore, Dr. Weisberg referred her to an orthopedic/spine surgeon.

Dr. Thomas L. Vater, an orthopedic surgeon, examined appellant on January 11, 2010. His impression was cervical, thoracic and lumbar back pain, with lumbar radiculopathy. Dr. Vater noted that appellant's condition was secondary to a fall. He ordered magnetic resonance imaging (MRI) scans of the cervical, thoracic and lumbar spine. Dr. Vater also indicated that appellant was able to perform limited-duty work, one to two hours per day.<sup>3</sup>

After reviewing appellant's January 25, 2010 MRI scans, Dr. Vater indicated that she could work full time with restrictions beginning February 1, 2010.<sup>4</sup> He noted that the scans did not reveal any surgical lesions. Also, there was no instability and no cord compression secondary to disc herniations. However, there was evidence of degenerative disease.<sup>5</sup> Dr. Vater's diagnosis remained the same -- cervical, thoracic and lumbar back pain, with lumbar radiculopathy to the lower extremities. Because surgical intervention was not an option, he referred appellant to physical medicine and rehabilitation. Dr. Vater specifically recommended a Dr. Victor B. Klausner.

In a report dated February 10, 2010, Dr. Klausner indicated that appellant sustained contusions of the left hip, left shoulder, lumbar spine and scalp on December 5, 2009.<sup>6</sup> He believed all of appellant's employment-related conditions had since resolved, and thus, she did not require further medical treatment. From a physiological standpoint, Dr. Klausner released

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<sup>3</sup> Appellant's limitations included lifting up to five pounds, no climbing ladders/stairs, no kneeling, no bending/stooping, no bending at the waist, no sitting and no driving. Dr. Vater also indicated that appellant should be able to change positions as needed and she should avoid reaching above shoulders.

<sup>4</sup> With the exception of the number of hours worked and the ability to reach above shoulders, the restrictions remained unchanged from January 11, 2010.

<sup>5</sup> The MRI scan of the thoracic spine revealed spondylosis and scoliosis. The January 25, 2010 lumbar MRI scan showed advanced spondylosis due to acquired degenerative changes upon a background of scoliosis. The latest cervical MRI scan revealed disc dessication throughout the cervical spine with mild loss of disc height at C4-5 level, and more pronounced disc space narrowing at C5-6 level.

<sup>6</sup> Although not a physiatrist, Dr. Klausner is Board-certified in both Family Medicine and Sports Medicine.

appellant to full duty without restrictions. He also noted a high degree of symptom magnification and psychological pathology with panic disorder and somatization disorder, which were reportedly nonindustrial.<sup>7</sup> Dr. Klausner further diagnosed preexisting thoracolumbar scoliosis with degenerative disc disease, osteoarthritis, mild stenosis and physical deconditioning. Lastly, he diagnosed preexisting migraine headache.

Dr. James S. Bertie, a family practitioner, examined appellant on February 27, 2010 and diagnosed chronic pain secondary to trauma.<sup>8</sup> He noted that appellant had fallen on the job on December 5, 2009. Dr. Bertie placed appellant on restricted duty from February 27 to March 12, 2010, with no pulling, no lifting and no constant shifting.

Appellant reported to work on March 13, 2010 and after a few hours she was transported to the emergency room (ER) *via* ambulance. She was treated for acute low back pain, right acute sciatica and cervical radiculopathy. The ER treatment records indicated that appellant had previously fallen at work in December 2009.<sup>9</sup>

Appellant had a follow-up visit with Dr. Weisberg on March 16, 2010. He diagnosed cervical strain and lumbar strain. Appellant was advised that she could return to work on March 17, 2010 with a five-pound lifting restriction. She was also advised to sit 100 percent of the time.

Dr. Weisberg referred appellant to Dr. Firooz Mashhood, a physiatrist, who examined her on March 25, 2010. He did not request any additional studies or review any of the previous x-rays or MRI scans. Dr. Mashhod noted that appellant was involved in an employment-related fall on December 5, 2009. On physical examination, he noted that appellant was not in any acute pain, but she demonstrated moderate pain behavior. Dr. Mashhood diagnostic impressions were status post industrial-related scalp contusion with complaint of headache and status post industrial-related lumbar spine contusion with complaint of low back pain, without objective findings. His nonindustrial-related findings included pain and disability behavior and positive Waddell sign. Dr. Mashhood explained that there was a lot of pain behavior and disability behavior, and restricted range of motion, but no objective findings to support any structural damage. He further noted that he had explained to appellant that soft tissue injuries were self-limiting and usually healed within six to eight weeks. Dr. Mashhood believed her prognosis was good with respect to the industrial-related injury of December 5, 2009, but in reference to her pain and disability behavior, appellant's prognosis was poor. He stated that appellant's pain and disability behavior had nothing to do with the injuries sustained on December 5, 2009.

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<sup>7</sup> Dr. Klausner's physical examination reportedly revealed 5/5 Waddell signs and eight distinct signs of symptom magnification. He did not believe appellant "psychologically fit" to return to work as a transportation security officer. Dr. Klausner characterized her as "psychologically unstable," and encouraged appellant to seek psychiatric treatment immediately.

<sup>8</sup> Additional x-rays were obtained on February 27, 2010, which revealed degenerative disc disease at C5-6 and scoliosis in the thoracic and lumbar spine.

<sup>9</sup> Another set of x-rays were obtained that showed mild spondylotic changes in the cervical spine and mild levoscoliosis of the lumbar spine.

Dr. Mashhood recommended physical therapy and limited duty with restrictions of no lifting over 20 pounds and no bending more than seven times per hour.<sup>10</sup>

In a decision dated May 12, 2010, OWCP terminated compensation and medical benefits based on Dr. Klausner's February 10, 2010 opinion.<sup>11</sup> On May 18, 2010 appellant requested reconsideration.

By decision dated July 15, 2010, OWCP considered the merits of the claim, but denied modification. It found that the weight of the evidence, as represented by Dr. Klausner's report, established that all of appellant's accepted medical conditions had resolved.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>12</sup> Having determined that an employee has a disability causally related to 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>13</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>14</sup> To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition which require further medical treatment.<sup>15</sup>

### **ANALYSIS**

The Board finds that OWCP improperly terminated appellant's compensation and medical benefits based upon Dr. Klausner's February 10, 2010 report. The May 12, 2010 decision characterized Dr. Klausner as appellant's "treating physician" based on the single encounter on February 10, 2010. Dr. Klausner himself, however, characterized his involvement as merely a "Consultation." OWCP made no specific mention of the Dr. Weisberg, who actually treated appellant at the time. Neither the May 12 nor July 15, 2010 decision referred to any of Dr. Weisberg's various reports.

OWCP's reliance on Dr. Klausner's report is also questionable in light of the fact that he did not specifically comment on any of the accepted conditions in the case. He believed appellant sustained various contusions as a result of her December 5, 2009 employment injury. However, based on Dr. Weisberg's opinion, OWCP accepted appellant's claim for cervical, thoracic, and lumbar sprains. While Dr. Klausner may have legitimately believed that appellant

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<sup>10</sup> OWCP later denied authorization of the requested physical therapy.

<sup>11</sup> OWCP did not provide appellant prior notification of its intent to terminate her compensation and medical benefits.

<sup>12</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>13</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>14</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>15</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

had a psychological condition unrelated to her employment injury, he offered no salient explanation for his apparent disagreement with OWCP's acceptance of the claim for various sprains. Contrary to OWCP's finding, Dr. Klausner's report does not establish that appellant's accepted conditions have ceased. Dr. Weisberg examined appellant both before and after Dr. Klausner's February 10, 2010 consultation and Dr. Weisberg continued to diagnose cervical and lumbar strains as recently as March 16, 2010. Moreover, three of the four physicians who examined appellant subsequent to Dr. Klausner apparently did not find a psychological disorder.

Under the circumstances, OWCP has not provided a legitimate basis for deferring to Dr. Klausner's February 10, 2010 report. Moreover, it failed to provide appellant appropriate notice in advance of its May 12, 2010 decision terminating compensation and medical benefits.<sup>16</sup> Accordingly, OWCP did not meet its burden to terminated compensation and medical benefits.

### **CONCLUSION**

The Board finds that OWCP did not meet its burden to terminate compensation and medical benefits effective May 12, 2010.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 15, 2010 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 19, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>16</sup> See 20 C.F.R. §§ 10.540 and 10.541.