

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New York City, NY, Employer**

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**Docket No. 12-294  
Issued: August 2, 2012**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 28, 2011 appellant, through her attorney, filed a timely appeal from a November 4, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly terminated appellant's wage-loss and medical compensation benefits effective May 8, 2011; and (2) whether appellant established a gynecological condition consequential to an authorized lumbar steroid injection.

**FACTUAL HISTORY**

On November 17, 2008 appellant, then a 41-year-old mail handler, sustained a back injury as a result of taking mail from a tray and placing it in a postal container. She stopped

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

work on the date of injury. OWCP accepted the claim for lumbar radiculopathy and paid appropriate benefits. Appellant returned to limited-duty work on March 26, 2009 for four hours per day.<sup>2</sup> On June 28, 2010 the employing establishment notified OWCP that she was only working two hours per day as a result of the National Reassessment Program.<sup>3</sup>

In an October 7, 2010 report, Dr. Sanjay Bakshi, a Board-certified pain management specialist, diagnosed lumbar herniated disc and lumbar radiculopathy. On November 8, 2010 he diagnosed lumbar disc herniation and radiculopathy. Dr. Bakshi also administered an authorized lumbar steroid injection. On December 3, 2010 appellant stopped work as no limited-duty work was available. On December 16, 2010 OWCP accepted a recurrence of disability on December 3, 2010 and paid compensation for temporary, total disability effective December 3, 2010.

In a January 5, 2011 report, Dr. Bakshi noted that appellant underwent lumbar epidural steroid injection at the L3-4 level on November 8, 2010, from which she had no benefit, but started experiencing menstrual irregularities after the procedure. He diagnosed lumbar radiculopathy and lumbar herniated disc and suggested a new magnetic resonance imaging (MRI) scan of the lumbar spine. Dr. Bakshi encouraged appellant to follow up with her gynecologist for further workup for her menstrual bleeding and noted that it could be secondary to the steroids that were injected.

In a February 9, 2011 report, Dr. Robert J. Orlandi, a Board-certified orthopedic surgeon and second opinion physician, noted the history of appellant's injury and his review of the statement of accepted facts and the medical records. He noted that the claim was accepted for lumbar radiculopathy that she had no present radicular symptoms and had excellent forward flexion to 90 degrees. Dr. Orlandi noted the diagnostic studies of record and indicated that on March 26, 2009 Dr. Steven Moalemi, a Board-certified physiatrist, interpreted electromyogram nerve conduction velocity studies as indicative of lumbar radiculopathy, but he could not determine the level involved. On examination, he noted that appellant had a normal lumbar lordosis of 40 degrees and that there was no lumbar spasm. Dr. Orlandi found that there was exceptional good forward flexion to 90 degrees and all three reflexes in each lower extremity were 2+ (L4, 5 and S1). He also found no right versus left calf atrophy to suggest an L5 or an S1 radiculopathy. Dr. Orlandi diagnosed a resolved lumbar strain. He opined that appellant could work full duty and that she did not require additional lumbar epidural injections or the additional lumbar MRI scan scheduled the next day. Dr. Orlandi further stated that there was no need for operative or conservative treatment for her low back. He opined that appellant had been at maximum medical improvement for the past 12 months. Dr. Orlandi further opined that she does not have a concurrent nonwork-related disability.

A February 16, 2011 lumbar spine MRI scan report contained an impression of annular bulge at the L4-5 level without significant compression or stenosis; degenerative facet diseases on the left at the L4-5 and L5-S1 levels without significant compression or stenosis.

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<sup>2</sup> Appellant received compensation for the remaining four hours per day.

<sup>3</sup> OWCP paid appellant compensation for the additional two hours per day.

On March 28, 2011 OWCP issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Orlandi's second opinion report, established that she no longer had any residuals or disability as a result of the work injury.

Following the notice of proposed termination, OWCP received medical reports from Dr. Bakshi dated March 7, 2011 and April 5, 2012. In his March 7, 2011 report, Dr. Bakshi noted that appellant had been under the care of a gynecologist and that her menstrual cycle was now regular and that she reported that no abnormalities were found. He noted that the recent MRI scan findings revealed some degenerative changes to the lumbar spine and reported that physical examination was unchanged. Dr. Bakshi recommended a transforaminal injection bilaterally at L3-4. In his April 5, 2012 report, he noted findings that included significant limited motion on flexion and extension, as well as significant low back pain with radiation to bilateral buttocks coupled with sitting intolerance. Dr. Bakshi disagreed with OWCP's proposed termination of appellant's compensation and stated that cortisone injected in the epidural injection can sometimes cause menstrual irregularities which support the gynecological follow up. He further stated that Dr. Moalemi would be the proper physician to evaluate her on the issue of injury-related disability.

By decision dated May 4, 2011, OWCP terminated appellant's wage-loss compensation and medical benefits effective May 8, 2011, finding that Dr. Orlandi's opinion represented the weight of the medical evidence.

On June 3, 2011 appellant requested an oral hearing, which was held by teleconference on September 19, 2011. At the hearing, she testified that her menstrual problem continued from December 2010 and into January 2011 from her initial lumbar steroid injection of November 18, 2011. Appellant's attorney argued that Dr. Orlandi erroneously concluded that lumbar radiculopathy did not exist when it was an accepted condition. He also argued that Dr. Orlandi was not qualified to serve as a second opinion examiner as he spent more time conducting examinations for OWCP than practicing orthopedic surgery.

In a May 11, 2011 report, Dr. Moalemi noted examination findings and diagnosed lumbar spine radiculopathy and herniated disc at L3-4. He opined that appellant's diagnoses were the result of her November 17, 2008 work injury. Dr. Moalemi indicated that he had followed her since that time and she always complained of this pain. At no point had appellant shown a sign of having healed from this injury. Dr. Moalemi also opined that the lumbar steroid injections affected her menstrual cycle and that this was something that was seen and they correlated with each other. He indicated that appellant was not disabled due to the gynecological side effects, but due to her back condition. Dr. Moalemi stated that Dr. Orlandi's finding of no calf atrophy and therefore no radiculopathy at L5 or S1 was immaterial as the February 9, 2009 MRI scan showed a disc herniation at L3-4 and no calf atrophy would be expected. He also stated that appellant's range of motion did not correlate with her level of activity. Dr. Moalemi opined that she remained partially disabled and could perform limited-duty work.

In a September 30, 2011 report, Dr. Ulrika Holm, a Board-certified gynecologist, stated that appellant's annual gynecological examination of April 28, 2011 was normal.

By decision dated November 4, 2011, OWCP affirmed its prior decision. An OWCP hearing representative also found that the record was insufficient to establish a gynecological condition consequential to authorized lumbar steroid injection.

### **LEGAL PRECEDENT -- ISSUE 1**

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> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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>

OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup> In addition to a proper factual and medical background, a rationalized medical opinion is one of reasonable medical certainty and supported by medical rationale explaining the opinion.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that on November 17, 2008 appellant sustained lumbar radiculopathy and paid appropriate compensation and medical benefits. It terminated her compensation benefits effective May 8, 2011 finding that she no longer had any residuals or disability that was due to her work injury. Determinative weight was accorded to Dr. Orlandi's report, which found that appellant had no further employment-related residuals or disability. The Board finds that OWCP properly terminated appellant's medical and wage-loss compensation benefits.

The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>8</sup> In his February 9, 2011 report, Dr. Orlandi discussed the history of injury and his review of the medical records. While he opined that appellant had a lumbar strain that had resolved, he also explained that the accepted lumbar radiculopathy was not present at the time of his examination. Dr. Orlandi noted that he found no radicular symptoms on examination and that she had excellent forward flexion to 90 degrees and all three reflexes in each lower extremity were 2+ (L4, 5 and S1) and there was no calf atrophy to suggest an L5 or an S1 radiculopathy. He further opined that appellant could return to work without restrictions and that no further medical treatment was necessary.

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<sup>4</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

<sup>5</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>6</sup> *J.M.*, 58 ECAB 478 (2007).

<sup>7</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

<sup>8</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

The Board finds that Dr. Orlandi provided a comprehensive, well-rationalized opinion in which he clearly advised that any residuals of appellant's accepted conditions had resolved and that she could return to work without restrictions and no further medical treatment was necessary. Dr. Orlandi's conclusion that she no longer had radiculopathy is further strengthened by the February 16, 2011 lumbar MRI scan which revealed some degenerative changes without radiculopathy. His opinion therefore constitutes the weight of the medical evidence.

In his March 7, 2011 and April 5, 2012 report, Dr. Bakshi focused on a nonwork-related gynecological issue. In his March 7, 2011 report, he noted that appellant's examination was unchanged and recommended injection at the bilateral L3-4 level. However, Dr. Bakshi does not provide any rationale to support continued treatment or restrictions due to the accepted work injury. In his April 5, 2012 report, he notes physical examination findings but does not provide any explanation whether they differed from previous examinations to support a worsening of appellant's condition due to the accepted work injury.

Dr. Moalemi, in his May 11, 2011 report, diagnosed lumbar spine radiculopathy and herniated disc at L3-4, which he opined were the result of the November 17, 2008 work injury and which partially disabled appellant. However, he provides no rationale to explain how or why she has continued to complain of her pain and why she is only partially disabled.<sup>9</sup>

The Board therefore concludes that Dr. Orlandi's opinion that appellant had recovered from the employment injury represents the weight of the medical evidence and the additional medical evidence submitted is insufficient to create a conflict in opinion regarding whether she had residuals or disability related to the accepted injury. OWCP therefore properly terminated her compensation benefits effective May 8, 2011.

While appellant's counsel argues that the decision is contrary to fact and law, the medical evidence fails to support any remaining residuals or disability due to the accepted condition. Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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

Where an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>10</sup> To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.<sup>11</sup> Causal relationship is a medical issue and the medical

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<sup>9</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>10</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>11</sup> See *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

evidence required to establish a causal relationship is rationalized medical evidence.<sup>12</sup> Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>13</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>14</sup>

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional misconduct.<sup>15</sup> Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

Appellant alleged a consequential gynecological condition as a result of the authorized November 8, 2010 lumbar steroid injection.

Dr. Holm, appellant's gynecologist, did not discuss the effect, if any, of the November 8, 2010 lumbar steroid injection on appellant's menstrual cycle. Dr. Bakshi noted that she started experiencing menstrual irregularities after the November 8, 2010 lumbar epidural injection. In his January 5, 2011 and April 5, 2012 reports, he stated that appellant's menstrual bleeding could be secondary to the steroids which were injected and explained that the cortisone injected in the epidural injection can sometimes cause menstrual irregularities. Although Dr. Bakshi opined that the steroids injected in the epidural injection could be secondary to her menstrual problems, his opinion is couched in speculative terms and he did not provide sufficient rationale to explain how the steroids in the November 8, 2010 epidural injection caused her menstrual irregularities.<sup>17</sup> While Dr. Moalemi opined that the lumbar steroid injections affected appellant's menstrual cycle he provided no specific rationale to her case other than generalizing that lumbar steroids injections correlate with changes in menstrual cycle. Appellant did not provide reasoned medical evidence unequivocally explaining how any diagnosed gynecological condition was a consequence of the steroid injection. Accordingly, the Board finds the medical evidence insufficient to establish that she developed menstrual problems as a consequence of the authorized November 8, 2010 lumbar steroid injection.

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<sup>12</sup> See *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

<sup>13</sup> See *Phillip L. Barnes*, 55 ECAB 426 (2004); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>14</sup> See *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>15</sup> *Mary Poller*, 55 ECAB 483, 487 (2004).

<sup>16</sup> *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

<sup>17</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that OWCP properly terminated appellant's compensation effective May 8, 2011. The Board further finds that she has not established that her gynecological problems were causally related to the authorized November 8, 2010 lumbar steroid injection.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated November 4, 2011 is affirmed.

Issued: August 2, 2012  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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