

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

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M.S., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS HEALTH ADMINISTRATION, )  
Oklahoma City, OK, Employer )

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**Docket No. 12-141  
Issued: July 12, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERLD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 28, 2011 appellant filed a timely appeal from an October 12, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the 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 whether: (1) OWCP met its burden of proof to terminate appellant's compensation benefits effective February 14, 2010; (2) appellant established that she had continuing disability or residuals relating to her accepted neck sprain/strain after February 14, 2010; and (3) appellant established that the conditions of memory loss and tension headaches are causally related to the October 9, 2005 work injury.

**FACTUAL HISTORY**

On October 9, 2005 appellant, then a 44-year-old practical nurse, claimed sharp radiating pain from the back of her neck to her left shoulder while pulling up and repositioning a patient.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

OWCP accepted the claim for sprain/strain of the neck and paid benefits. Appellant stopped work on October 10, 2005 and made several short-lived attempts to return to limited duty. She resigned effective June 2, 2006. The employing establishment was unable to accommodate appellant's restrictions and she received wage-loss compensation on the periodic rolls.

Appellant's treating physicians advised that she remained symptomatic due to the October 9, 2005 work injury. The medical evidence addresses diagnoses not accepted as employment related: possible cervical radiculopathy; aggravation of underlying spinal degenerative joint disease; possible cervical disc herniation; internal derangement of the shoulder; and tendinosis. In a January 23, 2008 report, Dr. Richard H. Kaplan, a Board-certified physiatrist, stated that a recent cervical magnetic resonance imagining (MRI) scan showed multiple disc herniations that accounted for appellant's symptoms. He stated that she was symptomatic and remained disabled.

On May 21, 2008 OWCP advised appellant that she was rescheduled to see Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, on May 20, 2008.<sup>2</sup> In a May 20, 2008 report, Dr. Hanley provided a history of the October 9, 2005 work injury and described appellant's treatment. He opined that the examination was normal and did not support any subjective symptomatology. Dr. Hanley commented on the diagnostic tests at the time of original injury but did not have a copy of the most recent cervical MRI scan study. He diagnosed a history of cervical sprain/strain and found that, at most, appellant had cervical degenerative disease with a short episode of radicular symptomatology. Dr. Hanley stated that appellant was fit for duty, needed no further medical treatment and had no work restrictions. He opined that symptom magnification and secondary gain played a role in her symptoms.

OWCP found a conflict of medical opinion between Drs. Hanley and Kaplan as to appellant's ongoing residuals and disability. It referred her to Dr. Scott Rushton, a Board-certified orthopedic surgeon, for an impartial examination. In an August 7, 2008 report, Dr. Rushton noted the history of appellant's work injury and that she had not been actively treated since March 2008. He provided examination findings, including a description and measurements of range of motion, strength and neurologic testing. Dr. Rushton commented on pertinent medical records including a December 19, 2007 cervical MRI scan, which identified diffuse cervical disease. He could not relate appellant's ongoing symptoms to the October 9, 2005 cervical strain. Dr. Rushton opined that appellant's current condition was related to underlying and preexisting cervical degenerative disc disease. He found that appellant reached maximum medical improvement for her cervical spine strain diagnosis and needed no further treatment. Dr. Rushton advised that she could return to full unrestricted activities and that she was capable of returning to her preinjury work.

On February 13, 2009 OWCP proposed to terminate appellant's compensation benefits on the grounds that Dr. Rushton's opinion established that the injury-related conditions and disability had ceased. In a March 13, 2009 letter, appellant disagreed with the proposed termination and submitted a December 21, 2007 cervical MRI scan report and medical treatment records beginning February 2009.

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<sup>2</sup> The May 1, 2008 statement of accepted facts did not include information regarding appellant's work status following the work injury or describe the physical requirements of appellant's date-of-injury job.

By decision dated March 20, 2009, OWCP terminated appellant's benefits effective April 12, 2009.

On April 17, 2009 appellant requested a review of the written record. She provided arguments and additional documentation of medical treatment.<sup>3</sup>

In a July 24, 2009 decision, an OWCP hearing representative set aside the March 20, 2009 decision. She noted that Dr. Hanley's opinion was not sufficiently rationalized to create a conflict in medical opinion. As such, Dr. Ruston could not be considered an impartial specialist. The hearing representative found that Dr. Rushton's opinion was sufficient to create a medical conflict with Dr. Kaplan as to the extent of any injury-related residuals and disability. The hearing representative directed OWCP to update the statement of accepted facts and reinstate appellant's compensation.

On remand, OWCP updated its statement of accepted facts on January 11, 2010. It referred appellant to Dr. Donald Mauldin, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a February 15, 2010 report, Dr. Mauldin reviewed the history of injury, the medical records and set forth findings on physical examinations. He provided an impression of status post cervical strain, development of chronic cervical-type syndrome. Dr. Mauldin stated that appellant's diagnosis was established years prior as a cervical strain. Appellant was found to have primarily multilevel degenerative disc disease that preexisted the cervical strain. Dr. Mauldin stated that there had not been any clear-cut documentation of a major disc herniation or major spinal cord compression or neurological symptoms and she had been treated, for the most part, as a chronic cervical syndrome. Based on his review of the record and appellant's prior complaints, Dr. Mauldin found that appellant had a cervical strain that may have transiently aggravated some exiting nerve roots, but had stabilized well before his examination. He stated that there was nothing in the record to indicate that the particular mechanism of injury resulted in major damage to her cervical spine or caused permanent problems and disability. Dr. Mauldin found that appellant had been capable of returning back to work status within a two- to three-month period of time following the injury. Based on the clinical examination and diagnostic studies, there was nothing to support that appellant was totally disabled secondary to a cervical strain superimposed upon preexisting multilevel cervical spondylosis. Following a functional capacity evaluation of February 22, 2010, Dr. Mauldin concluded that appellant could return to work full time.

In a March 1, 2010 decision, OWCP terminated appellant's wage-loss and medical compensation benefits effective February 14, 2010 based on Dr. Mauldin's opinion.

In a March 29, 2010 letter, appellant requested a review of the written record.

By decision dated July 28, 2010, an OWCP hearing representative affirmed the March 1, 2010 decision. The hearing representative found that appellant raised issues as to whether her conditions of tension headaches and memory loss were work related. The hearing representative directed OWCP to modify the statement of accepted facts to ensure an adequate factual background and, if OWCP deemed it warranted, to supply the amended statement of accepted facts to Dr. Mauldin for a supplemental opinion concerning continuing work-related disability.

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<sup>3</sup> The evidence included a March 27, 2009 report from Dr. Yanko Yankov, a Board-certified neurologist, who noted findings and diagnosed cervical spondyloarthritis, cervical radiculopathy, cervicogenic headaches in possible combination with migraine headaches, and possible cerebellar arachnoidal cyst or cisterna magna.

The hearing representative also requested OWCP to determine whether the claim had been accepted for tension headaches or memory loss and whether additional development was warranted to determine residual work-related disability due to those conditions.

In a November 6, 2010 letter, appellant requested reconsideration. She provided arguments and cited to medical information by the physicians of record. Appellant submitted a March 18, 2010 right lower extremity Doppler venogram and a February 22, 2011 report in which Dr. Yankov provided an impression of cervical trauma with post-traumatic cervical pain, into the thoracic region and both upper extremities, low back pain and right knee and right plantar pain.

On March 30, 2011 OWCP amended the statement of accepted facts.

In an April 4, 2011 decision, OWCP denied modification of its July 28, 2010 decision. Based on the medical evidence of record, the conditions of tension headaches and memory loss were not accepted as employment related. Therefore, further development was not necessary.

On September 19, 2011 appellant requested reconsideration. She argued that OWCP should have requested clarification from Dr. Mauldin when it modified the statement of accepted facts. Appellant asserted that the record substantiated her residual chronic headaches, cervical strain/sprain, cervical spondylosis, multiple disc herniation, cervical radiculopathy, neuropathy, cervicogenic headaches and cervical facet arthropathy. She contended that the evidence was sufficiently supportive of her claim to warrant further development. Appellant submitted a March 20, 2010 nerve conduction study/electromyogram report and a June 13, 2011 rehabilitation plan. In a June 13, 2011 report, Dr. Vance Zachary, Board-certified in family medicine, and Dr. Richard Wilson, a Board-certified physiatrist, noted findings and diagnosed a cervical disc with radiculopathy; spasm, decreased range of motion and segmental instability of the cervical spine. Surgery was recommended.

In an August 28, 2011 report, Dr. Stuart J. Glassman, a Board-certified physiatrist, reviewed a history of the 2005 work injury and opined that appellant sustained a cervical strain injury with temporary exacerbation of preexisting cervical degenerative disc disease on October 9, 2005.<sup>4</sup> Imaging studies demonstrated that there was cervical spondylosis but no disc herniations as of January 2010. A physical examination in March 2009 showed no evidence of any cervical radiculopathy or any abnormal strength, sensation or reflexes. It appeared appellant had a lumbar strain injury in 2005 but did not receive ongoing regular treatment. She had ongoing treatment for her neck complaints, but the majority of the treatments recently were for her underlying cervical degenerative disc disease. Dr. Glassman did not find there was any aggravation of her preexisting cervical degenerative disc disease due to the events of October 9, 2005. He opined appellant had five percent impairment based upon the cervical strain and temporary exacerbation of preexisting degenerative disc disease. Appellant had ongoing nonverifiable radicular complaints without any objective findings and no alteration of structural integrity from the work injury itself.

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<sup>4</sup> Dr. Glassman's report indicates that he reviewed the medical record but does not indicate that he conducted an examination of appellant.

By decision dated October 12, 2011, OWCP denied modification of its April 4, 2011 decision. It also found that the medical evidence of file did not support that the conditions of memory loss and tension headaches were ever accepted.

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

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.<sup>5</sup> It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>6</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>8</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>9</sup>

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>10</sup> This is called a referee examination and OWCP will select a physician who is qualified in the inappropriate specialty and who has no prior connection with the case.<sup>11</sup> When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>12</sup>

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

OWCP accepted that appellant sustained a sprain/strain of her neck due to an October 9, 2005 lifting incident at work. Appellant stopped work and was placed on the periodic rolls. In a decision dated March 20, 2009, OWCP originally terminated her compensation benefits effective April 12, 2009. On July 24, 2009 an OWCP hearing representative set aside the March 20, 2009 decision finding that Dr. Hanley's referral opinion was not sufficient to create a medical conflict

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<sup>5</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>6</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>7</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>8</sup> *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>9</sup> *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P.*, *id.*

<sup>10</sup> 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>11</sup> 5 U.S.C. § 8123; 20 C.F.R. § 10.321.

<sup>12</sup> *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

with Dr. Kaplan. Therefore, Dr. Rushton served as a second opinion examiner and created a conflict with appellant's physicians. On remand, OWCP updated its statement of accepted facts and referred appellant to Dr. Mauldin for an impartial medical evaluation. By decision dated March 1, 2010, it terminated appellant's compensation benefits effective February 14, 2010 based on the impartial opinion of Dr. Mauldin.

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits as of February 14, 2010 based on the February 15, 2010 report of Dr. Mauldin, the impartial specialist, who reviewed appellant's medical history and a statement of accepted facts. On examination, Dr. Mauldin found no objective evidence of ongoing residuals or disability due to the accepted neck sprain/strain. He also found no evidence for other conditions or residuals related to appellant's employment. Dr. Mauldin stated that, while the cervical strain may have temporarily aggravated some exiting nerve roots, the records did not establish any damage to her cervical spine or permanent residuals. He found that appellant was not totally disabled. Her symptoms were secondary to preexisting multilevel cervical spondylosis. Dr. Mauldin also reviewed a February 22, 2010 functional capacity evaluation and concluded that appellant could return to work full time without restrictions.

The Board finds that Dr. Mauldin's report represents the weight of the medical evidence. OWCP properly relied on his report in terminating appellant's benefits. The Board finds that Dr. Mauldin had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. Dr. Mauldin's opinion is based on proper factual and medical history and his report contained a detailed summary of this history. He addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's condition.<sup>13</sup> At the time benefits were terminated, Dr. Mauldin found no basis on which to attribute any residuals or continued disability to her October 9, 2005 work injury. His opinion as set forth in his February 15, 2010 report is found to be probative evidence and reliable. The Board finds that Dr. Mauldin's opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted condition.

Appellant contends that OWCP erred by not requesting clarification from Dr. Mauldin after it modified the statement of accepted facts. While OWCP modified its statement of accepted facts with regard to appellant's employment history following the work-related injury, this did not affect Dr. Mauldin's opinion regarding the nature and extent of her continuing work-related medical residuals or disability. A review of Dr. Mauldin's report establishes that he was aware of the relevant facts and was based on an accurate history. For these reasons, his report represents the special weight of the medical evidence and establishes that appellant no longer has residuals of her accepted cervical sprain/strain. Dr. Mauldin found no basis on which to attribute any other condition to appellant's employment.

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

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had disability causally related to her accepted

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<sup>13</sup> See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

employment injury.<sup>14</sup> To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, 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>15</sup>

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

The Board finds that appellant has not established that she has any continuing residuals of her work-related neck sprain/strain on or after February 14, 2010.

After OWCP's termination of her compensation benefits, appellant submitted additional evidence including diagnostic test reports and a June 13, 2011 rehabilitation plan. These reports are of limited probative value on the issue of causal relationship as they did not contain a physician's opinion addressing whether the conditions were causally related to the accepted work injury.<sup>16</sup> In a November 22, 2011 report, Dr. Yankov set forth diagnoses and in their June 13, 2011 report, Drs. Zachary and Wilson also noted diagnoses and recommendations. These reports are insufficient as neither Dr. Yankov nor Drs. Zachary and Wilson offered any opinion regarding the cause of appellant's conditions or provided an explanation regarding whether appellant's conditions were causally related to her accepted October 9, 2005 work injury.

In his August 28, 2011 report, Dr. Glassman reviewed appellant's file regarding the work injury. While he opined she had a cervical strain injury and temporary exacerbation of preexisting cervical degenerative disc disease on October 9, 2005, he found subsequent imaging studies demonstrated there was cervical spondylosis but found there were no disc herniations as of January 2010 and there was no evidence of any cervical radiculopathy or any abnormal strength, sensation or reflexes as of her March 2009 physical examination. Dr. Glassman stated that appellant's recent treatments had been for her underlying cervical degenerative disc disease and specifically opined there was no aggravation related to the October 9, 2005 work injury.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current symptoms and her accepted work-related neck condition. Thus, the Board finds that she did not establish that she had any employment-related residuals or disability after February 14, 2010.

### **LEGAL PRECEDENT -- ISSUE 3**

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>17</sup> Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>18</sup> Rationalized medical opinion evidence is medical

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<sup>14</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

<sup>15</sup> *I.J.*, 59 ECAB 408 (2008).

<sup>16</sup> *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

<sup>17</sup> See *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>18</sup> *John J. Montoya*, 54 ECAB 306 (2003).

evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>19</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>20</sup> must be one of reasonable medical certainty<sup>21</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>22</sup>

### **ANALYSIS -- ISSUE 3**

In a July 28, 2010 decision, the hearing representative remanded the case for OWCP to determine whether the claim had been accepted for tension headaches and memory loss or whether additional development was warranted.<sup>23</sup> In decisions dated April 4 and October 12, 2011, OWCP found that the medical evidence of file did not support that memory loss or tension headaches were ever accepted, but it did not set forth a discussion of any of the medical evidence which noted those conditions. Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.<sup>24</sup> OWCP's regulations at section 10.126 of Title 20 of the Code of Federal Regulations provide that OWCP's decision "shall contain findings of fact and a statement of reasons."<sup>25</sup> Moreover, the procedure manual provides that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the evidence which would overcome it.<sup>26</sup>

OWCP did not discharge its responsibility to clearly set forth findings of fact and a statement of reasons explaining the disposition so that appellant could understand why the conditions were not accepted. The case will be returned to OWCP for a proper decision which includes findings of fact and a precise statement regarding the basis for the decision with regard to the nonaccepted conditions. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision on this issue.

### **CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate compensation benefits and that appellant did not establish that she had any continuing residuals disability related to her

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<sup>19</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>20</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>21</sup> *See Montoya supra* note 18.

<sup>22</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>23</sup> With respect to additional employment-related conditions, the Board notes that Dr. Mauldin, the impartial medical specialist whom OWCP accorded special weight in terminating appellant's compensation benefits, was not asked and did not address the causal relationship of tension headaches or memory loss to her employment injury.

<sup>24</sup> 5 U.S.C. § 8124(a); *see Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colosi*, 56 ECAB 294 (2005).

<sup>25</sup> 20 C.F.R. § 10.126. *See also O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005); *M.L.*, Docket No. 09-956 (issued April 15, 2010).

<sup>26</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4(e) (March 1997).



accepted condition after February 14, 2010. The case is remanded for further development with regard to whether appellant's tension headaches and memory loss are employment related.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated October 12, 2011 is affirmed in part and set aside in part for further action consistent with this decision.

Issued: July 12, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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