



knee and right hand. OWCP accepted her claim for left knee contusion and lumbar sprain/strain. Appellant received compensation for wage loss.

A conflict arose on the extent of appellant's disability. Dr. Jay J. Cho, the attending Board-certified physiatrist, found that appellant was totally disabled for work indefinitely. Dr. Nicholas G. Sotereanos, a Board-certified orthopedic surgeon and OWCP second opinion physician, found that appellant was able to return to work with restrictions. He found no objective evidence of a serious orthopedic problem.

To resolve this conflict, OWCP referred appellant, together with the case record and a statement of accepted facts, to Dr. David C. Baker, a Board-certified orthopedic surgeon. On July 21, 2011 Dr. Baker related her history and symptoms. He described his findings on physical examination and reviewed appellant's diagnostic studies.

Dr. Baker opined that, based on the pain disability questionnaire and a positive Waddell's test, appellant significantly exaggerated her symptoms. He explained that she sustained a left knee contusion. There was no evidence in the record that appellant sustained anything more serious than that. Dr. Baker found that appellant had recovered from the contusion. With respect to appellant's description of locking in the left knee over the past six months, he would not consider any meniscal tear to be related to the May 11, 2008 work injury. Dr. Baker also found that appellant probably sustained a small herniation/protrusion at the L5-S1 level, but this was reported as quite small. It was possible that this mildly irritated the L5 nerve root, accounting for her leg pain, but currently she had no fixed neurologic deficits other than subjective complaints of pain that were primarily not isolated to the L5 nerve root distribution. Noting that appellant still had subjective symptoms, Dr. Baker asked to see what her symptoms and treatment were prior to the date of injury. Appellant stated that she was treated by Dr. Cho prior to May 2008. Dr. Baker wanted to see Dr. Cho's records to compare appellant's current and preinjury symptoms. He also asked for an electromyogram (EMG) performed by a Board-certified neurologist. Irrespective of whether appellant had fully recovered, Dr. Baker believed that she was capable of performing light duty.

OWCP asked for Dr. Cho's records prior to September 2008 so that Dr. Baker could review and complete his examination. It also authorized an EMG.

Dr. Baker reviewed the newly obtained EMG, as well as a recent magnetic resonance imaging scan. He reviewed Dr. Cho's records dating from December 2006. Of these, Dr. Baker regarded the May 6, 2008 record -- only five days before appellant's injury -- as the most important. Therein Dr. Cho found that appellant suffered with low back pain, permanent S1 left leg radiculopathy and chronic left shoulder tendonopathy. On her next visit to Dr. Cho on July 8, 2008 appellant had the same symptoms with a flare up of her left shoulder pain. Dr. Cho stated "appears tendonopathy and possible supraspinatus tendon partial tear."

Dr. Baker observed that Dr. Cho did not mention a knee problem in this visit. Also, his neurologic examination was improved from May 2008. The recent EMG was negative for lower extremity radiculopathy. Appellant had subjective leg pain in the L5 and S1 distributions, but there were no fixed neurologic complaints and no measurable neurologic deficits, such as atrophy or motor weakness or positive straight leg raise.

As a result, Dr. Baker considered appellant's back and left leg pain to be chronic, with her leg pain unexplained and unchanged by the May 11, 2008 work incident. Based on the records in his possession, he agreed with Dr. Sotereanos that the May 11, 2008 work incident probably involved a herniated disc at L5-S1 with mild radiculopathy. It did not appear from the record that anything happened on May 11, 2008 to change the natural history of appellant's chronic left leg pain in the S1 nerve distribution, which was symptomatic before the work incident with no new symptoms or findings reported in July 2008. Dr. Baker concluded that appellant was capable of working her usual job with no restrictions stemming from her May 11, 2008 employment injury.

In a February 22, 2012 decision, OWCP terminated appellant's compensation benefits. It found that Dr. Baker's opinion carried special weight and established that appellant no longer had a medical condition or disability causally related to the May 11, 2008 work injury.

### **LEGAL PRECEDENT**

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>3</sup> After it has determined that an employee has disability causally related to 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>4</sup>

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>5</sup> When there exist 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>6</sup>

### **ANALYSIS**

When a conflict arose between Dr. Cho, the attending physiatrist, and Dr. Nicholas G. Sotereanos, the second opinion physician, on the extent of appellant's disability, OWCP properly referred appellant to Dr. Baker, a Board-certified orthopedic surgeon, for an impartial medical examination. OWCP provided Dr. Baker with appellant's case record and a statement of accepted facts so he could base his opinion on a proper medical and factual background.

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>4</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

Dr. Baker reviewed appellant's medical record, including recent imaging studies and Dr. Cho's examinations both before and after the May 11, 2008 work injury. He found that appellant's left knee contusion had resolved; Dr. Cho mentioned no knee problem in July 2008. Dr. Baker also found that appellant's back pain was a chronic and preexisting condition, as complaints and examination findings prior to the work injury showed. He speculated that the work incident probably involved a herniated disc at L5-S1 with mild radiculopathy, but it did not appear that anything happened on May 11, 2008 to change the natural history of appellant's chronic left leg pain. There were currently no fixed neurologic complaints and no measurable neurologic deficits. Dr. Baker concluded that appellant was capable of working her usual job with no restrictions stemming from her May 11, 2008 injury.

Dr. Baker's opinion was unequivocal, thoughtful and supported by relevant findings from the medical record. His reasoning and conclusion appear sound and logical. The Board finds that Dr. Baker's opinion is sufficiently well rationalized that it must be accorded special weight in resolving the extent of any disability or need for continuing medical attention resulting from her accepted employment injuries. The Board therefore finds that OWCP has met its burden to terminate appellant's compensation benefits. The Board will affirm OWCP's February 22, 2012 decision.

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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 22, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board