



## **FACTUAL HISTORY**

On September 7, 2011 appellant, then a 52-year-old sales service associate, filed a traumatic injury claim alleging that on September 2, 2011 she fell in the performance of duty injuring her low back, neck shoulder and head. On October 14, 2011 OWCP accepted her claim for acute lumbar spine strain. Appellant underwent a lumbar magnetic resonance imaging (MRI) scan on January 6, 2012 which demonstrated L3-S1 disc bulges and degenerative disc disease. Her attending physician, Dr. Carol De Costa, a physician Board-certified in physical medicine and rehabilitation, examined appellant on January 10, 2012 due to lower back and neck pain. She diagnosed lumbar radiculopathy and myofascial pain in the neck and opined that appellant was totally disabled. Appellant's current diagnosed conditions were due to her accepted employment injury.

On January 23, 2012 OWCP referred appellant for a second opinion evaluation with Dr. Leon Sultan, a Board-certified orthopedic surgeon. On February 6, 2012 Dr. Sultan reviewed appellant's history of injury and examined her cervical spine. He found no spasm, no trigger points and a normal range of motion. Dr. Sultan stated that appellant's upper extremity had normal reflexes and grip strength. In regard to the lumbar spine, he found no muscle spasm with normal heel and toe standing. Appellant exhibited a normal gait and normal range of motion of the spine. Dr. Sultan found negative straight leg raising tests bilaterally, and symmetrical reflexes with intact sensory testing. He concluded that appellant's lumbar sprain was no longer present and that her cervical condition was unremarkable. Dr. Sultan opined that she had reached maximum medical improvement and that she did not require further medical treatment. He stated that appellant could return to her regular job duties.

On March 28, 2012 OWCP informed appellant of a conflict of medical opinion between Dr. Sultan and Dr. De Costa. It referred her for an impartial medical examination with Dr. Sanford Wert, a Board-certified orthopedic surgeon. It provided Dr. Wert with a statement of accepted facts and a list of specific questions.

In a report dated May 7, 2012, Dr. Wert reviewed a history of injury and medical treatment. He examined appellant and found a normal gait. Dr. Wert stated that appellant's cervical spine had no tenderness or muscle spasm with normal range of motion. He found symmetrical reflexes in the upper extremities. Regarding her lumbar spine, Dr. Wert noted global tenderness and pain upon all ranges of motion. He found no muscle spasm and range of motion limited only in flexion. Dr. Wert found normal reflexes and strength. He concluded that appellant had no objective finding in the lumbar spine and stated that her lumbar spine had resolved. Dr. Wert opined that appellant's disc bulges were degenerative in nature and not necessarily the result of a traumatic event. He stated, "In my opinion, it is unlikely that one accident would cause abnormalities at so many levels." Dr. Wert opined that appellant was capable of full-time normal employment with no restrictions or limitations. He stated that no further treatment or test was medically necessary.

In a letter dated May 18, 2012, OWCP proposed to terminate appellant's compensation and medical benefits on the grounds that Dr. Wert's opinion was entitled to the special weight of the medical evidence. It allowed her 30 days to respond. On June 10, 2012 counsel disagreed

with the proposed termination on the grounds that the medical evidence supported additional employment-related conditions.

By decision dated June 19, 2012, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found the Dr. Wert's report represented the special weight of medical opinion and established that appellant had no residuals of the September 2, 2011 employment injury and could perform the full duties of her date-of-injury position.

On October 9, 2012 counsel requested reconsideration of the June 19, 2012 termination decision. He argued that OWCP should have accepted additional conditions, including lumbar radiculopathy and cervical radiculitis. Counsel contended that referring appellant to a second opinion physician exceeded the bounds of reasonableness. He further contended that Dr. Sultan's report lacked medical rationale as did Dr. Wert's.

In a report dated September 28, 2012, Dr. De Costa noted appellant's history of injury and diagnosed lumbar radiculopathy, cervical radiculitis, myofascial cervical, shoulder and lumbar sprain and strain. She provided findings of pain on palpation in the lumbar and cervical spine. Dr. De Costa stated that appellant's findings on MRI scan were correlated with her injury and that her employment incident was competent to cause disc bulges. She stated that appellant had evidence of radiculopathy, specifically decreased strength in the extensor hallucis longus consistent with L5 radiculopathy. Dr. De Costa argued that Dr. Wert's findings supported evidence of C6 nerve root involvement. She disagreed with Dr. Wert's findings of no muscle spasms in the cervical and lumbar spines. Dr. De Costa discounted Dr. Wert's conclusions and opined that appellant's diagnosed conditions had not resolved. She further stated that appellant was totally disabled.

By decision dated January 16, 2013, OWCP denied modification of its prior decision terminating appellant's wage-loss compensation and medical benefits.

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

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup> After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement 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>

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<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Id.*

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>5</sup> *Id.*

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, 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 and resolve the conflict of medical evidence.<sup>6</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>7</sup>

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

OWCP accepted appellant's claim for lumbar sprain. Appellant's attending physician, Dr. De Costa, supported her disability for work and stated that additional medical treatment was necessary for lumbar radiculopathy and myofascial pain in the neck. OWCP referred appellant for a second opinion evaluation by Dr. Sultan on January 23, 2012. Dr. Sultan concluded that her lumbar sprain was no longer present and that her cervical condition was unremarkable. He opined that appellant had reached maximum medical improvement and that she did not require further medical treatment. Dr. Sultan stated that she could return to her regular job duties. As these reports are of virtually equal weight and rationale, the Board finds that there was a conflict of medical opinion between Drs. De Costa and Sultan which required a referee examination, pursuant to 5 U.S.C. § 8123(a).

OWCP properly referred appellant, a statement of accepted facts and a list of questions to Dr. Wert to resolve the issues of appellant's work-related disability and medical residuals. In a May 7, 2012 report, Dr. Wert provided a history of injury and reviewed appellant's medical treatment. He examined appellant and provided detailed medical findings of no muscle spasm with normal range of motion in the cervical spine. In appellant's lumbar spine Dr. Wert found no muscle spasm and normal reflexes and strength. He concluded that appellant had no objective findings in the lumbar spine and stated that her lumbar spine condition had resolved. Dr. Wert opined that appellant was capable of full-time normal employment with no restrictions or limitations. He stated that no further treatment or test was medically necessary.

In situations where there are 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 on a proper factual background, must be given special weight.<sup>8</sup>

The Board finds that Dr. Wert's report is entitled to special weight. He provided detailed findings on physical examination and reviewed appellant's history of injury and medical treatment. Dr. Wert opined that appellant's accepted condition of lumbar sprain had resolved. He determined that there were no findings support cervical or lumbar radiculopathy. Dr. Wert opined that appellant could return to her date-of-injury position with no restrictions. Based on

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<sup>6</sup> 5 U.S.C. §§ 8101-8193, 8123; *B.C.*, 58 ECAB 111 (2006); *M.S.*, 58 ECAB 328 (2007).

<sup>7</sup> *R.C.*, 58 ECAB 238 (2006).

<sup>8</sup> *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

his report, the Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 19, 2012.

### **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 or residuals causally related to her accepted employment injury.<sup>9</sup> To establish a causal relationship between the condition, as well as any disability claimed, and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of 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>10</sup>

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

Following the June 19, 2012 termination decision, appellant submitted an additional report from Dr. De Costa dated September 28, 2012. Dr. De Costa diagnosed lumbar radiculopathy, cervical radiculitis, myofascial cervical, shoulder and lumbar sprain and strain. She opined that appellant's employment injury was capable of resulting in her findings on MRI scan including multiple disc bulges. Dr. De Costa stated that appellant had evidence of L5 radiculopathy and C6 nerve root involvement. She disagreed with Dr. Wert's findings of no muscle spasms in the cervical and lumbar spines. Dr. De Costa discounted Dr. Wert's conclusions and opined that appellant's diagnosed conditions had not resolved and that appellant was totally disabled.

Dr. De Costa provided a detailed report and recorded findings which contradicted those listed by both Dr. Sultan and Dr. Wert. While she provided support for her conclusions that appellant's employment injury resulted in continued medical residuals and disability, this report is not sufficiently detailed and well reasoned to overcome the special weight accorded Dr. Wert as the impartial medical examiner. Dr. De Costa did not provide objective findings, relying instead on appellant's reports of pain in the cervical and lumbar areas. She did not provide additional diagnostic testing or other objective findings in support of her conclusions. Furthermore, as Dr. De Costa was on one side of the conflict that Dr. Wert resolved, the

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<sup>9</sup> *George Servetas*, 43 ECAB 424, 430 (1992).

<sup>10</sup> *James Mack*, 43 ECAB 321 (1991).

additional report from Dr. De Costa is insufficient to overcome the special weight accorded Dr. Wert's report as the impartial medical specialist or to create a new conflict with it.<sup>11</sup>

The Board finds that appellant has not met her burden of proof in establishing continuing disability or medical residuals on or after June 19, 2012 due to her accepted employment injuries.

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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 19, 2012 and that appellant failed to establish any continuing disability or medical residuals on or after that date, causally related to the accepted September 2, 2011 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 16, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 2013  
Washington, DC

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

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

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

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<sup>11</sup> *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).