



## **FACTUAL HISTORY**

On December 2, 2008 appellant, then a 47-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she injured her neck, shoulder and back on that same date when she was moving cages. She notified her supervisor and first received medical care on December 2, 2008. On January 5, 2009 OWCP accepted appellant's claim for neck sprain.

On May 6, 2009 OWCP notified appellant of its proposal to terminate her medical benefits based on Dr. Robert S. Ferretti's, a Board-certified orthopedic surgeon, opinion that she was not experiencing any residuals or disability connected to her employment injury of neck sprain. It further noted that as she had not filed any claim for compensation (Form CA-7) for disability, there had been no wage-loss compensation subsequent to December 2, 2008. OWCP provided appellant 30 days to submit additional information.

Appellant subsequently filed a claim for compensation (Form CA-7) and for leave without pay for the period December 2, 2008 to April 17, 2009. She requested "other wage loss" from the December 2, 2008 injury and also filed a claim for a schedule award.

By decision dated July 15, 2009, OWCP terminated appellant's medical benefits effective July 15, 2009 on the grounds that the weight of the medical evidence rested with Dr. Ferretti. On August 7, 2009 appellant requested an oral hearing before the Branch of Hearings and Review on the July 15, 2009 termination decision.

By decision dated December 1, 2009, OWCP also denied appellant's claim for disability compensation for the period January 17 to April 17, 2009.<sup>2</sup>

On December 10, 2009 appellant requested an oral hearing before the Branch of Hearings and Review regarding the December 1, 2009 OWCP decision.

At the March 23, 2010 hearing, appellant's attorney argued that, since the date of injury on December 2, 2008, appellant has contended that she hurt both her neck and back as seen on her Form CA-1. He further referenced other medical reports which identified her lower back complaints and noted Dr. Karen Parker's, Board-certified in emergency medicine, initial December 2, 2008 report which identified lower back complaints on the date of injury. Counsel stated that appellant had initially complained of low back pain to Dr. Maurice A. Minervini, Board-certified in osteopathic manipulative medicine, but that he would not treat her because the claim had only been accepted for her neck condition. This caused appellant to change physicians and seek treatment from Dr. Perminder J. Bhatia, Board-certified in Neurology, in January 2009, who did note and treat her back complaints. The record was held open for 30 days.

In support of her claim, appellant submitted an April 7, 2010 medical report from Dr. Kenneth I. Light, a Board-certified orthopedic surgeon, who reported that she had a

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<sup>2</sup> OWCP noted that the period December 3, 2008 to January 16, 2009 was within the 45-day continuation of pay period. It also noted that it paid wage-loss compensation due to medical appointments for the following dates: January 28 (4 hours), February 17 (4 hours), February 19 (4 hours), February 23 (4 hours), March 9 (4 hours), March 10 (4 hours) and April 9, 2009 (4 hours).

preexisting cervical condition 15 years ago which had resolved. She had been a mail carrier for four years and a mail handler for one year. On December 2, 2008 appellant was moving bins, which weighed approximately 500 pounds, when she felt a sudden pain in her neck and pressure in her lower back. Dr. Light noted that the neck pain was initially much worse than her lower back pain, stating that just because subsequent evaluations did not note lower back complaints did not mean that she did not injure her back. He noted that appellant's initial injury was a cervical sprain and her current diagnosis was a chronic neck sprain. Dr. Light stated that, based on objective findings, such as the loss of movement in her back, her right disc protrusion correlated with her symptoms and was a result of her industrial accident. He further stated that Dr. Ferretti's conclusions that appellant did not have evidence of a low back condition, had developed bilateral cubital tunnel syndrome and that her neck condition had resolved were unsubstantiated. Dr. Light noted that in order to diagnose bilateral cubital tunnel syndrome, appellant must have current electromyogram (EMG) and nerve conduction study (NCS) which would substantiate a spinal injury. These tests were never accomplished. Dr. Light recommended current EMG/NCS of both the upper and lower extremities to determine whether appellant had cubital tunnel syndrome or radiculopathy.

By decision dated May 6, 2010, OWCP's hearing representative vacated the July 15 and December 1, 2009 decisions and remanded the case with instructions for OWCP to further develop the medical evidence. On remand, the hearing representative instructed OWCP to refer appellant, along with a statement of accepted facts and the case record, to an appropriate specialist and have EMG/NCS tests of the upper and lower extremities performed to assist the referee physician in providing a rationalized opinion to resolve the conflict in medical opinion relating to diagnosis, residuals and disability.

OWCP referred appellant, a statement of accepted facts, the case file, a medical conflict statement and a series of questions to Dr. Peter N. Sfakianos, a Board-certified orthopedic surgeon, for an impartial referee medical examination to resolve the conflict in medical evidence. Appellant was evaluated on July 12, 2010. In his August 18, 2010 medical report, Dr. Sfakianos provided a summary of her past medical reports and reviewed diagnostic studies. He stated that appellant's claim of injuring her lower back during the December 2, 2008 employment incident was unsubstantiated because there were no reports of lower back symptoms or lower back complaints in any of the medical reports until January 2009. Dr. Sfakianos further stated that she did not complain of lower back pain or lower extremity radicular symptomatology until it was noted in the emergency room report dated January 9, 2009 from Sierra Nevada Memorial Hospital. He opined that appellant had a preexisting ongoing medical degenerative process associated with her cervical spine which was unaltered by the events of December 2, 2008.

With respect to appellant's reports of upper extremity numbness and tingling, Dr. Sfakianos stated that she possessed signs and symptoms consistent with a right ulnar compression neuropathy at the elbow which he opined predated the employment incident. He noted that a strain of the right upper extremity could exacerbate symptomatology but also stated that altering sleeping positions could have the same effect as well. Thus, Dr. Sfakianos opined that appellant's mild preexisting neurological condition was not a result of the December 2, 2008 employment incident.

Dr. Sfakianos reported that electrodiagnostic studies were not accomplished as recommended by Dr. Light, who stated, however, that the diagnosis of peripheral compression neuropathy would be made on the basis of nerve conduction velocities as opposed to the EMG results. He stated that EMG findings are important in helping to confirm the diagnosis of a cervical radiculopathy, but that no one was claiming appellant suffered from this condition. Dr. Sfakianos also noted that electrodiagnostic studies performed in the lower extremities could confirm the diagnosis of a S1 radiculopathy, as suggested by her physical examination and the February 10, 2009 magnetic resonance imaging (MRI) scan of the lumbar spine, but were unnecessary because he did not find her lower back condition was relatable or associated with the events of December 2, 2008.

Dr. Sfakianos concluded that appellant sustained a cervicothoracic sprain/strain injury and a right trapezial strain as a result of the December 2, 2008 employment incident, noting that the soft tissue injuries occurred in the setting of preexisting, multilevel, mild cervical degenerative disc disease with principal involvement of the C4-5 and C5-6 levels. He also diagnosed nonindustrial degeneration of the cervical intervertebral disc, degeneration of lumbar or lumbosacral intervertebral disc, displacement of lumbar intervertebral disc without myelopathy and peripheral compression neuropathy of the ulnar nerve at the elbow. Dr. Sfakianos stated that, given the disassociation between appellant's lower back condition and her potential upper extremity ulnar compression neuropathy with the December 2, 2008 events, she would have been totally disabled from December 2, 2008 until a period of six weeks and could have been partially disabled for three months. He found that, "After this time period, statistically speaking, her disability, would, in all medical probability, have ceased." Dr. Sfakianos stated that appellant's nonindustrial lower back and lower extremity condition would make it difficult for her to return to work with any type of light-duty restrictions in place for even the shortest time period each day. However, he stated that she had no physical limitations as a result of the December 2, 2008 injury.

By decision dated August 27, 2010, OWCP affirmed the July 15, 2009 decision terminating medical benefits and the December 1, 2009 decision denying appellant's disability compensation for the period January 17 to April 17, 2009. It noted that the findings of Dr. Sfakianos were sufficiently well rationalized and based on a proper medical background. Thus, the weight of the medical evidence rests with his opinion that the December 2, 2008 injury had resolved with no further disability or need for medical treatment.

In medical reports dated June 8 and August 17, 2011, Dr. Robert D. Teasdale, Jr., a Board-certified orthopedic surgeon, disagreed with Dr. Sfakianos that appellant's medical records did not reference any lower back complaints until January 2009. He stated that appellant noted a back injury on her December 2, 2008 Form CA-1. Dr. Teasdale further stated that she complained of a lower back injury in various December 2008 medical reports, including a December 2, 2008 report which recorded neck and lower back pain. He opined that Dr. Sfakianos either did not review these reports or chose to ignore them. At the time of the initial injury, appellant's neck injury was far worse but that later her back condition had worsened. Dr. Teasdale stated that a review of her February 10, 2009 MRI scan demonstrated a herniated disc in the lumbar spine with right-sided nerve root entrapment. He stated that appellant was having symptoms from her damaged lumbar L5-S1 disc and lumbar facet chances. Dr. Teasdale diagnosed radiculitis and recommended treatment. He opined that there was a clear

relationship between appellant's lower back complaints, right leg radiating pain and herniated disc to her work-related condition. Appellant's predominate complaint related to the cervical spine and her secondary complaint to the lumbar spine. Dr. Teasdale suggested that commonly in the medical practice, the primary complaint receives the most attention. As appellant's lumbar complaints became more noticeable, it went untreated because it was determined that the condition was not accepted as part of her claim.

In support of her contention that she had complained of a back injury since the December 2, 2008 employment incident, appellant resubmitted her Form CA-1, a December 2, 2008 medical report by Dr. Karen Parker, Board-certified in emergency medicine, a December 19, 2008 Rideout Health Group Work Release Form, as well as other medical documents previously submitted.

By decision dated September 27, 2011, OWCP affirmed the August 27, 2010 decision. It noted that the weight of the medical evidence still rested with Dr. Sfakianos because his report was not vague, speculative or equivocal and was supported by substantial medical reasoning. OWCP noted that, he, devoted three pages of discussion to whether appellant's medical records supported that the low back condition was related to the December 2, 2008 employment incident and specifically summarized all of the reports he reviewed. It found that the difference in opinion between Dr. Teasdale and Dr. Sfakianos was based on how much significance the physicians assigned to the early reports. Thus, OWCP found that Dr. Sfakianos' report was sufficient to resolve the medical conflict.

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

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>3</sup> Having determined that an employee has a disability causally related to his or 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>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</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>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>

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<sup>3</sup> *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>4</sup> *Id.*

<sup>5</sup> *Roger G. Payne*, 55 ECAB 535 (2004).

<sup>6</sup> *Pamela K. Guesford*, 53 ECAB 726 (2002).

<sup>7</sup> *T.P.*, 58 ECAB 524 (2007); *Furman G. Peake*, 41 ECAB 351 (1975).

Section 8123(a) 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.<sup>8</sup> 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>9</sup>

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

OWCP accepted that appellant sustained a neck sprain on December 2, 2008. The Board finds that OWCP properly terminated appellant's medical benefits effective July 15, 2009 as the residuals of this condition had ceased.

As discussed above, OWCP found that a conflict of medical opinion existed regarding the nature and extent of appellant's employment-related condition. It referred her to Dr. Sfakianos to resolve the conflict. In his August 18, 2010 report, Dr. Sfakianos concluded that appellant sustained a cervicothoracic sprain/strain injury and a right trapezial strain as a result of the December 2, 2008 employment incident.

Dr. Sfakianos stated that appellant's lower back condition and upper extremity ulnar compression neuropathy were not causally related to the December 2, 2008 employment incident. He noted that she had a preexisting ongoing medical degenerative process which was unaffected by her accepted injury on December 2, 2008. Dr. Sfakianos opined that as a result of the accepted injury appellant was totally disabled for six weeks and partially disabled for three months after her injury.

The Board finds that, under the circumstances of this case, the opinion of Dr. Sfakianos is well rationalized and based upon an extensive factual background. It is entitled to special weight and establishes that disabling residuals of appellant's work-related conditions ceased effective July 15, 2009. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>10</sup>

Dr. Sfakianos' opinion is based on a complete, documented factual and medical history. He thoroughly reviewed that history and accurately summarized the relevant medical evidence.<sup>11</sup> Dr. Sfakianos provided medical rationale for his opinion by explaining that appellant's accepted cervicothoracic sprain/strain injury and right trapezial strain would have ceased within three months of the injury. He further explained that her work restrictions were necessary only

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<sup>8</sup> 5 U.S.C. § 8123(a).

<sup>9</sup> *Nathan L. Harrell*, 41 ECAB 402 (1990).

<sup>10</sup> *Solomon Polen*, 51 ECAB 341 (2000). *See supra* note 8.

<sup>11</sup> *See Melvina Jackson*, 38 ECAB 443 (1987).

because of her nonindustrial lower back and lower extremity condition. Dr. Sfakianos provided support for his argument noting that appellant had a preexisting ongoing degenerative process in her lower back which was unaffected by the December 2, 2008 injury. His opinion is entitled to special weight and establishes that her accident-related condition had resolved.

Subsequent to Dr. Sfakianos' report, appellant submitted June 8 and August 17, 2011 medical reports from Dr. Teasdale, who disagreed with Dr. Sfakianos that appellant's medical records had no reference to any lower back complaints until January 2009. Dr. Teasdale argued that she had noted back injury on her December 2, 2008 Form CA-1 and complained of a lower back injury in various December 2008 medical reports, including Dr. Parker's December 2, 2008 report which recorded neck and lower back pain. However, the earlier records from 2008 do show a reference to back complaints, but not to lower back complaints. Many of the early reports refer only to cervical and shoulder pain, but where back pain was referenced, it was overwhelmingly in conjunction with the upper back. Where diagramed on the emergency room report and follow up reports, only the upper back was highlighted.

Dr. Teasdale stated that review of appellant's MRI scan demonstrated a herniated disc in the lumbar spine with right-sided nerve root entrapment and that she was having symptoms from her damaged lumbar L5-S1 disc and lumbar facet chances. He diagnosed radiculitis and opined that there was a clear relationship between her lower back complaints, right leg radiating pain and herniated disc to her work-related condition. Dr. Teasdale explained his belief that commonly in medical practice, the primary complaint receives the most attention. As appellant's lumbar complaints became more noticeable, they were untreated because that condition was not accepted under her claim. The record demonstrates that she was treated frequently for her injury. Appellant visited the doctor often and her complaints are documented at length. It is unlikely that her symptoms were overlooked or ignored as Dr. Teasdale suggests. The record affirms that no lower back complaints were raised relative to her accident until January 2009.

While Dr. Teasdale argued that appellant's lower back complaints, right leg radiating pain and herniated disc were related to her work-related condition, he failed to provide support for his conclusion.<sup>12</sup> Though he generally supported that her continued symptoms were a result of a back condition related to her accepted work injury, his opinion on causal relationship remains conclusory and unsupported by additional explanation of how the conditions caused disability or remained symptomatic.<sup>13</sup> Moreover, Dr. Teasdale's suggestion that Dr. Sfakianos did not thoroughly review the medical record is inconsistent with the facts. Thus, his reports are insufficient to overcome the opinion of Dr. Sfakianos or to create a new medical conflict.<sup>14</sup>

The Board finds that Dr. Sfakianos' opinion constitutes the weight of the medical evidence. There is no other medical evidence contemporaneous with the termination of

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<sup>12</sup> *J.H.*, Docket No. 12-1848 (issued May 15, 2013).

<sup>13</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>14</sup> See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Hoover's report did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

appellant's medical benefits to support that she has any continuing residuals or disability related to her accepted work-related injury.<sup>15</sup> Thus, OWCP properly terminated appellant's medical benefits.<sup>16</sup>

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

Under FECA,<sup>17</sup> the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>18</sup> Disability is not synonymous with a physical impairment which may or may not result in incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.<sup>19</sup>

Whether a particular injury causes an employee to be disabled and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>20</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements consist only of a repetition of the employee's complaints that excessive pain caused an inability to work, without making an objective finding of disability, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>21</sup>

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

OWCP accepted that appellant sustained a neck sprain due to the December 2, 2008 employment incident. Appellant requested wage-loss compensation from January 17 to April 17, 2009. She has the burden of proving by the weight of the substantial, reliable and probative evidence a causal relationship between her accepted injury and her claimed disability for that period.<sup>22</sup> The reports from appellant's physicians do not provide a rationalized medical opinion finding her disabled for work for the claimed period due to her accepted condition. Therefore, appellant has failed to meet her burden of proof.<sup>23</sup>

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<sup>15</sup> *D.R.*, Docket No. 12-1697 (issued January 29, 2013).

<sup>16</sup> *D.M.*, Docket No. 11-386 (issued February 2, 2012); *Marshall E. White*, 33 ECAB 1666 (1982).

<sup>17</sup> 5 U.S.C. §§ 8101-8193.

<sup>18</sup> *See Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>19</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>20</sup> *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

<sup>21</sup> *G.T.*, 59 ECAB 447 (2008); *see Huie Lee Goal*, 1 ECAB 180,182 (1948).

<sup>22</sup> *See Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>23</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

OWCP determined that a conflict existed between Dr. Light, appellant's treating physician, and Dr. Ferretti, a second opinion referral physician, regarding the nature and extent of appellant's employment-related condition and disability. It referred appellant to Dr. Sfakianos for an impartial medical evaluation to resolve the conflict. Dr. Sfakianos opined that appellant's claim of back injury was unsubstantiated primarily because she had no diagnosed change in her low back condition until January 2009. He opined that she had a preexisting ongoing degenerative process which was unaltered by the injury of December 2, 2008. Though Dr. Sfakianos stated appellant's nonindustrial lower back and lower extremity condition would make it difficult for her to return to work in any type of light duty, he found this condition unrelated to her employment injury. He concluded that she had no physical limitations causally connected to the December 2, 2008 injury.

Appellant submitted reports from Dr. Teasdale which found that she suffered from a herniated disc in the lumbar spine with right-sided nerve root entrapment. Dr. Teasdale diagnosed radiculitis and concluded that her accepted accident caused her low back and right leg complaints and her herniated disc. His report, however, failed to establish that appellant was disabled from January 17 to April 17, 2009 due to the accepted December 2, 2008 employment incident. Dr. Teasdale failed to discuss her medical history by identifying the reports and treatment records he reviewed and explaining their relative importance. He did not show how appellant's preexisting back condition related to her current alleged disability. Dr. Teasdale did not describe or explain changes in her medical condition. He did not specifically address appellant's capacity for work. Dr. Teasdale did not conclude that she was totally disabled as of January 17, 2009.

Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>24</sup> Dr. Teasdale did not provide any opinion that appellant was totally disabled from January 17 to April 17, 2009 as a result of the accepted neck injury and failed to explain how any residuals of this injury caused her disability.<sup>25</sup> Without any explanation or rationale for the conclusion reached, his reports are insufficient to establish that her additional conditions are causally related to her original December 2, 2008 injury.<sup>26</sup> Therefore, the medical evidence of record does not establish that appellant's claimed disability during this timeframe was related to her December 2, 2008 employment injury.<sup>27</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

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<sup>24</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>25</sup> *S.P.*, Docket No. 09-1010 (issued March 2, 2010).

<sup>26</sup> *Deborah L. Beatty*, 54 ECAB 334 (2003).

<sup>27</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits effective July 15, 2009. The Board also finds that appellant failed to establish wage-loss compensation for total disability due to her December 2, 2008 injury for the period January 17 to April 17, 2009.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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