



strain had ceased by December 5, 1986.<sup>2</sup> In a decision dated August 4, 1995, the Board affirmed that appellant's request for reconsideration was untimely and failed to show clear evidence of error.<sup>3</sup> By decision dated May 10, 2001, the Board remanded the case to OWCP for further development.<sup>4</sup> The Board noted that appellant had filed a claim on January 8, 1998 for a recurrence of disability and submitted probative evidence in support of her claim. By decision dated September 9, 2003, the Board remanded the case on the grounds that a conflict in the medical evidence existed.<sup>5</sup>

In a decision dated March 23, 2005, an OWCP hearing representative found that the orthopedic surgeon selected to resolve the conflict, Dr. Donald Hubbard, had inferred that a chronic myofascial pain syndrome was causally related to the employment injury. The hearing representative stated that the case should be referred to an appropriate specialist on the issue. OWCP referred appellant to an orthopedic surgeon. By decision dated August 23, 2006, an OWCP hearing representative stated that OWCP should have referred appellant to a "Board-certified pain specialist." In a decision dated October 15, 2007, an OWCP hearing representative found a conflict in the medical evidence on the issue of an employment-related disability on or after December 5, 1986, and directed that appellant should be referred to "a Board-certified specialist in pain management for an examination and reasoned opinion on whether the claimant's myofascial pain syndrome condition and any disability for work, on or after December 5, 1986, was causally related to the accepted employment-related injury of October 15, 1986."

By order dated April 21, 2011, the Board remanded the case on the grounds that the physician selected to resolve the conflict, Dr. Aleksandra Zietak, was not Board-certified in the subspecialty of pain medicine. In a decision dated August 30, 2011, OWCP found that new "documentation" established Dr. Zietak was certified in pain medicine. By order dated July 12, 2012, the Board found there was no evidence that the physician selected was properly Board-certified. In an order dated May 13, 2013, the Board again remanded the case, finding the new referee physician selected, Dr. Daniel Brzusek, was not established as Board-certified on pain medicine. The history of the case as provided in the Board's prior decisions and orders is incorporated herein by reference.

On return of the case record, OWCP selected Dr. Russell Faria, an osteopath, as a referee physician, who is Board-certified in family medicine, anesthesiology, with certification in the

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<sup>2</sup> Docket No. 92-4 (issued June 30, 1992).

<sup>3</sup> Docket No. 94-442 (issued August 4, 1995).

<sup>4</sup> Docket No. 00-1400 (issued May 10, 2001).

<sup>5</sup> Docket No. 03-1108 (issued September 9, 2003). The record also contains an October 19, 2004 order remanding the case to OWCP on the grounds that a November 26, 2003 OWCP decision was not sent to the designated representative. Docket No. 04-1414 (issued October 19, 2004).

subspecialty of pain medicine. In a report dated November 7, 2013, Dr. Faria provided a history, reviewed medical records and results on examination. He stated,

“The claimant did not develop a pain syndrome on or after December 5, 1986. The massive documentation repeatedly shows nothing more than a simple lumbar sprain and strain with marked symptom magnification, anxiety and somatization. There is marked discrepancy between appellant’s severe pain behavior and clinical findings, of which there are really none, no objective clinical findings, as well as imaging studies, which are normal.”

Dr. Faria opined that employment-related disability would have ceased by October 30, 1986 and appellant did not have any physical limitations from the October 15, 1986 injury.

By decision dated November 19, 2013, OWCP denied the claim for a recurrence of disability. It found the weight of the evidence was represented by Dr. Faria.

### **LEGAL PRECEDENT**

A recurrence of disability means “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>6</sup> When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>7</sup>

The Board has held that to be of probative value a medical opinion must be based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale.<sup>8</sup> The term medical rationale refers to a medically sound explanation for the opinion offered.<sup>9</sup> It is well established that when a case is referred to a referee for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>10</sup>

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<sup>6</sup> 20 C.F.R. § 10.5 (x).

<sup>7</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>8</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

<sup>9</sup> See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound and logical).

<sup>10</sup> *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

## ANALYSIS

As the Board noted in its June 30, 1992 decision, OWCP accepted a low back strain in the performance of duty on October 15, 1986. Appellant had returned to a light-duty job and according to the employing establishment she worked intermittently through November 21, 1986. The Board found that residuals of the employment injury had ceased by December 5, 1986. Appellant filed a claim for a recurrence of disability, and the Board found, in its September 9, 2003 decision, that a conflict in the medical evidence existed.<sup>11</sup> An OWCP hearing representative found that proper resolution of the conflict required referral to a referee that was Board-certified in pain medicine. The case has been remanded to OWCP as the physicians selected as referee physicians were not properly Board-certified in this subspecialty.

The selection of Dr. Faria does meet the certification requirements, as the record indicates that he is Board-certified in anesthesiology and the subspecialty of pain medicine. In addition, Dr. Faria provided a complete report with a detailed review of the medical evidence and physical examination findings. He offered an unequivocal opinion that appellant did not develop an employment-related pain syndrome. Dr. Faria indicated that appellant had sustained a simple lumbar sprain and strain and noted the results on imaging studies. He indicated that, based on his examination and review of the evidence, appellant did not have a recurrence of employment-related disability on or after December 5, 1986 based on a pain syndrome.

The Board finds that Dr. Faria provided a medical opinion based on a complete and accurate background and supported by sound medical reasoning. As noted above, a referee physician's opinion is entitled to special weight if sufficiently rationalized and based on a proper background. The opinion provided in the November 7, 2013 report constitutes the weight of the medical evidence in this case. The Board accordingly finds that OWCP properly denied the claim for compensation commencing December 5, 1986. 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 appellant has not established a recurrence of disability causally related to her employment injury.

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<sup>11</sup> The initial recurrence of disability claim was for disability commencing January 8, 1998, but it appears that appellant has claimed disability on or after December 5, 1986.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 19, 2013 is affirmed.

Issued: August 26, 2014  
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