United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 14-153**
	)	**Issued: July 2, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Bronxville, NY, Employer	)	

Appearances:
Martin Kaplan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 28, 2013 appellant, through his attorney, filed a timely appeal from a July 31, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation effective June 24, 2009 on the grounds that he had no further disability due to a November 8, 2007 employment injury; and (2) whether appellant established that he sustained an employment-related cervical condition.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record also contains an August 26, 2013 decision granting appellant a schedule award for an additional two percent impairment of each upper extremity. Appellant has not appealed this decision and thus it is not before the Board at this time. *See* 20 C.F.R. § 501.3(a).

FACTUAL HISTORY

On November 16, 2007 appellant, then a 43-year-old mail carrier, filed a traumatic injury claim alleging that on November 8, 2007 he was walking with a mailbag on his shoulder when he heard something snap and felt back and neck pain. He stopped work on November 9, 2007. On September 12, 2008 OWCP accepted the claim for thoracolumbar strain and bilateral shoulder impingement. It stated:

> "While you claimed your injury occurred as the result of a single incident the medical evidence clearly establishes that you have an injury due to your employment activities. It is certainly reasonable that carrying a [mailbag] result[ed] in your injuries over a period of time."

In a report dated November 7, 2008, Dr. Julio V. Westerband, a Board-certified orthopedic surgeon and OWCP referral physician, found that appellant did not have any "clinical findings that correlate with a serious health condition as it relates to the back and right and left shoulders." He determined that appellant could return to his usual employment with no limitations.

In a work restriction evaluation dated November 24, 2008, Dr. Michael Cushner, an attending Board-certified orthopedic surgeon, diagnosed back and bilateral shoulder sprain and found that appellant could perform modified employment.

OWCP determined that a conflict in medical opinion arose between Dr. Westerband and Dr. Cushner regarding the extent of appellant's disability. It referred appellant to Dr. George Burak, a Board-certified orthopedic surgeon, for an impartial medical examination to determine if appellant had any continuing disability due to his accepted thoracolumbar strain and bilateral shoulder impingement. In the statement of accepted facts, OWCP noted that appellant had filed a claim alleging that on November 8, 2007 he felt a pull in his back and that it had accepted the claim for thoracic lumbar strain and bilateral impingement syndrome.

On April 23, 2009 Dr. Burak reviewed the history of injury and the medical reports of record, including the results of diagnostic studies. On examination of the shoulders, he determined that appellant had no evidence of impingement, instability, pain, reduced motion or loss of strength with range of motion. Dr. Burak found full straight leg raise on examination of the lumbar spine with no evidence of spams and normal range of motion. He further found a negative Spurlings test on examination of the thoracic spine, normal reflexes of the lower extremities and no sensory deficits or atrophy. Dr. Burak diagnosed a cervical and thoracic sprain and right shoulder sprain and stated that there was "no evidence whatsoever on today's examination that there is any evidence of active mechanical derangements, either in his neck, [appellant's] dorsal spine or shoulders causing objective symptoms." He stated:

> "My impression and decisions in reference to [appellant's] full recovery from his injuries are solely based on the clinical examination, which demonstrates that [he] had regained a full range of motion of his neck and back, as well as both shoulders and there is no evidence of any type of clinical findings which would

suggest any residual mechanical deficiencies as a result of the accident of November 8, 2007."

On May 20, 2009 OWCP notified appellant of its proposal to terminate his compensation and authorization for medical benefits on the grounds that the medical evidence established that he had no further disability or residuals of his November 8, 2007 work injury.

In a report dated May 18, 2009, Dr. Cushner related that a March 16, 2009 magnetic resonance imaging (MRI) scan study revealed disc herniations at C4-5 and C5-6 causing significant compression on the cord and a disc herniation at C6-7 with mild cord compression. He found that appellant was unable to work and required chiropractic care.

By decision dated June 24, 2009, OWCP terminated appellant's compensation and authorization for medical treatment effective June 24, 2009. It determined that Dr. Burak's opinion represented the weight of the evidence and established that appellant had no further employment-related disability or need for medical treatment.

On July 1, 2009 appellant, through his attorney, requested a telephone hearing before an OWCP hearing representative.

In a report dated July 21, 2009, Dr. Cushner related that appellant had pain in his neck and back from repetitive work duties due to lifting at work and an injury at work.[3] He attributed the pain to repetitive motion rather than a particular injury. Dr. Cushner diagnosed cervical strain, thoracolumbar strain and bilateral shoulder impingement syndrome. He listed findings on examination and indicated that the work incident described caused the conditions and that appellant was unable to work.

On August 10, 2009 appellant requested reconsideration in lieu of a telephone hearing.

In a report dated August 11, 2009, Dr. Stephen Andrus, a Board-certified physiatrist, evaluated appellant for pain in his neck, middle and lower back and bilateral shoulders. He noted that appellant felt "something snap in his back" after lifting a heavy mailbag on November 8, 2007. Dr. Andrus diagnosed cervical herniated discs at C4 through 7, chronic lumbar strain and bilateral shoulder pain and impingement syndrome with a partial left rotator cuff tear. He found that appellant could not perform his work duties.

On August 31, 2009 Dr. Richard G. Harvey, a chiropractor, diagnosed subluxations at L3-S1 and back pain and chronic lumbar strain. He disagreed with Dr. Burak's opinion that appellant could return to his usual employment.

Electrodiagnostic studies obtained on September 25, 2009 showed bilateral cervical radiculopathy at C5 through C7, bilateral carpal tunnel syndrome and mild bilateral elbow ulnar neuropathy.

[3] Dr. Cushner submitted periodic reports diagnosing cervical strain, thoracolumbar strain and bilateral shoulder impingement syndrome and finding that appellant was unable to work due to his employment injury.

By decision dated October 16, 2009, OWCP denied modification of its June 24, 2009 decision. On October 19, 2009 it received appellant's request for reconsideration. In a decision dated November 5, 2009, OWCP denied his request for reconsideration after finding that he had not submitted evidence or raised an argument sufficient to warrant reopening his case for further merit review.

On November 10, 2009 appellant, through his attorney, requested a telephone hearing.[4]

In a report dated November 12, 2009, Dr. Andrus noted that appellant described an injury at work on November 8, 2007 and that an MRI scan study showed disc herniation at C4-5, C5-6 and C6-7 compressing the cord. He discussed the medical treatment received and provided findings on examination. Dr. Andrus diagnosed left cervical radiculopathy with herniated extruded discs at C4-5, C5-6 and C6-7 resulting in cord compression and bilateral impingement syndrome with a partial tear of the left rotator cuff. He attributed the diagnosed conditions to the November 8, 2007 employment injury and found that appellant was disabled from work.

By decision dated November 27, 2009, OWCP denied appellant's request for a hearing under 5 U.S.C. § 8124 as he had previously requested reconsideration and the issue could be equally well addressed through the reconsideration process.

Appellant submitted additional periodic medical reports from Dr. Cushner.

By decision dated February 22, 2010, OWCP denied modification of its June 24, 2009 decision.[5] It noted that reports from physicians who were part of the conflict were generally insufficient to outweigh the report of the impartial medical examiner.

On March 22, 2010 appellant requested reconsideration.[6] By decision dated September 9, 2010, OWCP denied modification of its February 22, 2010 decision.

On October 7, 2010 appellant again requested reconsideration. By decision dated January 13, 2011, OWCP denied modification of its September 9, 2010 decision. On January 20, 2011 appellant requested reconsideration, which OWCP denied in a merit decision dated March 29, 2011. In an April 22, 2011 reconsideration request, he questioned why Dr. Burak found that appellant had recovered even though his 2009 electromyogram (EMG) study revealed bilateral cervical radiculitis.

[4] On November 5, 2009 appellant, through his attorney, appealed to the Board. On December 17, 2009 he requested that the Board dismiss his appeal. In an order dated January 6, 2010, the Board dismissed appellant's appeal at his request. *Order Dismissing Appeal*, Docket No. 10-368 (issued January 6, 2010).

[5] On March 19, 2010 appellant appealed to the Board. In an order dated July 9, 2010, the Board dismissed the appeal at his request. *Order Dismissing Appeal*, Docket No. 10-1192 (issued July 9, 2010).

[6] An MRI scan study of the cervical spine dated August 18, 2010 showed spondylosis, muscle spasms and herniated discs on at C4-5 and C6-7 and on the left at C5-6.

By letter dated April 27, 2011, OWCP requested that Dr. Burak review the March 7, 2009 MRI scan study showing a disc herniation at C6-7 with cord compression and discuss whether it altered his opinion that appellant was able to perform his usual employment.

On May 9, 2011 Dr. Burak related that he did not find any underlying cervical pathology at the time of his April 23, 2009 examination. He asserted that, while a cervical MRI scan study showed compression of the cord at C6-7, it was not correlated with clinical findings and thus his conclusions in his April 23, 2009 report were unchanged.

In a decision dated June 14, 2011, OWCP denied modification of its March 29, 2011 decision. On June 18, 2011 appellant requested reconsideration. In a nonmerit decision dated July 20, 2011, OWCP denied his request to reopen his case for further review of the merits under section 8128.[7]

Electrodiagnostic testing dated February 24, 2012 revealed cervical radiculopathy at C5, C6 and C6, moderate right carpal tunnel syndrome, mild left carpal tunnel syndrome bilateral elbow ulnar neuropathy.

In a report dated March 12, 2013, Dr. Lata Bhansali, a Board-certified physiatrist, diagnosed radicular neck pain, bilateral carpal tunnel syndrome and chronic lumbar intervertebral disc disease due to repetitive stress.

On April 7, 2012 appellant requested reconsideration.[8] In a report dated May 10, 2012, Dr. Andrus disagreed with Dr. Burak's opinion that appellant did not have cervical pathology. He related that the MRI scan study of the cervical spine showed a large disc herniation at C5-6 impinging on the spinal cord, a disc herniation at C6-7 causing mild cord compression and myelopathic changes which were permanent in nature. Dr. Andrus noted that on November 8, 2007 appellant heard a snap while carrying a mailbag and that an EMG confirmed findings of cervical radiculopathy. He stated, "[Appellant] has not been able to work since the work injury on November 8, 2007 and the objective tests outlined above substantiate that [he] does indeed have a serious injury and as such, he has been unable to work since the date of injury." Dr. Andrus attributed the herniated cervical discs causing cord compression to the November 8, 2007 work injury. He questioned Dr. Burak's objectivity and stated:

> "The medical evidence in this case is overwhelming. Again, it is inconceivable how a physician reviewing the medical data in this case, could conclude that a patient with multiple large herniated discs, compressing on the spinal cord and causing injury to the spinal cord, with EMG evidence of cervical radiculopathy could conclude that the patient does not have any underlying cervical pathology."

[7] By decision dated December 21, 2011, OWCP granted appellant a schedule award for a nine percent permanent impairment of each upper extremity. In a decision dated September 27, 2012, it denied his request for further merit review of the December 21, 2011 decision under section 8128.

[8] On April 24, 2012 appellant appealed to the Board. In an order dated June 19, 2012, the Board dismissed his appeal of a July 20, 2011 decision as untimely. *Order Dismissing Appeal*, Docket No. 12-1097 (issued June 19, 2012).

On May 29, 2012 Dr. Bhansali diagnosed cervical intervertebral disc degeneration with myositis due to herniated discs at C4-5 and C6-7 and an extruded disc at C5-6, lumbar intervertebral disc degeneration with myositis and bilateral carpal tunnel syndrome. He related that he had reviewed Dr. Andrus' May 10, 2012 report and concurred with his findings.

On June 5, 2012 appellant again requested reconsideration. In a form report dated August 16, 2012, Dr. Andrus diagnosed cervical radiculopathy and cervical herniated discs due to "lifting and carrying [a] heavy mailbag." He advised that appellant was totally disabled from November 8, 2007 onward.

By decision dated August 22, 2012, OWCP denied modification of its June 14, 2011 decision. It found that Dr. Andrus and Dr. Bhansali did not rely on a correct history of injury, that of appellant experiencing a work injury on November 8, 2007 while carrying a mailbag.

In a report dated September 26, 2012, Dr. Lehman diagnosed lumbar sprain/strain, shoulder impingement and cervical radiculopathy. He attributed the back strain, left shoulder tear and acromioclavicular joint hypertrophy of the right shoulder to repetitive lifting and carrying in the course of his federal employment.

On October 1, 2012 appellant requested reconsideration.

Electrodiagnostic testing on November 7, 2012 performed by Dr. David J. Dickoff, a Board-certified neurologist, showed chronic, bilateral radiculopathy at C5 and C6 and mild ulnar neuropathy of the elbow.

On December 6, 2012 OWCP requested that Dr. Dickoff review Dr. Burak's April 23, 2009 and May 9, 2011 reports and discuss whether appellant was impaired due to the herniated disc seen on the March 7, 2009 MRI scan study. It further requested that he address whether appellant had mechanical derangement of the neck and, if so, whether it was employment related.

In a decision dated January 4, 2013, OWCP denied modification of its June 14, 2011 decision.

In a report dated January 7, 2013, Dr. Dickoff related that he treated appellant beginning November 6, 2012 "for injuries suffered in a work-related accident on November 8, 2007." He indicated that a March 7, 2009 cervical MRI scan study showed disc herniations resulting in cord compression at C4-5 and C5-6 and moderate degenerative changes. Electrodiagnostic studies dated November 7, 2012 revealed chronic C5-6 radiculopathy bilaterally. Dr. Dickoff asserted that it was "impossible to say that the C4-5 and C5-6 disc herniations, which result in cervical cord compression, occurred precisely November 8, 2007." He further found that Dr. Burak relied only on a clinical examination in reaching his conclusions. Dr. Dickoff found that, in his May 9, 2011 report, Dr. Burak "clearly underestimated the importance and significan[ce] of the MRI scan findings. Spinal cord compression is *never* an insignificant finding, even if clinical signs are not elicited on examination." He opined that appellant was totally disabled from employment and required an anterior cervical discectomy at C4-5 and C5-6.

On January 13, 2013 appellant requested reconsideration. By decision dated February 1, 2013, OWCP denied modification of its January 4, 2013 decision.[9]

On March 6, 2013 appellant requested reconsideration.

In a report dated April 18, 2013, Dr. Jeffrey Cohen, a Board-certified neurologist, discussed appellant's history of hearing "a snap in his neck with pain radiating to the right and left upper extremities and pain in the back" on November 8, 2007 while carrying a mailbag. He reviewed the result of the March 7, 2009 MRI scan study and elctrodiagnostic tests. Dr. Cohen stated:

> "It is my opinion with a fair degree of medical certainty as a practicing orthopedic surgeon for over 30 years that carrying a 50-pound bag of mail on a regular basis for the many years that [appellant] was employed by the [employing establishment] and on the date of accident in question hearing a snap in his neck, would be the competent cause of [his] two disc herniations, which are in fact extruded."

Dr. Cohen related that the positive findings on examination correlated with the diagnostic studies. He stated:

> "There could be no question that the weight from the mailbag was the competent cause of [appellant's] herniated cervical disc, which came to a plateau in 2007 on this date of accident and furthermore the impingement syndrome of the left and right shoulders with a capsulitis is clearly a result of this event. This is a repetitive stress disorder and there is no reason to disclaim the multitude of positive physical findings at this point, the positive history provided by [appellant], the positive EMG and MRI [scan] findings in this matter and the fact that [he] has not made a full recovery."

Dr. Cohan opined that appellant was disabled from his usual employment and required cervical surgery. He stated, "There is a clear causal relationship between the date of accident, the injury in question and the positive physical findings complemented by the positive testing in this matter."

In a report dated June 24, 2013, Dr. Cohen diagnosed bilateral carpal tunnel syndrome due to the November 8, 2007 employment injury and advised that appellant was disabled.

In a report dated July 7, 2013, Dr. Cy Blanco, a Board-certified anesthesiologist, noted that appellant experienced a snap and pain in his neck and back on November 8, 2007 after lifting a heavy mailbag. He related that a cervical MRI scan study showed extruded herniated discs at C4-5 and C5-6 with cord compression and a herniated disc at C6-7 with mild cord compression and that the abnormal EMG studies were consistent with the findings on MRI scan study. Dr. Blanco attributed the findings to the employment injury, diagnosed cervical

[9] In a decision dated March 5, 2013, OWCP denied appellant's request for reconsideration of its schedule award determination as untimely and insufficient to establish clear evidence of error.

radiculopathy and found that appellant was disabled from employment. On July 30, 2013 he related that appellant's "injuries are related to the November 8, 2007 accident. [Appellant] is not able to work at this time."

By decision dated July 31, 2013, OWCP denied modification of its January 4, 2013 decision. It found that Dr. Cohen's April 18, 2013 report attributed appellant's condition both to carrying mail regularly, which it found was relevant to an occupational disease claim, assigned file number xxxxxx546 and to the November 8, 2007 work injury.

On appeal, appellant's attorney argues that Dr. Burak's opinion is not rationalized and thus not entitled to the weight of the evidence. He contends that Dr. Burak did not review the most recent MRI scan study at the time of his examination and thus the termination was not procedurally correct. Counsel also argues that appellant's claim was accepted as an occupational disease rather than a traumatic injury and thus the statement of accepted facts was inaccurate.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[10] It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[11] OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[12] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[13] 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.[14]

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.[15] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. 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.[16] In situations where there exist opposing medical reports of virtually equal weight and

[10] *Elaine Sneed*, 56 ECAB 373 (2005).

[11] *Fred Reese*, 56 ECAB 568 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[12] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[13] *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

[14] *Id*.

[15] 5 U.S.C. § 8123(a).

[16] 20 C.F.R. § 10.321.

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.[17]

OWCP's procedures provide as follows:

> "When the DMA [district medical adviser], second opinion specialist or referee physician renders a medical opinion based on a SOAF [statement of accepted facts] which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether."[18]

ANALYSIS -- ISSUES 1

Appellant filed a traumatic injury claim alleging that on November 8, 2007 he injured his back, neck and shoulder in the performance of duty. On September 12, 2008 OWCP accepted that he sustained thoracolumbar strain and bilateral shoulder impingement. It indicated that while appellant alleged an injury due to a single event, the medical evidence established that his condition was due to his work activities and that it was "certainly reasonable that carrying a [mailbag] result[ed] in your injuries over a period of time." It appears that OWCP accepted that he sustained an occupational disease rather than a traumatic injury. It determined that a conflict arose between Dr. Westerband, an OWCP referral physician who found that appellant could resume work without limitations and Dr. Cushner, his attending physician who found that appellant could perform modified employment. In 2009, OWCP referred appellant to Dr. Burak for an impartial medical examination. In the statement of accepted facts provided to Dr. Burak, it noted that appellant had filed a claim alleging that he sustained a November 8, 2007 work injury and indicated that it had accepted thoracic lumbar strain and bilateral shoulder impingement. OWCP did not clearly set forth whether it had accepted a traumatic injury or occupational disease claim in the statement of accepted facts.

When there exists a conflict in medical opinion 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.[19] The Board finds, however, that Dr. Burak's opinion is insufficient to establish that appellant has no further disability due to his accepted bilateral shoulder impingement and thoracolumbar strain. To assure that, the report of a medical specialist is based upon a proper factual background, OWCP provides information to the physician through the preparation of a

[17] *R.C.*, 58 ECAB 238 (2006); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

[18] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600(3) (October 1990).

[19] *See R.H.*, 59 ECAB 382 (2008); *R.C., supra* note 17.

statement of accepted facts.[20] If the statement of accepted facts is inaccurate or incomplete, the probative value of the physician's opinion is greatly diminished.[21]

The Board finds that the opinion of Dr. Burak is not entitled to special weight as the statement of accept facts does not clearly indicate that appellant sustained an occupational disease rather than a traumatic injury occurring on November 8, 2007. Further, Dr. Burak diagnosed cervical sprain, thoracic sprain and right shoulder sprain due to the November 8, 2007 work injury. He found that appellant had no further findings of any active condition of the neck, thoracic spine or shoulders. OWCP, however, accepted thoracic lumbar sprain. Dr. Burak did not specifically address whether appellant had any further disability or residuals due to thoracic lumbar strain. Consequently, his opinion is insufficient to meet OWCP's burden of proof to terminate appellant's compensation and authorization for medical benefits for the accepted thoracic lumbar strain and bilateral shoulder impingement.

LEGAL PRECEDENT -- ISSUE 2

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[22] The opinion of the physician must be based on a complete factual and medical background of the claimant,[23] must be one of reasonable medical certainty[24] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[25]

ANALYSIS -- ISSUE 2

Following OWCP's termination of compensation, appellant submitted numerous medical reports attributing a cervical condition to factors of his federal employment. OWCP requested that Dr. Burak review and a March 7, 2009 MRI scan study that revealed a disc herniation at C6-7 with cord compression and indicated whether he believed that appellant could return to his usual employment. At the time it sought Dr. Burak's opinion regarding appellant's cervical condition, there was no conflict in medical opinion regarding the cervical condition and thus Dr. Burak acted as a second opinion examiner rather than an impartial medical examiner on this issue.

In a report dated May 9, 2011, Dr. Burak advised that he had not found evidence of a cervical condition during his April 23, 2009 physical examination. He opined that the results of the MRI scan study were unsupported by findings on examination.

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[20] *See Helen Casillas*, 46 ECAB 1044, 1052 n. 15 (1995).

[21] *See supra* note 18.

[22] *John J. Montoya*, 54 ECAB 306 (2003).

[23] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[24] *John W. Montoya*, *supra* note 22.

[25] *Judy C. Rogers*, 54 ECAB 693 (2003).

In a report dated May 10, 2010, Dr. Andrus disagreed with Dr. Burak's opinion. He discussed appellant's history of hearing a snap on November 8, 2007 and related that diagnostic studies confirmed the presence of cervical radiculopathy. Dr. Andrus diagnosed herniated cervical discs and cord compression due to a November 8, 2007 work injury. On May 29, 2012 Dr. Bhansali reviewed Dr. Andrus' May 10, 2012 report and agreed with his findings.

At the request of OWCP, Dr. Dickoff reviewed Dr. Burak's reports. He diagnosed disc herniations and cord compression at C4-5 and C5-6 by MRI scan study and C5-6 radiculopathy bilaterally by diagnostic studies. Dr. Dickoff advised that it was not possible to find that the disc herniations "occurred precisely November 8, 2007." He disagreed with Dr. Burak's opinion that spinal cord compression was not a significant finding.

In a report dated April 18, 2013, Dr. Cohen diagnosed extruded disc herniations due to appellant carrying a mailbag on November 8, 2007. He asserted that regularly carrying mail and hearing a snap in November 2007 caused his cervical disc herniations. Dr. Cohen related that "the weight from the mailbag was the competent cause of [appellant's] herniated cervical disc, which came to a plateau in 2007 on the date of accident…." He determined that appellant was disabled due to his work injury.

On July 7, 2013 Dr. Blanco diagnosed cervical radiculopathy and extruded cervical disc herniations as a result of appellant's injury on November 8, 2007.

The Board finds that a conflict exists between Dr. Burak, an OWCP referral physician who found that appellant had no active cervical condition and Drs. Andrus, Cohen and Blanco, attending physicians who diagnosed cervical herniated discs with radiculopathy due to employment factors. In its July 31, 2013 decision, OWCP noted that medical evidence related appellant's symptoms to carrying a heavy bag of mail in the course of his usual employment. It found that this evidence related to his occupational disease claim, assigned file number xxxxxx546. On remand, OWCP should combine the current file number with file number xxxxxx546 and determine whether appellant sustained cervical disc herniations due to factors of his federal employment.[26] It should further prepare a statement of accepted facts clearly indicating whether it accepted that he sustained an occupational disease or traumatic injury under the current file number. OWCP should then refer appellant to an impartial medical examiner to resolve whether he sustained a cervical condition as a result of employment factors. After such further development as deemed necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's compensation effective June 24, 2009 on the grounds that he had no further disability due to a November 8, 2007 employment injury. The Board further finds that the case is not in posture for decision regarding whether he sustained an employment-related cervical condition.

[26] In a report dated June 24, 2013, Dr. Cohen diagnosed carpal tunnel syndrome due to a November 8, 2007 work injury. His report, however, contains no rationale and thus is of little probative value.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2013 decision of the Office of Workers' Compensation Programs is reversed and set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 2, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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