



by the August 3, 2011 employment injury. He further contends that OWCP's referral physicians should have addressed the aggravations in their reports to find in favor of appellant.

### **FACTUAL HISTORY**

On August 3, 2011 appellant, then a 46-year-old mail processing clerk, sustained injuries to her neck, both arms, lower, mid and upper back in the performance of duty. She had returned to light duty on August 3, 2011 after being out of work for accepted left wrist and bilateral shoulder strains under OWCP File No. xxxxxx133. OWCP accepted the claim for cervical, thoracic and lumbar sprains and placed appellant on the periodic rolls.

On January 4, 2012 Dr. Samy Bishai, an attending physician and orthopedic surgeon, diagnosed cervical strain/sprain, bulging disc at C3-4 and C4-5, disc bulge at T6-7 and mild annular disc bulge at L4-5 and L5-S1. He opined that appellant was disabled due to injuries she sustained to her neck, both shoulders, left arm, left wrist, and her thoracic and lumbar spine on October 4, 2008 and an aggravation of the injuries on August 3, 2011 while at work.

OWCP referred appellant to Dr. William Dinenberg, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of her employment-related conditions. In a January 26, 2012 report, Dr. Dinenberg conducted a physical examination and reviewed appellant's medical history and the statement of accepted facts. Upon examination, he found that appellant had tenderness in the cervical, thoracic and lumbar spine to palpation. Dr. Dinenberg stated that it was "unclear why [appellant was] currently having pain in her cervical thoracic, and lumbar spine, though [he did] not feel it [was] related to the work injury of August 3, 2011." He stated that appellant's cervical, thoracic, and lumbar sprains were caused by an August 3, 2011 employment injury and her other reported conditions, including left wrist pain, bilateral shoulder impingement, and cervicothoracic and lumbar degenerative disc disease, were preexisting conditions and not related to the aggravations by the August 3, 2011 employment injury. Dr. Dinenberg concluded that appellant's cervical, thoracic and lumbar sprains had resolved effective January 26, 2012.

In an April 18, 2012 report, Dr. Bishai reviewed Dr. Dinenberg's January 26, 2012 report and disagreed with his opinion that appellant's cervical, thoracic and lumbar sprains had resolved. He opined that appellant's condition had worsened because she discontinued physical therapy and acupuncture while receiving treatment for a gallbladder and a pancreatitis condition in her abdomen. Dr. Bishai reiterated that appellant sustained an aggravation of her preexisting conditions on August 3, 2011.

OWCP referred appellant to Dr. Ben Chiang, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion between Drs. Dinenberg and Bishai on the issue of whether appellant continued to have any disability or residuals as a result of the accepted employment-related conditions.<sup>3</sup>

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<sup>3</sup> The record reflects that OWCP initially referred appellant to Dr. Fabio Fiore, a Board-certified orthopedic surgeon, for an impartial evaluation. After an attempt to clarify the opinion, OWCP found that the reports of Dr. Fiore were not sufficient to resolve the conflict.

Dr. Chiang reviewed a statement of accepted facts, the medical evidence of record and performed a physical examination. In his October 29, 2012 report, he opined that appellant had “a very low pain threshold because minor palpation of the cervical, thoracic and lumbar spine elicit[ed] major complaint of pain and discomfort.” Dr. Chiang stated that appellant “may not knowingly realize it, but it appear[ed] that she either unconsciously or consciously [had] a tendency to magnify her symptomatology.” He advised that the degenerative disc disease of appellant’s neck, thoracic and lumbar spine preexisted the August 3, 2011 employment injury. Dr. Chiang noted that it normally took between 6 to 12 weeks to recover from a muscle injury and stated that appellant was 14 months postinjury. Appellant also complained about her shoulders and left arm, but Dr. Chiang stated that “these [were] covered under a separate claim with the [employing establishment] and [had] nothing to do with the present injuries that she suffered on August 3, 2011.” He opined that the soft tissue injuries to appellant’s neck and lower back were a direct result of the repeated lifting, pushing and pulling that she did at work in the first 30 minutes of her return to work on August 3, 2011. Dr. Chiang stated that this “could very well have aggravated the preexisting degenerative disc disease in the neck and low back, but it should have been a temporary aggravation rather than a permanent aggravation.” He found a functional range of motion of the cervical, thoracic and lumbar spine and no evidence of stiffness or muscle spasm. Dr. Chiang concluded that appellant’s employment-related conditions had resolved and found that she was capable of working with restrictions of lifting, pushing and pulling no more than 20 pounds.

Appellant submitted reports dated December 20, 2012 and January 17, 2013 from Dr. Bishai, who reiterated his opinion that appellant continued to have residuals from her employment-related conditions and was totally disabled for work.

By letter dated February 19, 2013, OWCP notified appellant that it proposed to terminate her compensation benefits based on the weight of the medical evidence, as represented by Dr. Chiang.

Appellant submitted a March 11, 2013 report from Dr. Bishai who diagnosed cervical strain, cervical disc syndrome, dorsal muscle strain of the back, lumbosacral strain and lumbar disc syndrome. Dr. Bishai stated that “[t]here is no such thing as temporary aggravation of preexisting conditions when it affects a formidable condition like cervical disc disease or lumbar disc disease because the condition is progressive and it will continue to get worse.”

By decision dated April 10, 2013, OWCP terminated appellant’s compensation benefits effective that day. It found the weight of the evidence was represented by Dr. Chiang, the impartial medical specialist.

On April 29, 2013 appellant, through her representative, requested an oral hearing before an OWCP hearing representative. She submitted reports dated April 9 through July 11, 2013 from Dr. Bishai who reiterated his diagnoses and opinions. On May 14, 2013 Dr. Bishai advised that appellant’s condition was still quite severe and she was having pain in her neck and back with radiculopathy down the arms and legs. He stated that her condition was “not a simple case of a sprain or strain of the neck and back since [she had] degenerative disc disease in the cervical spine and the lumbosacral region of the spine.” Dr. Bishai also noted that appellant was quite depressed and recommended a psychiatric evaluation.

In reports dated June 10 through September 30, 2013, Dr. Orlando Ruano, Board-certified in psychiatry, diagnosed a generalized anxiety disorder and major depressive episode. He stated that appellant never experienced major symptoms of depression prior to her injuries at work.

A hearing was held before an OWCP hearing representative on October 29, 2013.

Appellant submitted a December 12, 2013 report from Dr. Bishai who reiterated his diagnoses and opinions, noting that appellant continued to complain of neck and back pain.

By decision dated January 23, 2014, the hearing representative affirmed the April 10, 2013 termination decision, finding that Dr. Chiang represented the weight of the medical evidence.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>4</sup> After it has determined that an employee has disability causally related to his or her 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>5</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>7</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>8</sup>

Section 8123(a) of FECA provides in pertinent part: 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>9</sup> Where a case is referred to an impartial medical specialist 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>4</sup> See *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>5</sup> See *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>6</sup> See *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>8</sup> See *James F. Weikel*, 54 ECAB 660 (2003).

<sup>9</sup> 5 U.S.C. § 8123(a). See *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>10</sup> See *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

## ANALYSIS

OWCP accepted appellant's claim for cervical, thoracic and lumbar sprains. It terminated her compensation benefits effective April 10, 2013 finding that the accepted employment-related conditions had resolved without residuals based on the opinion of the impartial medical examiner, Dr. Chiang.

OWCP referred appellant to Dr. Chiang to resolve a conflict in medical opinion between Drs. Dinenberg and Bishai. Dr. Bishai, a treating physician, opined that appellant had residuals from her accepted employment injuries for which she was totally disabled. Dr. Dinenberg, an OWCP referral physician, found that appellant no longer had any residuals or disability due to the accepted employment injuries. He concluded that appellant's cervical, thoracic and lumbar sprains had resolved. The Board finds that there was a conflict in medical opinion between Dr. Bishai and Dr. Dinenberg on the issues of medical residuals and disability. OWCP properly referred her to Dr. Chiang to resolve the conflict in the medical opinion evidence, pursuant to 5 U.S.C. § 8123(a).

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits based on the October 29, 2012 report of Dr. Chiang who reviewed appellant's medical history, examined her and found no objective evidence of ongoing residuals or disability due to her cervical, thoracic and lumbar sprains. Dr. Chiang reviewed the statement of accepted facts and the medical record. He found a functional range of motion of the cervical, thoracic and lumbar spine and no evidence of stiffness or muscle spasm. Dr. Chiang opined that appellant had "a very low pain threshold because minor palpation of the cervical, thoracic and lumbar spine elicit[ed] major complaint of pain and discomfort." He stated that appellant "may not knowingly realize it, but it appear[ed] that she either unconsciously or consciously [had] a tendency to magnify her symptomatology." Dr. Chiang noted that the degenerative disc in appellant's neck, thoracic and lumbar spine preexisted the August 3, 2011 employment injury. He indicated that it normally took between 6 to 12 weeks to recover from a muscle injury and stated that appellant was 14 months postinjury. Appellant also complained about her shoulders and left arm, but Dr. Chiang stated that "these [were] covered under a separate claim with the [employing establishment] and [had] nothing to do with the present injuries that she suffered on August 3, 2011." He opined that the soft tissue injuries to appellant's neck and lower back were a direct result of the repeated lifting, pushing and pulling that she did at work in the first 30 minutes of her return to work on August 3, 2011. Dr. Chiang stated that this "could very well have aggravated the preexisting degenerative disc disease in the neck and low back, but it should have been a temporary aggravation rather than a permanent aggravation." He concluded that appellant's employment-related conditions had resolved and advised that she was capable of working restrictions of lifting, pushing and pulling no more than 20 pounds.

The Board finds that Dr. Chiang's report represents the special weight of the medical evidence at the time OWCP terminated benefits. OWCP relied on his report to terminate appellant's compensation benefits. The Board finds that he had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Chiang is a specialist in the appropriate field. His opinion was based on proper factual and medical history and his report contained a detailed summary of medical history. Dr. Chiang addressed the medical records and made his own examination findings to reach a reasoned conclusion regarding appellant's

condition.<sup>11</sup> At the time benefits were terminated, he found no basis on which to attribute any residuals or continued disability to appellant's accepted conditions. Dr. Chiang's opinion is found to be probative and reliable. The Board finds that his opinion constitutes the special weight of the medical evidence and supports OWCP's termination of benefits for the accepted cervical, thoracic and lumbar sprains.

Dr. Bishai submitted reports diagnosing cervical strain, cervical disc syndrome, dorsal muscle strain of the back, lumbosacral strain, lumbar disc syndrome, bulging disc at C3-4 and C4-5, disc bulge at T6-7 and mild annular disc bulge at L4-5 and L5-S1 and opining that they were employment related. On May 14, 2013 he indicated that appellant's condition was "not a simple case of a sprain or strain of the neck and back since [she had] degenerative disc disease in the cervical spine and the lumbosacral region of the spine." As Dr. Bishai was on one side of the conflict, his reports, without more by way of medical rationale, are insufficient to create a new conflict in medical opinion to overcome the special weight properly accorded to Dr. Chiang.<sup>12</sup> Thus, the Board finds that OWCP properly terminated appellant's compensation benefits effective April 10, 2013 relating to the accepted cervical, thoracic and lumbar sprains.

Dr. Ruano submitted reports diagnosing generalized anxiety disorder and major depressive episode. He noted that appellant never experienced major symptoms of depression prior to her injuries at work. OWCP has not accepted an emotional condition in this case. Therefore, the Board finds that Dr. Ruano's report is not sufficient to establish causal relation to the accepted employment injuries.

On appeal, appellant's representative contends that appellant's conditions of cervical disc syndrome, lumbar disc syndrome and internal derangement of the left shoulder were aggravated by the August 3, 2011 employment injury. He further contends that OWCP's referral physicians should have addressed the aggravations in their reports and find in favor of appellant. OWCP has not accepted cervical disc syndrome, lumbar disc syndrome or an internal derangement of the left shoulder in this case.

### **CONCLUSION**

The Board finds that OWCP properly terminated appellant's compensation benefits effective April 10, 2013 on the grounds that her accepted cervical, thoracic and lumbar sprains had ceased without residuals.

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<sup>11</sup> See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

<sup>12</sup> See *Dorothy Sidwell*, 41 ECAB 857 (1990); *J.M.*, Docket No. 11-1257 (issued January 18, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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