



## **FACTUAL HISTORY**

This case was previously before the Board. By decision dated March 28, 2011, the Board reversed a January 29, 2010 OWCP decision terminating appellant's wage-loss and medical benefits effective February 14, 2010.<sup>2</sup> The Board found that the report of Dr. Daniel Primm, Jr., the impartial medical examiner, was insufficient to resolve the conflict of medical opinion between Dr. Vance N. True, appellant's attending chiropractor, and Dr. Richard T. Sheridan, an OWCP second opinion physician. The Board noted that it was unclear if Dr. Primm had received the statement of accepted facts. The Board found that his report was not based on a proper factual history and his opinion was not sufficiently rationalized as to whether appellant's accepted conditions of thoracic and lumbar sprains and cervical subluxation at C1 and C6 had resolved. The findings of fact from the prior decision are hereby incorporated by reference.

On June 9, 2008 appellant, then a 55-year-old laboratory technician, filed a traumatic injury claim (Form CA-1) alleging that she sustained a neck, shoulders, head, right knee and left forearm injury that day when her foot became caught on the lip of a cooler causing her to fall forward. By decision dated September 8, 2008, OWCP accepted the claim for thoracic and lumbar sprains of the back and cervical subluxation at C1 and C6. Appellant stopped work and was placed on the periodic rolls for temporary total disability effective September 29, 2008.

On April 26, 2011 OWCP referred appellant, a statement of accepted facts, the case file, a medical conflict statement and a series of questions to Dr. Robert F. Baker, a Board-certified orthopedic surgeon, for an impartial referee medical examination to resolve the conflict between Dr. True and Dr. Sheridan.

In his June 5, 2011 medical report, Dr. Baker reviewed appellant's past medical treatment and diagnostic studies. He noted that on June 9, 2008 she was placing samples in a cooler when she tripped over a step causing her to fall forward and hit her head. Appellant complained of continued neck pain. Dr. Baker noted that a June 13, 2008 magnetic resonance imaging (MRI) scan of the cervical spine showed no evidence of significant abnormality and an MRI scan of the thoracic spine revealed normal. Furthermore, appellant's June 13, 2008 MRI scan showed no changes when compared to a preexisting August 7, 2003 MRI scan. Dr. Baker found no objective diagnostic support for the diagnosis of cervical facet joint subluxation. Similarly, the testing did not reveal any evidence of significant acute cervical, thoracic or lumbar disc herniations, fractures or evidence of subluxation. Dr. Baker questioned why there was a prior thoracic MRI scan performed in 2003 despite appellant's assertions that she had no preexisting spinal problems. He agreed with appellant's evaluating physicians regarding the diagnoses of soft tissue cervical, thoracic and lumbar sprain/strain. Dr. Baker found no evidence of significant nerve root involvement in the cervical, thoracic or lumbar area and opined that appellant most likely had underlying, allegedly asymptomatic, early degenerative arthritic conditions of these spinal areas. From a purely symptomatic and subjective basis, he opined that these conditions were most probably brought into a symptomatic state by the alleged incident. Dr. Baker further stated that these types of common diagnoses resolved within a six-month time frame. He found no objective basis for appellant's complaints of pain which were from a purely

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<sup>2</sup> Docket No. 10-1127 (issued March 28, 2011).

subjective symptomatic perspective. Given that the incident occurred approximately three years prior, Dr. Baker stated that the aggravation was permanent in nature. He concluded that appellant did not need permanent restrictions secondary to the incident of June 9, 2008 over and above those already in place due to her nonoccupational chronic heart condition. Dr. Baker found no objective evidence to find a material significant change in the anatomic structures of appellant's spine secondary to the June 9, 2008 employment incident.

Appellant submitted an August 8, 2008 medical report from Dr. True, her treating chiropractor, who reported that, on June 9, 2008, appellant's shoe became caught on the lip of a cooler causing her to fall on her backside and hit her head. Immediately following the incident, she complained of neck, shoulder and low back pain. Appellant sought emergency treatment and followed up with Dr. Maria Pavez, a Board-certified neurologist, who referred her for chiropractic treatment. Upon physical examination and review of x-rays, Dr. True diagnosed subluxation of the cervical spine, cervical brachial syndrome and sprain/strain of the thoracic and lumbar spine. He stated that appellant's injuries were a direct result of the June 9, 2008 work-related accident and that she required continued treatment.

On November 1, 2011 OWCP notified appellant of its proposal to terminate her compensation benefits based on Dr. Baker's opinion that she did not have any residuals or disability connected to her June 9, 2008 employment injury. Appellant was provided 30 days to submit additional information.

By letter dated November 28, 2011, appellant stated that she was submitting additional medical evidence which supported her claim for disability. She resubmitted Dr. True's August 8, 2008 medical report, several scripts from Danville Cardiovascular Consultants and physical therapy notes.

By decision dated December 16, 2011, OWCP terminated appellant's compensation benefits effective December 18, 2011 on the grounds that the weight of the medical evidence rested with Dr. Baker who found that appellant did not continue to experience residuals of her work-related injury.

On November 27, 2012 appellant requested reconsideration of the December 16, 2011 OWCP decision. She argued that her conditions were caused by the June 9, 2008 employment incident and submitted new medical evidence in support of her claim.

In a November 18, 2012 report, Erik Drake, a physical therapist (PT), stated that there was objective evidence of appellant's condition through malarticulations in the spine and pelvis. He further stated that a negative MRI scan was a poor tool to identify sources of pain as malarticulations would not appear on an MRI scan.

By letter dated November 27, 2012, Dr. Robert P. Knetsche, Board-certified in orthopedic surgery, reported that he had been treating appellant for chronic regional pain, right lumbar back pain, left lumbar back pain and chronic bilateral lower extremity radicular pain which appellant related to a work injury from four years ago. He stated that appellant's lumbar back pain and bilateral lower extremity radicular symptoms were consistent with neuropathic-type radicular pain as well as potential Complex Regional Pain Syndrome/Reflex Sympathetic

Dystrophy. As appellant had already gone through a period of injections, physical therapy, chiropractic treatment and pain medication with little improvement, Dr. Knetsche recommended a permanent implant of the spinal cord stimulator.

By decision dated March 8, 2013, OWCP affirmed the December 16, 2011 decision terminating medical benefits. It noted that the weight of the medical evidence rested with Dr. Baker who established that the injury and related residuals had resolved.

### **LEGAL PRECEDENT**

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, it 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> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained a thoracic and lumbar sprain of the back and cervical subluxation at C1 and C6. The issue is whether it properly terminated her compensation benefits, effective December 18, 2011, as she did not have any residuals or disability of the June 9, 2008 injury. The Board finds that OWCP failed to meet its burden of proof in terminating appellant's benefits.

OWCP determined that a conflict existed between Dr. True, appellant's treating chiropractor, and Dr. Sheridan, a second opinion referral physician, regarding the nature and extent of appellant's employment-related condition and disability. It referred appellant to Dr. Baker for an impartial medical evaluation to resolve the conflict.<sup>8</sup>

In its December 16, 2011 and March 8, 2013 decisions, OWCP determined that appellant no longer experienced residuals or disability from her June 9, 2008 injury finding that the weight of the medical evidence rested with Dr. Baker's report. The Board finds, however, that

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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).

<sup>8</sup> *See R.A.*, Docket No. 09-1754 (issued May 24, 2010); *Rose V. Ford*, 55 ECAB 449 (2004).

Dr. Baker's opinion is insufficient to resolve the question of whether appellant continued to suffer from any residuals or disability causally related to the accepted June 9, 2008 injury.

Dr. Baker's report provided a review of appellant's medical records and diagnostic studies. He referenced a June 13, 2008 MRI scan of the cervical spine which showed no evidence of significant abnormality and an MRI scan of the thoracic spine which was normal. Dr. Baker found that the objective testing, which included plain x-rays and MRI scans, revealed no evidence of any significant acute cervical, thoracic or lumbar disc herniations, fractures, or evidence of subluxation. However, he failed to indicate -- the particular x-rays to which he referred and did not note or summarize any previous x-rays when reviewing appellant's medical records. The reports of Dr. True provided a diagnosis of subluxation to exist as evidenced by x-ray. Given that the opinion of Dr. True gave rise to the conflict of medical opinion, it is important for Dr. Baker to review and summarize the diagnostic findings with specificity in support of the opinions stated. As Dr. Baker's report did not provide a thorough and detailed medical history, his opinion is not sufficiently well rationalized to establish that appellant ceased to have residuals of her employment injuries.<sup>9</sup>

The Board further notes that Dr. Baker's opinion was unclear as to whether appellant has residuals or disability from the June 9, 2008 injury. While Dr. Baker agreed with prior diagnoses of soft tissue cervical, thoracic and lumbar sprain/strain, he opined that appellant most likely had underlying, early degenerative arthritic conditions of the spinal areas. He opined that these conditions were most probably brought into a symptomatic state by the accepted incident. The Board notes that, although appellant may have had a preexisting degenerative arthritic spinal condition, this does not negate the possibility that her condition was aggravated by the June 9, 2008 employment incident. Based on Dr. Baker's report, it is unclear if appellant continued to experience residuals from the June 9, 2008 employment incident due to aggravation of a preexisting degenerative arthritic conditions of the spinal area. The Board has held that a medical opinion not fortified by rationale is of limited probative value.<sup>10</sup>

Dr. Baker's opinion is also unclear regarding whether appellant's disability had resolved. He stated that these types of very common diagnoses resolve within a six-month time. It is unclear to which of appellant's diagnoses Dr. Baker referred as he was diagnosed with soft tissue cervical, thoracic and lumbar sprain/strain as well as early degenerative conditions. Dr. Baker's opinion is vague as to the diagnoses referenced and is speculative as he stated generally that such conditions typically resolve within six months. He noted that given appellant's subjective complaints of pain from an injury which occurred three years ago, the aggravation was permanent in nature. Dr. Baker's opinion that common diagnoses resolve within a six-month time frame is not consistent with his assertion that appellant's aggravation was permanent in nature. His opinion does not establish that appellant's June 9, 2008 condition had resolved. Given the deficiencies in Dr. Baker's report, his opinion is of limited probative value and does not resolve the conflict in medical opinion.<sup>11</sup>

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<sup>9</sup> V.C., Docket No. 11-1561 (issued February 15, 2012).

<sup>10</sup> A.D., 58 ECAB 149 (2006).

<sup>11</sup> See *Johana McCarthy*, 38 ECAB 680 (1987); *William H. Slade*, 13 ECAB 80 (1961).

The Board therefore finds that OWCP erred by terminating appellant's compensation in its December 16, 2011 and March 8, 2013 decisions. The Board will reverse OWCP's determination terminating appellant's medical and wage-loss compensation.

**CONCLUSION**

The Board finds that OWCP improperly terminated appellant's compensation benefits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 8, 2013 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 7, 2014  
Washington, DC

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

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

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