

**United States Department of Labor  
Employees' Compensation Appeals Board**

<b>E.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 13-1876</b>
	)	<b>Issued: March 26, 2014</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer</b>	)	
	)	

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 8, 2013 appellant, through his attorney, filed a timely appeal from the May 31, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant's disability beginning March 25, 2009 was causally related to his December 11, 2008 employment injury.

**FACTUAL HISTORY**

On December 11, 2008 appellant, a 43-year-old letter carrier, sustained a traumatic injury in the performance of duty when he slipped and fell off a porch. He was treated by Dr. David Weiss, an osteopath, that day. Appellant complained of low back pain and stiffness, as well as

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

left forearm pain. He rated his back pain at 4/10. Dr. Weiss diagnosed a contusion and sprain to the upper lumbar and lower thoracic spine, rule out T12 and L1 compression fracture. He also diagnosed contusion and abrasion to the left forearm, rule out occult fracture of the left ulnar shaft. Dr. Weiss returned appellant to work with no change in restrictions.<sup>2</sup>

Dr. Weiss saw appellant again on December 18, 2008. X-rays of the left forearm and thoracic spine were normal. X-rays of the lumbar spine revealed some degenerative changes at L5-S1 with facet joint arthropathy, but no compression fracture or transverse process fracture. Appellant continued to experience some lumbar pain and stiffness in the morning but denied any radicular complaints. He rated his low back pain at 3/10. After describing his findings on physical examination, Dr. Weiss diagnosed status post contusion to the left forearm resolved, lumbar strain and sprain resolved and lumbar contusion resolved, all related to the December 11, 2008 work injury. In light of the negative studies and appellant's orthopedic examination, no formal therapy was recommended.

On January 15, 2009 appellant complained of intermittent, almost daily low back pain. He continued to experience pain and stiffness in the morning but had no radicular complaints. Appellant's low back pain remained at 3/10.

On February 10, 2009 appellant presented with intermittent low back pain and stiffness, with a pain level of 0-5/10. Dr. Weiss diagnosed post-traumatic lumbar strain and sprain. He indicated that appellant would begin therapy.

On March 3, 2009 appellant complained of low back pain and stiffness daily with a pain level of 6/10, greater on the right side. He denied any radicular pain to the lower extremities. Dr. Weiss again diagnosed post-traumatic lumbar strain and sprain. Trigger point injection to the lumbar spine and an imaging study were considered. Appellant was to return in four weeks.

Appellant returned to Dr. Weiss on March 24, 2009. He noted ongoing lower back pain especially on the right side with pain now radiating into the right lower extremity. Dr. Weiss added the diagnosis of rule out lumbar disc pathology. Given the marked increase in appellant's low back and right leg pain following his work duties, Dr. Weiss took appellant off work.

A March 27, 2009 computed tomography (CT) scan of the lumbar spine showed disc degeneration with mild disc bulging, facet joint hypertrophy and foraminal narrowing at L3-4 and L4-5. There was concentric disc bulging with a small broad-based central disc herniation at L4-S1.

Appellant claimed compensation for disability beginning March 25, 2009. He also filed a recurrence of disability claim.

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<sup>2</sup> Dr. Weiss had been following appellant for a December 31, 2007 right knee injury in OWCP File No. xxxxxx598. Appellant was already working a modified assignment when the December 11, 2008 injury occurred. Dr. Weiss imposed no new work restrictions as a result of the latter injury. On a prior appeal, the Board found that appellant did not meet his burden to establish that he sustained a recurrence of disability on March 25, 2009 as a result of his December 31, 2007 right knee injury. Docket No. 12-774 (issued October 3, 2012).

On April 26, 2009 Dr. Weiss related appellant's history and clinical findings. He advised: "Due to [appellant's] injuries he has been totally disabled from his gainful employment from March 24, 2009 and remains totally disabled at the present time due to the severity of his pain." Appellant most recently complained of increasing low back pain and stiffness with radicular pain into the right lower extremity and a burning sensation with a pain level of 10/10. Dr. Weiss stated that appellant's condition was the result of his work-related injuries.

By June 18, 2009 appellant complained of persistent low back pain and stiffness, daily and constant, radiating in the right lower extremity and lately affecting the left side of the low back as well as the right.

OWCP accepted appellant's claim for a lumbar sprain and contusion of the left forearm. It referred him, together with the medical record and a statement of accepted facts, to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second-opinion evaluation.

Dr. Hanley evaluated appellant on June 24, 2009. He related appellant's history, complaints and findings on physical examination. Dr. Hanley saw fairly heavy-duty signs of pain behavior. He advised that appellant's possible lumbar sprain/strain was initially related to the work injury, but his presentation was overblown and exaggerated and did not appear consistent with any reasonably-related industrial injury. Dr. Hanley stated, "I believe [that appellant] is much more capable than he is leading us to believe at this time." He explained that a CT scan was of little or no value in managing a patient who might have a discogenic problem. Dr. Hanley found that appellant could be performing his work duties full time. Giving him the benefit of a doubt, he suggested that appellant limit his lifting to some degree.

An electromyogram (EMG) confirmed right S1 radiculopathy.

In July 6, 2009 decision, OWCP denied appellant's claim for compensation. It found that the medical evidence failed to demonstrate a causal relationship between the original injury and the currently claimed condition or disability.

On February 3, 2010 an OWCP hearing representative affirmed the denial of appellant's claim. The hearing representative found insufficient rationalized medical evidence to establish that appellant's condition or disability on or after March 25, 2009 was causally related to the accepted work injury.

Dr. Weiss continued to report that appellant remained disabled from his gainful employment due to his combined work-related injuries to his right knee and lumbar spine. He noted that appellant was hesitant about surgical intervention and was considering a second opinion.

On March 22, 2010 OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Steven J. Valentino, a Board-certified orthopedic surgeon, to determine if appellant's current symptoms were due to the December 11, 2008 work incident or an underlying condition.

In an April 20, 2010 report, Dr. Valentino related appellant's history and his findings on physical examination, which were negative, save for inconsistently limited lumbosacral

flexibility and initial significant guarding with right knee range of motion. He diagnosed resolved lumbar strain and resolved left forearm contusion. Dr. Valentino found that appellant had recovered from his work injury, which consisted of a lumbar strain and left forearm contusion. There was no evidence to suggest that appellant sustained any traumatically-related lumbar disc herniation or radiculopathy. His lumbar degenerative disc disease was an underlying condition not connected to the stated injury, as per initial records.

Dr. Valentino also found that appellant's subjective complaints did not correspond with the objective findings. Appellant had recovered and Dr. Valentino found no injury-related residuals or disability related to the history of the December 11, 2008 injury. He had no limitations resulting therefrom.

Appellant requested reconsideration of the hearing representative's February 3, 2010 decision. In support thereof, he submitted the May 7, 2010 report of Dr. Alexander R. Vaccaro, a Board-certified orthopedic surgeon.

Dr. Vaccaro saw appellant on May 7, 2010. The history he received was that appellant began to develop discomfort in his low back and right lower extremity on December 11, 2008 when he fell off a porch. After describing his findings, Dr. Vaccaro noted that appellant had no significant back pain or leg pain up until a fall on December 11, 2008. "This resulted in symptomatic dis[c] degeneration with radiculopathy culminating in [appellant's] need for surgical intervention."

On July 10, 2010 Dr. Weiss reviewed his treatment notes. He noted that appellant suffered no injury or pathology to the lumbar spine prior to the work incident on December 11, 2008 "and therefore it is felt that his lumbar spine injury is certainly a result of the fall with a direct contusion to the back on December 11, 2008."

On July 13, 2010 Dr. Weiss advised that the December 11, 2008 work incident caused a contusion to the lumbar spine and bulging disc at L3-4 and L4-5, as well as a herniation at L5-S1 and radiculopathy. "[Appellant] also sustained aggravation of underlying quiescent age-related degenerative disc disease of the lumbar spine." Dr. Weiss stated that the December 11, 2008 work injury was considered the competent producing factor for appellant's ongoing and permanent orthopedic impairment to the lumbar spine. He found that appellant remained totally disabled due to the extent of the pathology to the right knee as well as the lumbar spine.

In a July 15, 2010 supplemental report, Dr. Vaccaro addressed Dr. Valentino's opinion that appellant had recovered from his work-related lumbar strain and left arm contusion. He advised that appellant had more than just a lumbar strain. Dr. Vaccaro noted that a CT scan showed foraminal stenosis, that an EMG revealed S1 radiculopathy and that appellant reported an 85 percent improvement with an injection at the S1 nerve root. "As such [appellant] continues to be symptomatic from the residuals of his work[-]related injury on December 11, 2008."

On August 12, 2010 OWCP denied modification of the hearing representative's February 3, 2010 decision.

Appellant's attorney contended that a conflict in medical opinion arose between Dr. Weiss and Dr. Hanley on whether appellant had residuals of his December 11, 2008 work injury. OWCP referred appellant to an impartial medical specialist, Dr. William C. Hamilton, a Board-certified orthopedic surgeon, but the specialist reported that he did not have Dr. Hanley's report. It provided Dr. Hamilton with a copy and asked for a supplemental opinion. When Dr. Hamilton proved nonresponsive over a period of months, OWCP referred appellant to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon. A Form ME023 documented his selection through the Medical Management Application (MMA), as well as a screenshot documenting the bypass history. Dr. Ronald N. Rosenfeld, a Board-certified orthopedic surgeon, was bypassed because he was ill and Dr. Didizian was the next physician in rotation for selection after Dr. Hamilton.

Dr. Didizian examined appellant on February 29, 2012. He related appellant's history and described his findings on physical examination. Dr. Didizian reviewed appellant's medical record with an emphasis on the complaints and findings from the December 11, 2008 work injury to the first mention of radicular complaints. He noted that appellant was seen on December 18, 2008, he had no radicular complaints. Dr. Didizian's physical examination was completely normal from an orthopedic and neurologic aspect. Appellant's left forearm contusion, lumbar contusion and lumbar sprain and strain were resolved and in light of negative studies, no therapy was recommended.

"Based on the review of the records of Dr. Weiss, it is my medical opinion that once he found [that appellant's] condition resolved on December 18, 2008, that remains the medical opinion related to the date[-]of[-]injury of December 11, 2008. A medical opinion [condition] cannot be unresolved once it has been resolved.

"In my opinion, any treatment beyond that point has no bearing to the December 11, 2008 date of injury."

Dr. Didizian explained that the December 12, 2008 x-rays showed mild degenerative disc disease at L5-S1 with mild facet hypertrophy, findings that take years to develop and which were part of appellant's genetic make-up and age. He added that the March 27, 2009 CT scan did not indicate any involvement of the exiting nerve roots. These findings were also part of appellant's degenerative disease and had no bearing to the date of injury. "A small central disc is not going to cause pressure on the exiting nerve roots, namely the S1 nerve roots."

Dr. Didizian advised that CT scans should be correlated clinically and appellant had no radicular complaints for the first three to four months after the date of injury, which was significant and ruled out any kind of nerve root compression or irritation. He stated that the June 26, 2009 EMG did not correlate with the CT scan. Currently, appellant had intact reflexes at the ankles, which was a function of the S1 nerve root. His motor strength was also normal and graded as 5/5. Appellant's sensory examination was nonphysiologic in response. Dr. Didizian observed that Dr. Vaccaro's history that appellant initially complained of low back pain and radicular right leg pain was incorrect. He stated that appellant sustained a lumbar sprain and left forearm contusion on December 11, 2008, which resolved by December 18, 2008, as per Dr. Weiss. Appellant had no disability beyond that date related to the December 11, 2008 work

injury. Further, Dr. Didizian found that appellant had no physical limitation resulting from the injury.

Dr. Weiss reported on January 11, 2011 that appellant had a documented disc herniation at L5-S1, lumbar radiculopathy and bulging discs at L3-4 and L4-5. He noted that appellant attempted to continue work, but due to his ongoing and increasing symptomatology in both the right knee and low back, he was experiencing significant difficulties working; therefore he was taken off of work on March 24, 2009.

In a July 19, 2012 decision, OWCP terminated compensation for the December 11, 2008 employment injury. It found that the weight of the medical opinion evidence rested with Dr. Didizian, the impartial medical specialist and established that appellant had no medical condition or disability causally related to the December 11, 2008 work injury.

In an August 24, 2012 decision, OWCP reviewed the merits of appellant's claim and denied modification of its August 12, 2010 decision. It found that Dr. Didizian's opinion represented the weight of the medical evidence concerning the claimed recurrence on March 25, 2009.

On February 13, 2013 an OWCP hearing representative affirmed the July 19, 2012 termination of compensation.

In a January 10, 2013 report, Dr. Vaccaro related that appellant "began to become symptomatic" when he fell off a porch on December 11, 2008. He reviewed Dr. Didizian's report and disagreed that appellant had no injury-related disability. "[Appellant] has a significant radiculopathy which is more than just a strain. He continues to be unable to be employed as a mail carrier and I believe [that] this is causally related to his work[-]related injury on December 11, 2008."

In a May 31, 2013 decision, OWCP reviewed the merits of appellant's case and denied modification of its February 13, 2013 decision. It found that Dr. Vaccaro offered no explanation to dispute Dr. Didizian's findings. Dr. Vaccaro reiterated the diagnosis of radiculopathy and generally stated that appellant's symptomatology was causally related to the work injury. OWCP found that the weight of the medical opinion rested with Dr. Didizian, the impartial medical specialist who provided a well-reasoned opinion based on objective findings.

Appellant appeals from OWCP's May 31, 2013 decision. His attorney contends that appellant has provided sufficient medical evidence to establish a recurrence of injury beginning March 25, 2009 related to his work injuries. He points to Dr. Weiss' reports on July 10, 2010 and January 11, 2011. Counsel also points to Dr. Vaccaro's July 15, 2010 and January 10, 2013 reports.

Appellant's attorney argued that OWCP ignored the opinion of the first impartial medical specialist and was guilty of "[physician] shopping" when the specialist refused to provide a supplemental report. For this reason and because there is no screenshot of his selection and because his opinion is not well reasoned, counsel argues that Dr. Didizian's opinion cannot carry the weight of the medical evidence. In the alternative, he contends that a conflict exists between

Dr. Didizian on the one hand and Dr. Vaccaro and the first impartial specialist on the other. Counsel stated that OWCP should have combined appellant's case records.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,<sup>4</sup> including that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>5</sup>

It is not sufficient for the claimant to establish merely that he or she has disability for work. He or she must establish that his or her disability is causally related to the accepted employment injury. The claimant must submit a rationalized medical opinion that supports a causal connection between the claimed disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury and must explain from a medical perspective how the current disabling condition is related to the injury.<sup>6</sup>

When a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.<sup>7</sup>

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>8</sup> After a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he or she claims compensation, he or she had a disability causally related to the employment resulting in a loss of wage-earning capacity.<sup>9</sup>

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>10</sup> When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

<sup>7</sup> *Thomas D. Petrylak*, 39 ECAB 276 (1987).

<sup>8</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>9</sup> *Wentworth M. Murray*, 7 ECAB 570 (1955); *Maurice E. King*, 6 ECAB 35 (1953).

<sup>10</sup> 5 U.S.C. § 8123(a).

the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>11</sup>

A physician selected by OWCP to serve as an impartial medical specialist should be one wholly free to make a completely independent evaluation and judgment. In order to achieve this, OWCP has developed specific procedures for the selection of the impartial medical specialist designed to provide adequate safeguards against any possible appearance that the selected physician's opinion was biased or prejudiced. The procedures contemplate that the impartial medical specialist will be selected on a strict rotating basis in order to negate any appearance that preferential treatment exists between a particular physician and OWCP.<sup>12</sup>

The MMA, which replaced the Physician Directory System (PDS), allows users to access a database of Board-certified specialist physicians and is used to schedule referee examinations. The application contains an automatic and strict rotational scheduling feature to provide for consistent rotation among physicians and to record the information needed to document the selection of the physician.<sup>13</sup>

The claims examiner is not able to determine which physician serves as the impartial medical specialist. A medical scheduler inputs the claim number into the application, from which the claimant's home zip code is loaded. The scheduler chooses the type of examination to be performed (second opinion or impartial referee) and the applicable medical specialty. The next physician in the roster appears on the screen and remains until an appointment is scheduled or the physician is bypassed. If the physician agrees to the appointment, the date and time are entered into the application. Upon entry of the appointment information, the application prompts the medical scheduler to prepare an ME023 appointment notification report for imaging into the case file. Once an appointment with a medical referee is scheduled, the claimant and any authorized representative are to be notified.<sup>14</sup>

If an appointment cannot be scheduled in a timely manner or cannot be scheduled for some other reason such as a conflict or the physician is of the wrong specialty, the scheduler will update the application with an appropriate bypass code. Upon the entering of a bypass code, the MMA will select the next physician in the rotation.<sup>15</sup>

### ANALYSIS

The issue whether appellant's disability beginning March 25, 2009 was causally related to the December 11, 2008 employment injury. The accepted employment injury was a lumbar

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<sup>11</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>12</sup> *Raymond J. Brown*, 52 ECAB 192 (2001).

<sup>13</sup> See generally Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.5 (December 2012).

<sup>14</sup> *B.N.*, Docket No. 12-1394 (issued August 5, 2013).

<sup>15</sup> See *supra* note 13.



sprain and a contusion of the left forearm. Appellant did not contend that the December 11, 2008 left forearm contusion caused disability for work beginning March 25, 2009. In February 2009, Dr. Weiss, the attending osteopath, diagnosed post-traumatic lumbar strain and sprain, but after appellant's "marked increase" in low back pain following work duties in or about March 2009, his radicular complaints and studies showing bulging discs, a herniated disc and radiculopathy. He advised that the December 11, 2008 work incident caused not only a contusion to the lumbar spine, but a bulging disc at L3-4 and L4-5, a herniation at L5-S1 with radiculopathy and an aggravation of underlying age-related degenerative disc disease of the lumbar spine.

Dr. Vaccaro, appellant's orthopedic surgeon, was of the opinion that he sustained more than a lumbar strain on December 11, 2008. Noting the results of the CT scan and EMG, he indicated that the work incident was responsible.

This raises the issue of whether the medical conditions for which appellant currently claims compensation were causally related to the December 11, 2008 work injury. As for whether his disability beginning March 25, 2009 was causally related to the accepted lumbar sprain or left arm contusion, the record contains no probative medical opinion in the affirmative.

Dr. Weiss found that the accepted lumbar sprain and left arm contusion had resolved one week after the December 11, 2008 work injury. Dr. Valentino, the second-opinion orthopedic surgeon, found that appellant had recovered from his lumbar strain and left forearm contusion. Dr. Didizian, the orthopedic surgeon and impartial medical specialist, agreed with Dr. Weiss that the accepted medical conditions had resolved by December 18, 2008. He added that any treatment beyond that date was not due to the December 11, 2008 employment injury.

Accordingly, the Board finds that appellant has not met his burden to establish that his disability beginning March 25, 2009 was causally related to the accepted employment injuries.

As for whether the medical conditions for which appellant currently claimed compensation are causally related to the December 11, 2008 work injury, a conflict in medical opinion arose. Dr. Weiss asserted that the work incident was the competent producing factor for appellant's ongoing orthopedic impairment to the lumbar spine. Dr. Valentino, however, found no evidence to suggest that appellant sustained any traumatically-related lumbar disc herniation or radiculopathy.<sup>16</sup>

OWCP referred appellant to Dr. Didizian, a Board-certified orthopedic surgeon, to resolve the issue. It provided Dr. Didizian with appellant's medical record and a statement of accepted facts so he could base his opinion on a proper history. Dr. Didizian found that

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<sup>16</sup> Dr. Hanley, a second-opinion orthopedic surgeon, suggested that appellant's current condition was not related to any reasonably-related industrial injury. He found fairly heavy-duty signs of pain behavior and concluded that appellant was much more capable than he was leading on. Dr. Vaccaro reported an incorrect history. He indicated that appellant's right lower extremity complaints began on December 11, 2008. The record shows no radicular complaint until March 24, 2009. For this reason, the Board finds that Dr. Vaccaro's opinion has little, if any, probative value. *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions). *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete).

appellant sustained a lumbar sprain and left forearm contusion on December 11, 2008, which resolved by December 18, 2008, as per Dr. Weiss and that appellant had no disability beyond that date related to the December 11, 2008 work injury. He explained that appellant had no radicular complaints on his initial examination. Dr. Didizian's neurologic examination was normal. He had no radicular complaints one week later. Dr. Didizian's physical examination was completely normal from both an orthopedic and neurologic aspect. Later, on February 10, 2009, Dr. Weiss' neurologic examination was also nonfocal. On March 3, 2009 appellant still denied any radicular complaints.

The Board finds that Dr. Didizian's opinion is based on a proper history and is sufficiently well reasoned that it must be accorded special weight in resolving whether the medical conditions for which appellant currently claims compensation are causally related to the December 11, 2008 work injury. The first complaint of radicular pain did not appear until March 24, 2009, about three and a half months after the December 11, 2008 work injury. This complaint coincided, incidentally, with a "marked increase" in appellant's low back and right leg pain following his work duties.<sup>17</sup> This does not appear consistent, to a Board-certified orthopedic surgeon such as Dr. Didizian, with a lumbar disc injury on December 11, 2008 or with Dr. Weiss' early findings and conclusion that appellant had recovered from the December 11, 2008 work injury within about a week and without disability or limitation.<sup>18</sup> Dr. Didizian's conclusion that the December 11, 2008 work injury caused a lumbar sprain and left arm contusion that resolved a week later, leaving no residual or disability thereafter appears consistent with the medical record.

Accordingly, the Board finds that appellant has not met his burden to establish that the medical conditions for which he currently claims compensation are causally related to the December 11, 2008 work injury. The Board will therefore affirm OWCP's May 31, 2013 decision.

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.

Appellant's attorney points to particular reports from Dr. Weiss, whose opinion conflicted with that offered by Dr. Valentino and OWCP referred appellant to Dr. Didizian to resolve the matter.

The Board finds no evidence of doctor shopping. FECA procedures state that OWCP should request a supplemental report from the referee physician to clarify inadequacies in the initial report. Only if the referee physician does not respond or does not provide a sufficient response after being asked, should OWCP request a new referee examination.<sup>19</sup> OWCP

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<sup>17</sup> Appellant had earlier complained of some pain and stiffness in the morning.

<sup>18</sup> Dr. Weiss initially diagnosed contusion and sprain to the upper lumbar and lower thoracic spine, rule out T12 and L1 compression fracture.

<sup>19</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11.e (September 2010).

developed the medical record with the first impartial medical specialist and requested a supplemental report. He did not respond. After inquiries and the passage of time, it became proper for OWCP to select a new specialist.

Appellant's representative argued that the record contains no screenshot of the selected impartial medical specialist and therefore the record is not sufficient to show that OWCP properly selected the specialist under the PDS. The Board finds that OWCP properly selected Dr. Didizian. OWCP adequately documented Dr. Didizian's selection. The record contains the ME023 report showing the scheduled appointment generated under the MMA. It also contains a sufficiently legible screenshot from the application showing Dr. Didizian's appearance in the automatic rotation. The Board has held that such evidence is sufficient to show that OWCP has met its affirmative obligation to establish that it properly followed its selection procedures.<sup>20</sup> Thus, the Board finds that the argument raised by appellant's attorney to the contrary is not substantiated.

As for the argument that Dr. Vaccaro's opinion created a new conflict requiring another impartial medical specialist, the Board has found that Dr. Vaccaro's opinion is of diminished probative value. He incorrectly reported that appellant's right lower extremity complaints began on December 11, 2008.

Finally, the Board finds no reversible error in the exercise of OWCP's administrative discretion not to double the present case record with the record relating to appellant's December 11, 2008 right knee injury. The cases involve injuries on different dates to different parts of the body and adjudication of this case does not require frequent cross-references to the other.<sup>21</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden to establish that his disability beginning March 25, 2009 was causally related to his December 11, 2008 employment injury.

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<sup>20</sup> See e.g., *D.B.*, Docket No. 13-1355 (issued December 5, 2013).

<sup>21</sup> See *supra* note 19 at *File Maintenance & Management*, Chapter 2.400.8 (February 2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 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