



## **FACTUAL HISTORY**

On January 4, 2012 appellant, then a 71-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury on December 21, 2011 in a motor vehicle accident at work. She stopped work on December 21, 2011.<sup>2</sup> Appellant's claim form did not specify the nature of the injury sustained.

In a January 6, 2012 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a statement in which she noted that on December 21, 2011 her mail delivery vehicle was stopped at a mailbox when another motor vehicle struck her vehicle from behind. She was propelled forward due to the impact.

In a February 10, 2012 decision, OWCP denied appellant's claim. It found that she did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty on December 21, 2011.

In a February 8, 2012 report, Dr. Neil R. Schultz, an attending Board-certified physical medicine and rehabilitation physician, described the December 21, 2011 motor vehicle accident. He indicated that appellant sustained several conditions, including cervical sprain/strain, lumbar sprain/strain and left knee contusion, due to the work incident.<sup>3</sup> On range of cervical motion testing, appellant had 45 degrees of extension, 40 degrees of extension, 45 degrees of right rotation and 45 degrees of left rotation. On range of lumbar motion testing, she had 45 degrees of extension, 15 degrees of extension, 20 degrees of right lateral flexion and 15 degrees of left lateral flexion. Dr. Schultz noted that appellant exhibited tenderness/spasms in the right and left cervical facets, thoracic paraspinals and right and left lumbar facets and that testing for the cervical and lumbar facets on extension caused pain. In another February 8, 2012 report, he indicated that she had various work restrictions, including lifting no more than 15 pounds and intermittently sitting for no more than two hours.<sup>4</sup>

In an April 5, 2012 report, Dr. Schultz diagnosed cervical sprain/strain, lumbar strain and left knee contusion. On range of cervical motion testing, appellant had 45 degrees of extension, 50 degrees of extension, 65 degrees of right rotation and 65 degrees of left rotation. On range of lumbar motion testing, she had 70 degrees of extension, 25 degrees of extension, 30 degrees of right lateral flexion and 30 degrees of left lateral flexion. Dr. Schultz advised that appellant exhibited tenderness/spasms in the right cervical and right lumbar facets and that testing for the cervical and lumbar facets on extension caused pain. He recommended work restrictions.

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<sup>2</sup> Appellant returned to limited-duty work on January 3, 2012 but stopped work shortly thereafter. She received disability compensation on the daily rolls.

<sup>3</sup> Appellant also submitted a brief report of emergency hospital treatment she received on December 21, 2011.

<sup>4</sup> Appellant's rural carrier position required her to lift up to 45 pounds and to intermittently sit for up to five hours. The record also contains a Form CA-16 (Authorization for Examination and/or Treatment) completed by Dr. Schultz on January 25, 2012.

In an April 30, 2012 decision, OWCP vacated the February 13, 2012 decision. It accepted her claim for a neck sprain, lumbar sprain and left knee contusion due to the December 21, 2011 work incident.

In a May 3, 2012 report, Dr. Schultz diagnosed several conditions, including cervical sprain/strain, lumbar strain and left knee contusion. He provided findings for range of cervical motion and range of lumbar motion testing and stated that appellant exhibited tenderness/spasms in the right cervical and right lumbar facets. Testing for the lumbar facet on extension caused pain. In another May 3, 2012 report, Dr. Schultz indicated that appellant had various work restrictions, including lifting no more than 15 pounds and intermittently sitting for no more than two hours.

On May 23, 2012 OWCP assigned appellant a field nurse to help her achieve full recovery and a return to work. The nurse asked Dr. Schultz to provide information about appellant's work-related condition and ability to work. She provided Dr. Schultz with a form that asked questions about such matters as appellant's diagnosis, prognosis, treatment plans, date of maximum medical improvement, permanent impairment and anticipated date of return to full duty.

In a May 31, 2012 report, Dr. Schultz diagnosed cervical sprain/strain, lumbar strain and thoracic strain. On range of cervical motion testing, appellant had 55 degrees of extension, 55 degrees of extension, 65 degrees of right rotation and 70 degrees of left rotation. On range of lumbar motion testing, she had 75 degrees of extension, 30 degrees of extension, 30 degrees of right lateral flexion and 30 degrees of left lateral flexion. Dr. Schultz noted that appellant exhibited tenderness/spasms in the right lumbar facet.

On May 31, 2012 Dr. Schultz completed the form provided by the field nurse, noting that appellant's diagnoses were cervical and lumbar strains, her prognosis was good, her treatment plans involved physical therapy and pain medication as needed, her date of maximum medical improvement was May 31, 2012 and her anticipated date of return to full duty was May 31, 2012.<sup>5</sup>

In a June 13, 2012 letter, OWCP requested that Dr. Schultz address whether appellant's accepted conditions (neck sprain, lumbar sprain and left knee contusion) had resolved. On June 15, 2012 Dr. Schultz replied "yes" that appellant's December 21, 2011 work injuries had resolved. He did not provide any further explanation for his statement.

In a June 27, 2012 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals of her December 21, 2011 work injuries. The proposed termination action was based on the May 31 and June 15, 2012 reports of Dr. Schultz. OWCP provided appellant 30 days to submit evidence and argument challenging the proposed termination action.

Appellant submitted a June 29, 2012 statement in which she asserted that she had not fully recovered from her December 21, 2011 work injuries. She submitted physical therapy

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<sup>5</sup> Dr. Schultz indicated that he did not anticipate that appellant would have a permanent impairment rating.

reports and disability certificates signed by nurse practitioners for periods in early June and early July 2012. In an August 27, 2012 statement, appellant advised that she returned to her full-time regular work on July 25, 2012. She asserted that she had not been ready to return to work prior to that date.

In an October 17, 2012 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 1, 2012. The termination action was based on the opinion of Dr. Schultz. OWCP noted that appellant did not submit evidence showing that she had work-related residuals after June 1, 2012.

Appellant requested a hearing with an OWCP hearing representative regarding the termination of her wage-loss compensation and medical benefits. During the February 13, 2013 hearing, she testified that she continued to have residuals of her December 21, 2011 work injuries after June 1, 2012 and asserted that she should receive compensation up through the time that she returned to full duty on July 25, 2012. Appellant contended that she believed that Dr. Schultz prematurely ended the treatment for her work injuries.

Appellant submitted a November 12, 2012 note from Dr. Jerry Williams, an attending family practitioner, who stated that she could only perform limited-duty work between June 9 and July 24, 2012 and was released to full duty on July 24, 2012. In a November 14, 2012 report, Dr. Williams listed dates in June and July 2012 when he treated appellant for ongoing cervical/lumbar strain that started December 2011 following a motor vehicle accident. He advised that appellant was referred for physical therapy to treat her condition and noted that she was released to full duty on August 28, 2012. When Dr. Williams' office examined appellant on November 12, 2012, she exhibited no evidence of cervical or lumbar strain.

In a decision dated May 1, 2013, the hearing representative affirmed the October 17, 2012 termination decision. She found that the termination action was justified based on the reports of Dr. Schultz. Appellant did not submit medical evidence to establish that she had work-related residuals after June 1, 2012.

In an August 15, 2013 letter, appellant requested reconsideration of her claim. She submitted a number of documents relating to her work requirements.

In a November 20, 2013 decision, OWCP affirmed the May 1, 2013 decision. It found that Dr. Schultz supported the termination of wage-loss compensation and medical benefits as of June 1, 2013.

### **LEGAL PRECEDENT -- ISSUE 1**

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>6</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>7</sup>

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<sup>6</sup> *J.M.*, 58 ECAB 478 (2007); *Charles E. Minniss*, 40 ECAB 708 (1989).

<sup>7</sup> *Id.*

Its' burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup>

OWCP procedures provide that a request for medical information from the attending physician may be the most efficient and expeditious means to obtain a medical status update and address any unresolved medical issues. Its' claims examiner must ensure, however, that the attending physician's reply is well reasoned and responsive to the questions asked. OWCP procedures further indicates that if reports from the attending physician lack needed details and opinion, or if the subjective complaints and time loss from work appear inconsistent with the objective findings and the claimant's diagnosis, the claims examiner can write back to the physician, clearly state what is needed and request a supplemental report.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained a neck sprain, lumbar sprain and left knee contusion due to a December 21, 2011 motor vehicle accident at work and paid her wage-loss compensation and medical benefits. It terminated her wage-loss compensation and medical benefits effective June 1, 2012 based on the opinion of Dr. Schultz, an attending Board-certified physical medicine and rehabilitation physician.

The Board finds that the opinion of Dr. Schultz is not sufficiently well rationalized to justify the termination of appellant's wage-loss compensation and medical benefits effective June 1, 2012.

On May 31, 2012 Dr. Schultz completed a form provided by a field nurse who was assigned to the case by OWCP noting that appellant's diagnoses were cervical and lumbar strains, her prognosis was good, her treatment plans involved physical therapy and pain medication as needed, her date of maximum medical improvement was May 31, 2012 and her anticipated date of return to full duty was May 31, 2012.<sup>10</sup> In a June 13, 2012 letter, OWCP requested that Dr. Schultz further addressed whether appellant's accepted conditions (neck sprain, lumbar sprain and left knee contusion) had resolved. On June 15, 2012 Dr. Schultz replied "yes" to indicate that appellant's December 21, 2011 work injuries had resolved.

The Board notes that despite providing an opinion that appellant's December 21, 2011 work injuries had resolved and that she could return to full duty on May 31, 2012, Dr. Schultz did not provide any explanation for his opinion. The Board has held that a medical opinion which is not fortified by medical rationale is of limited probative value on a given medical

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<sup>8</sup> See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988). After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits. *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.7 (September 2010).

<sup>10</sup> Dr. Schultz indicated that he did not anticipate that appellant would have a permanent impairment rating.

issue.<sup>11</sup> In a May 31, 2012 report, Dr. Schultz diagnosed cervical sprain/strain, lumbar strain and thoracic strain. He indicated that, on examination, appellant exhibited tenderness/spasms in the right lumbar facet. In his May 31, 2012 response to the field nurse, Dr. Schultz noted that appellant's diagnoses were cervical and lumbar strains and that her treatment plans involved physical therapy and pain medication. These reports do not fully support Dr. Schultz' statement that appellant's December 21, 2011 work injuries had resolved. He did not adequately explain his opinion that appellant ceased to have residuals of his December 21, 2011 work injuries, which included a neck sprain and lumbar sprain. Moreover, there is no indication that OWCP attempted to obtain clarification of Dr. Schultz' opinion on continuing work-related residuals after receiving his May 31 and June 15, 2012 reports.<sup>12</sup>

For these reasons, OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 1, 2012.<sup>13</sup>

### CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 1, 2012 on the grounds that she had no residuals of her December 21, 2011 work injury after that date.

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<sup>11</sup> See *George Randolph Taylor*, 6 ECAB 986 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

<sup>12</sup> See *supra* note 9 with respect to OWCP procedure for obtaining supplemental information from attending physicians. In addition, the record contains reports of Dr. Williams, an attending family practitioner, which suggest that appellant had residuals of her December 21, 2011 injuries for a period after June 1, 2012.

<sup>13</sup> Given the Board's disposition of the first issue of this case, it is not necessary for it to consider the second issue. The Board notes that the record contains a Form CA-16 (Authorization for Examination and/or Treatment) completed by Dr. Schultz on January 25, 2012. The Board notes that where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 20, 2013 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 2, 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