



## **FACTUAL HISTORY**

On June 26, 2008 appellant, then a 47-year-old technical writer-editor, filed a traumatic injury claim alleging that on June 25, 2008 she sustained injury when she stepped out of her car and her right foot went into a ditch causing her to fall. The claim was accepted for an abrasion or friction burn of the right foot and toes without infection, abrasion or friction burns of both hands without infection, temporary aggravation of preexisting lumbosacral spondylosis without myelopathy, cervical spondylosis, cervical radiculopathy, and cervical facet arthropathy.

On December 24, 2008 appellant filed a second traumatic injury claim alleging an injury on December 22, 2008 when she slipped on a patch of ice and fell. The claim was accepted for aggravation of cervical spondylosis with myelopathy, brachial neuritis or radiculitis and arthropathy associated with other conditions.

On August 7, 2009 Dr. Bruce Rosenblum, an attending Board-certified orthopedic surgeon, performed an authorized micro-anterior cervical discectomy at C5-6 and C6-7. On September 3, 2009 he performed an authorized exploration of anterior cervical incision with debridement of the skin, subcutaneous tissue, muscle and fascia due to developing a staph infection.

On August 25, 2010 appellant filed another traumatic injury claim alleging that on August 17, 2010 she sustained an injury when a coworker called her name and she turned her head. The claim was accepted for aggravation of cervical radiculopathy. Appellant received compensation on the daily and periodic rolls for periods of disability.

On March 12, 2013 OWCP received a February 25, 2013 report from Dr. Rosenblum which stated that recent electromyogram (EMG) testing showed that appellant had C5-6 radicular dysfunction. Appellant reported that neck pain to the left upper extremity was her predominant problem.

In an effort to determine appellant's current work capacity, on March 14, 2013 OWCP referred appellant and the case record to Dr. Kenneth P. Heist, an osteopath and Board-certified orthopedic surgeon, for a second opinion examination and opinion on whether she continued to have residuals of her work-related injuries.

In his April 5, 2013 report, Dr. Heist discussed appellant's multiple accepted work injuries and listed the medical records that he reviewed. He noted that appellant had been previously been released to full duty on July 13, 2010, but also noted a history of a nonemployment-related motor vehicle accident in October 2010 which resulted in increased cervical pain. Dr. Heist found that an April 12, 2010 magnetic resonance imaging (MRI) scan showed an anterior spinal fusion at C5 through C7. He reported findings on physical examination. Dr. Heist found a normal lordotic curve in the cervical spine and cervical range of motion included lateral flexion of 0 to 30 degrees, flexion of 0 to 40 degrees, extension of 0 to 30 degrees and rotation of 0 to 60 degrees bilaterally. Spurling test was negative bilaterally. There was no evidence of cervical radiculopathy, gross muscular weakness, atrophy or compromised circulation in the cervical spine. Grip strength was 5/5 bilaterally, appellant could extend both hands and make fists and oppose the fingers of both hands. Tinel's signs of the median and ulnar

nerves were negative bilaterally, and Phalen's and Finkelstein's tests were negative bilaterally. Dr. Heist found no evidence of peripheral neuropathy in her upper extremities.

Dr. Heist stated that appellant was unable to ambulate on her toes and heels or perform a full squat. Standing examination revealed forward back flexion to 70 degrees, hyperextension to 10 degrees and side bending to 20 degrees bilaterally. Seated individual leg raising was performed to 70 degrees bilaterally. There was no evidence of lumbar radiculopathy, gross muscular weakness, atrophy, or compromised circulation in appellant's lower extremities. Dr. Heist diagnosed aggravation of cervical spondylosis (preexisting), cervical radiculopathy (resolved), aggravation of preexisting cervical facet arthropathy, brachial neuritis/radiculitis (healed), abrasion, friction burn, right foot and toes, bilateral hands (healed) and preexisting lumbosacral spondylosis without myelopathy. He noted that there was restriction of motion of the cervical and lumbar spines and stated, "I feel this is a combination of the cervical fusion (performed for the accepted conditions) and age related degenerative spinal disease." Dr. Heist indicated that appellant did have current disability related to the restriction of motion of the cervical and lumbar spine. He found these limitations due to the cervical surgery and her age. Dr. Heist stated:

"Degenerative spinal disease is a concurrent nonwork-related disability. [Appellant] suffered an aggravation of preexisting degenerative changes that ultimately required a cervical fusion and is therefore permanent. The job description of a technical writer/editor describes it as a sedentary job that does not involve lifting. I feel [appellant] is capable of performing her sedentary job eight hours a day with breaks. She has reached her maximum medical improvement and no additional treatment or testing is indicated."<sup>2</sup>

In a May 13, 2013 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation as she was no longer totally disabled due to her accepted conditions. It found the report of Dr. Heist to be the weight of the medical evidence. Appellant was provided 30 days to submit evidence and argument regarding the proposed termination.

In a May 28, 2013 report, Dr. Douglas Manganelli, an attending Board-certified anesthesiologist, diagnosed lumbosacral or thoracic neuritis or radiculitis, unspecified, lumbar disc displacement/herniation, cervical disc displacement/herniation and cervical radiculitis/root compression. He explained that appellant had lumbar disc pathology along with lumbar facet syndrome and recommended physical therapy and epidural steroid injections.

In a June 14, 2013 decision, OWCP terminated appellant's wage-loss compensation effective that date. It noted that the weight of the medical evidence rested with the well-rationalized April 5, 2013 report of Dr. Heist. OWCP stated that appellant had not submitted medical reports containing medical rationale establishing disability due to her accepted work injuries.

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<sup>2</sup> In an attached work restrictions form, Dr. Heist indicated that appellant could work eight hours a day with periodic breaks.

In a September 2, 2013 report, Dr. Lizett Marza, an attending Board-certified internist, stated that appellant's symptoms from her cervical radiculopathy had not resolved as she was having numbness in her left arm and constant numbness in three digits on her left hand. She pointed out that Dr. Rosenblum also found that appellant's cervical radicular symptoms had not resolved. Dr. Marza found that appellant could function, under high analgesia with narcotics every day, but found that she was unable to perform her job because she was taking a considerably high dose of pain medicine and her cervical spasm made driving dangerous. She disagreed with Dr. Heist's opinion and found that appellant was unable to return to her full-time job as a technical writer-editor because appellant still suffered significant pain and could not perform her regular job.

A telephonic hearing was held on November 15, 2013.

In a January 30, 2014 decision, an OWCP hearing representative affirmed the June 14, 2013 termination decision, noting the weight of the medical evidence continued to rest with the April 5, 2013 report of Dr. Heist. He noted that the reports of appellant's attending physicians were of limited probative value regarding her work-related residuals.

### **LEGAL PRECEDENT**

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained work accidents on June 25 and December 22, 2008 and August 17, 2010 which collectively caused an abrasion or friction burn of the right foot and toes without infection, abrasion or friction burns of both hands without infection, temporary aggravation of preexisting lumbosacral spondylosis without myelopathy, cervical spondylosis, cervical radiculopathy, cervical facet arthropathy, aggravation of cervical spondylosis with myelopathy, brachial neuritis or radiculitis, arthropathies associated with other conditions, and aggravation of cervical radiculopathy. A micro-anterior cervical discectomy at C5-6 and C6-7 and a later exploration of the anterior cervical incision with debridement of the skin, subcutaneous tissue, muscle and fascia due to the development of a staph infection were authorized by OWCP in 2009.

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<sup>3</sup> *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>4</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

<sup>5</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In a June 14, 2013 decision, OWCP terminated appellant's wage-loss compensation effective that date. It based its termination on the April 5, 2013 report of Dr. Heist, OWCP's referral physician. OWCP affirmed its termination determination on January 30, 2014.

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation effective June 14, 2013. OWCP properly found that the weight of the medical evidence was represented by the April 5, 2013 report of Dr. Heist.

In his April 5, 2013 report, Dr. Heist provided a well-rationalized opinion that appellant ceased to be totally disabled due to her accepted work injuries. While he noted that not all of her work-related conditions had resolved, he found that she could return to her regular, sedentary position of technical writer-editor. Dr. Heist noted reviewing the description of the position and found the duties well within the restrictions caused by her accepted conditions. Despite residuals of symptoms from the accepted conditions, he found that appellant could perform the regular work of her position.

The Board finds Dr. Heist's opinion to be sufficiently well rationalized to justify the termination of appellant's wage-loss compensation effective June 14, 2013. The record contains medical reports from attending physicians which continued to find appellant totally disabled but these reports failed to specify what exact duties of her position she could not perform or clearly explain with medical reasoning why she could not return to work.

In his September 2, 2013 report, Dr. Marza stated that appellant's symptoms from her cervical radiculopathy had not resolved because she was having numbness in her left arm and constant numbness in three digits on her left hand. She pointed out that Dr. Rosenblum also had found that appellant's cervical radicular symptoms had not resolved. Dr. Marza discussed appellant's cervical surgery and indicated that she disagreed with Dr. Heist's opinion because appellant still suffered significant pain and could not perform her regular job. These opinions, however, fail to sufficiently address how appellant was unable to return to her technical writer-editor position due to the accepted conditions. Dr. Marza's opinion provides no medical reasoning addressing the causal relationship of appellant's accepted employment conditions to her disability and no discussion as to what specific duties of her position she could not perform due to the accepted conditions. The Board has held that a medical opinion not fortified with medical rationale is of diminished probative value.<sup>6</sup>

In his May 28, 2013 report, Dr. Manganelli diagnosed lumbosacral or thoracic neuritis or radiculitis, unspecified, lumbar disc displacement/herniation, cervical disc displacement/herniation and cervical radiculitis/root compression but failed to address disability. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>7</sup>

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<sup>6</sup> *F.T.*, Docket No. 09-919 (issued December 7, 2009); *Elizabeth H. Kramm*, 57 ECAB 117, 124 (2005); *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>7</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

The Board finds that OWCP properly found the rationalized medical report of Dr. Heist to be the weight of the evidence in terminating appellant's wage-loss benefits. The Board notes that appellant continues to be eligible for medical benefits for the accepted conditions.

**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation effective June 14, 2013. The case remains open for medical benefits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 30, 2014 decision of the Office of Workers' Compensation Programs is affirmed.<sup>8</sup>

Issued: December 9, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.