



November 15, 2008. She stated that she was lifting a tray out of the back of her mail truck. On May 5, 2009 OWCP accepted the claim for a lumbar sprain and aggravation of the displacement of lumbar intervertebral disc without myelopathy. Appellant worked in a light-duty capacity.

In order to determine the extent of appellant's disability, OWCP referred appellant to Dr. David Rubinfeld, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated April 12, 2011, Dr. Rubinfeld provided a history and results on examination. He diagnosed a lumbar sprain and stated that appellant presented with a mild disability due to the November 15, 2008 injury. Dr. Rubinfeld opined that appellant could work with restrictions.

The record indicates that appellant underwent lumbar surgery on September 20, 2011. In a report of that date, Dr. Nasar Shahid, a Board-certified physiatrist, described the procedure as intradiscal electrothermal treatment at L4-S1. Appellant stopped working and was placed on the periodic compensation rolls as of May 6, 2012. In a report dated August 29, 2012, Dr. Marc Cohen, a Board-certified orthopedic surgeon, provided results on examination. He diagnosed lumbar internal disc disruption disease L4-S1, and lumbar radiculopathy. Dr. Cohen indicated that additional surgical options were discussed. By report dated September 7, 2012, Dr. Faheem Abbasi, a Board-certified physiatrist, stated that Dr. Cohen had recommended surgery.

OWCP requested an opinion from Dr. Henry J. Magliato, an OWCP medical adviser, as to the proposed surgery. In a report dated September 14, 2012, Dr. Magliato requested referral for a second opinion examination. Appellant was again referred to Dr. Rubinfeld.

In a report dated October 29, 2012, Dr. Rubinfeld provided results of an October 26, 2012 examination. He noted that he had reviewed a magnetic resonance imaging (MRI) scan report of December 21, 2011, and computerized tomography (CT) scans of June 14, 2011 and August 15, 2012. Dr. Rubinfeld stated that the MRI scan changes were degenerative and he did not find a continuing aggravation based on the employment injury. He indicated that appellant did have work restrictions due to low back pain and excessive weight. Dr. Rubinfeld also opined that no surgery was needed due to the November 15, 2008 employment injury.

By report dated November 14, 2012, Dr. Cohen noted that he had reviewed Dr. Rubinfeld's October 29, 2012 report. He stated that appellant did not improve with pain management injections, and that the December 22, 2011 MRI scan showed a disc herniation with degeneration at L5-S1. Dr. Cohen opined that appellant's injury was an internal disc disruption disease, where the structural matrix is compromised from a traumatic event. He stated that appellant would benefit from further "surgical recommendation."

OWCP determined that a conflict in the medical evidence existed, and OWCP selected Dr. Michael Silverstein, a Board-certified orthopedic surgeon, as a referee physician. In a report dated February 25, 2013, Dr. Silverstein provided a history, reviewed medical evidence and results on examination. He diagnosed lumbosacral strain superimposed on lumbar spondylosis with no radiculopathy. Dr. Silverstein stated that the MRI scan results showed mild L5-S1 degeneration, with associated mild facet arthritis at L4-5 and L5-S1, which were degenerative, not traumatic in origin. He opined that the employment-related aggravation was temporary and there was no need for surgical intervention based on the employment injury. According to

Dr. Silverstein, appellant could return to her regular job, but if she “states that she is physically incapable of doing it,” she could work modified duty.

In a letter dated June 21, 2013, OWCP requested that Dr. Silverstein provide a supplemental report. It asked him to clarify whether the specific accepted conditions of lumbar strain and aggravation of lumbar disc displacement had resolved. In a report dated July 3, 2013, Dr. Silverstein opined that the February 25, 2013 examination results were benign, and appellant did not have any residuals of a lumbar sprain. He also opined that her employment-related aggravation had ceased, and she did not have a continuing employment-related condition. Dr. Silverstein concluded that appellant could work her regular job.

By letter dated August 20, 2013, OWCP advised appellant that it proposed to terminate compensation for wage-loss and medical benefits based on the weight of the medical evidence. On September 4, 2013 appellant submitted a form report (CA-20) dated August 21, 2013 from Dr. Abbasi, indicating she remained totally disabled.

By decision dated September 24, 2013, OWCP terminated compensation for wage-loss and medical benefits. It found the weight of the evidence was represented by Dr. Silverstein.

Appellant requested a hearing before an OWCP hearing representative, which was held on April 16, 2014. In a report dated March 18, 2014, Dr. Cohen stated that appellant continued to report severe back pain and an inability to function. He provided results on examination and opined that her symptoms were causally related to the employment injury.

By decision dated July 10, 2014, the hearing representative affirmed the September 24, 2013 decision. She found the weight of the medical evidence rested with the referee physician, Dr. Silverman.

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

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>2</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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>3</sup>

FECA provides that, if there is a 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 the examination.<sup>4</sup> The implementing regulations state that if a conflict exists between the medical opinion of the employee’s physician and the medical opinion

---

<sup>2</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>4</sup> 5 U.S.C. § 8123.

of either a second opinion physician or OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>5</sup>

It is well established that, when 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>6</sup>

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

In the present case, OWCP found there was a conflict between second opinion physician, Dr. Rubinfeld, and attending physician, Dr. Cohen. Dr. Rubinfeld indicated in his October 26, 2012 report that appellant did not have a continuing employment-related condition. Dr. Cohen disagreed in his November 14, 2012 report, finding that she continued to have a back condition causally related to the employment injury and required additional surgery.

OWCP properly selected Dr. Silverstein in accordance with its procedures for selecting a referee physician.<sup>7</sup> In reports dated February 25 and July 3, 2013, Dr. Silverstein found that appellant did not have a continuing employment-related condition. He provided a detailed report that reviewed the medical record and provided results on examination. Dr. Silverstein reported a benign physical examination and found that any continuing back condition was degenerative in nature and not causally related to the November 15, 2008 traumatic injury. He provided an unequivocal opinion based on a complete background. The Board finds that Dr. Silverstein's opinion was entitled to special weight as the referee physician and represented the weight of the medical evidence in this case.

On appeal, appellant's counsel argues that Dr. Silverstein's report should not represent the weight of the medical evidence. He argues that the opinions of the referee physician were conflicting and not supported by medical rationale. As noted above, Dr. Silverstein provided an unequivocal opinion based on a complete factual and medical background. His opinion with respect to a continuing employment-related condition was not inconsistent or conflicting with other findings. Counsel also stated that Dr. Silverstein should have been provided with the circumstances of a November 14, 2003 employment injury and reviewed a December 3, 2003 MRI scan. The Board notes that the SOAF referred to an injury on November 14, 2003, and Dr. Silverstein noted a work injury on November 14, 2003 and that appellant had undergone a December 3, 2003 MRI scan. In the present case, the issue was whether appellant continued to have an employment-related condition or disability as of September 24, 2013. The medical reports from Dr. Silverstein were properly based on an accurate and detailed background and represent the weight of the evidence.

---

<sup>5</sup> 20 C.F.R. § 10.321 (1999).

<sup>6</sup> *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.4 (May 2013).

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.

### **LEGAL PRECEDENT -- ISSUE 2**

It is well established that after termination or modification of 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 she had an employment-related disability which continued after termination of compensation benefits.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

Following the termination of her compensation benefits, appellant submitted a March 18, 2014 report from Dr. Cohen. With respect to the termination of compensation as of September 24, 2013, as noted above Dr. Silverstein represented the weight of the evidence. Additional reports from a physician on one side of the conflict that is properly resolved by a referee specialist are generally insufficient to overcome the weight accorded the referee specialist's report or create a new conflict.<sup>9</sup> Dr. Cohen states that appellant continued to have an employment-related condition. His opinion is conclusory in nature.<sup>10</sup> Dr. Cohen does not provide a medical opinion supported by medical rationale establishing a continuing employment-related condition or disability after September 24, 2013. Appellant therefore did not meet her burden of proof to establish continuing disability after September 24, 2013.

### **CONCLUSION**

The Board finds that OWCP properly terminated compensation for wage-loss and medical benefits effective September 24, 2013. The Board also finds that appellant did not meet her burden of proof to establish continuing disability after September 24, 2013.

---

<sup>8</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

<sup>9</sup> *See Harrison Combs, Jr.*, 45 ECAB 716 (1994); *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>10</sup> *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale). *See also R.R.*, Docket No. 14-1415 (issued December 29, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 10, 2014 is affirmed.

Issued: February 10, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board