

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

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L.B., Appellant )  
and ) Docket No. 14-1687  
DEPARTMENT OF VETERANS AFFAIRS, ) Issued: June 10, 2015  
VETERANS ADMINISTRATION NEW JERSEY )  
HEALTH CARE SYSTEM, Lyons, NJ, Employer )  
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*Appearances:*

*James D. Muirhead, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On August 4, 2014 appellant, through her attorney, filed a timely appeal of a July 3, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 to consider the merits of the case.

**ISSUES**

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective May 8, 2013; and (2) whether appellant has established any continuing disability or medical residuals after that date due to her May 16, 2012 employment injury.

Counsel argued that OWCP failed to meet its burden of proof to terminate appellant's compensation and medical benefits due to an existing conflict of medical opinion evidence.

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

## **FACTUAL HISTORY**

On May 18, 2012 appellant, then a 68-year-old nurse, filed a traumatic injury claim alleging that on May 16, 2012 that she sustained multiple contusions when the knob came off of a door she was closing, causing her to fall on the floor and land on her right hip, right shoulder, and the back of her head. OWCP accepted her claim for contusion of the right hip, contusion of the right shoulder, contusion of the scalp, and contusion of the coccyx on July 9, 2012.

Appellant's attending physician, Dr. Jerry L. Jurado, a family practitioner, completed form reports on June 6 and 14, 2012 and diagnosed contusions of the right shoulder, hip, scalp, and the coccyx. On July 21, 2012 he diagnosed right hip pain, lower back pain, and severe vertigo. Dr. Jurado completed a form report on September 11, 2012 diagnosing lower back pain and right hip pain. He continued to support appellant's total disability for work.

Dr. Monica Mehta, a Board-certified physiatrist, completed a form report on September 29, 2012 and diagnosed lumbosacral pain syndrome and found that appellant was totally disabled.

OWCP referred appellant for a second opinion examination with Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, on September 13, 2012. In his September 27, 2012 report, Dr. Lakin described appellant's history of injury and her accepted employment conditions. He noted that her right hip pain worsened with prolonged standing and walking. Dr. Lakin also stated that appellant's shoulder pain had improved, but that she continued to experience pain in her lower back and coccyx pain increased with long sitting or standing, radiating to the right buttocks. Appellant was able to get on and off of the examination table with minimal difficulty. Upper extremity sensation was intact and that her head was atraumatic. Dr. Lakin reported that appellant's shoulder examination had negative impingement with negative anterior apprehension and negative drop arm test and negative cross arm adduction test. Appellant was nontender over the sternoclavicular and acromioclavicular joints.

Dr. Lakin reported that examination of the thoracic and lumbosacral spine revealed no tenderness in the lower right paravertebral musculature and no tenderness in the bilateral sacroiliac joints or bilateral sciatic notches. Appellant could bring her fingers within six inches from her toes on forward flexion. Dr. Lakin stated that ankle and knee jerks were equal bilaterally with normal muscle strength in the lower extremities. He reported full range of motion in the right hip symmetric to the left with a negative Romberg's sign and an unremarkable gait. Dr. Lakin also reviewed a May 29, 2012 lumbar spine magnetic resonance imaging (MRI) scan and found multilevel disc bulges and herniations as well as grade 1 anterolisthesis of L4 on L5 with spinal canal stenosis at L4-5 and a right paracentral annular tear at L5-S1. He found that appellant's right hip MRI scan showed mild degenerative changes in both hips with mild insertional tendinosis involving the bilateral gluteus medius muscles. Dr. Lakin reviewed the films and found no arthritis. He concluded that appellant had minimal tenderness to the cervical and lumbosacral spine with an unremarkable right shoulder examination. Dr. Lakin opined that she had no disabling residuals of the accepted conditions and that there was no need for any further treatment due to her employment-related conditions. He stated that appellant was not disabled and was capable of returning to her full-duty, date-of-injury position. Dr. Lakin further opined that there were no objective findings that she

experienced an aggravation of a prior condition as a result of the employment injury. He indicated that appellant had reached maximum medical improvement.

Dr. Mehta completed a form report on October 19, 2012 and opined that appellant could not return to work. She diagnosed cervical radiculopathy and an illegible lumbosacral condition with coccyx contusion. Dr. Mehta completed a narrative report on October 12, 2012 and listed appellant's reported back pain, inability to stand and walk, neck pain, dizziness, and right shoulder pain. She described appellant's employment injury. Dr. Mehta listed her findings on physical examination as limited range of motion of the lumbar spine, with multiple varicosities in the lower legs. Appellant had normal range of motion of the shoulders with pain. She had difficulty in ambulation on toes as well as on heels, with dizziness when she lied down in a supine position. Appellant demonstrated a broad-based antalgic gait. Dr. Mehta diagnosed probable lumbosacral pain, dizziness, and vertigo secondary to her employment-related head trauma. She suggested that appellant had intracranial pathology which required electroencephalogram (EEG) testing. Dr. Mehta also diagnosed probable cervical pain syndrome, probable cervical radiculopathy, probable rotator cuff tendinitis, and probable lumbosacral radiculopathy. She opined, "At the present time, it is my opinion within reasonable medical probability that the above complaints are permanent in nature and are due to the trauma sustained while at work on May 16, 2012. Dr. Mehta completed a form report on November 16, 2012 and diagnosed lumbosacral radiculopathy and herniated disc. She indicated with a checkmark "yes" that this condition was caused or aggravated by an employment activity.

OWCP proposed to terminate appellant's wage-loss compensation and medical benefits in a letter dated December 18, 2012. It found that Dr. Lakin did not support appellant's continuing disability or her need for additional medical treatment due to her accepted employment-related conditions. OWCP further noted that Dr. Mehta's reports were speculative and did not provide medical reasoning to support causal relationship between appellant's additional diagnosed conditions and her accepted employment injury.

Dr. Mehta submitted a narrative report dated December 26, 2012 and described appellant's employment injury and her medical treatment. She reported loss of range of motion in the cervical and lumbar spine and in both shoulders. Dr. Mehta found that sensations were diminished in the L5-S1 and C5-6 dermatomes. She stated that electromyogram (EMG) studies revealed the presence of right S1 radiculopathy with a large fiber right deep peroneal neuropathy at the fibular head as well as bilateral C6-7 radiculitis and moderate left median mononeuropathy. Appellant's MRI scan of the lumbar spine demonstrated multilevel disc bulges and herniations with anterolisthesis of grade 1 at L4-5, spinal canal stenosis at L4-5 and right paracentral annular tear, and disc bulging at L5-S1 contacting the exiting right L5 and descending right S1 nerve roots. Dr. Mehta diagnosed cervical disc herniations, cervical spinal stenosis, cervical radiculopathy, peripheral nerve compromise, lumbar disc herniation, and neural foraminal stenosis with dizziness. She stated, "These complaints are due to trauma sustained while at work." Dr. Mehta found that appellant was totally disabled. She further opined that OWCP had accepted incorrect diagnoses and that appellant's correct diagnosis was lumbosacral radiculopathy.

Dr. Mehta completed an additional form report on January 4, 2013 and diagnosed cervical and lumbar disc herniations as well as vertigo. She indicated with a checkmark “yes” that appellant’s conditions were caused or aggravated by her employment.

OWCP requested clarification from Dr. Lakin on February 26, 2013. In a report dated March 4, 2013, Dr. Lakin stated that appellant had no objective findings in her right shoulder with full motion, no tenderness, and normal motor strength. He stated that appellant’s employment injury had resulted in a contusion to the right shoulder and no objective findings in the right hip as she had full range of motion and an unremarkable gait. Dr. Lakin further noted that appellant’s head was atraumatic. He stated that appellant’s coccyx and lower back were essentially unremarkable with forward flexion to within six inches of her toes and that she was intact neurologically. Dr. Lakin found that appellant’s accepted conditions had resolved. He stated that appellant was capable of performing her date-of-injury job as a nurse with excellent function of the spine and extremities.

OWCP issued a notice of proposed termination on April 3, 2013 and again proposed to terminate appellant’s wage-loss compensation and her medical benefits due to her accepted employment injuries. It found that Dr. Lakin’s reports were entitled to the weight of the medical evidence.

By decision dated May 8, 2013, OWCP terminated appellant’s wage-loss compensation and medical benefits effective that date based on Dr. Lakin’s reports.

In a report dated May 17, 2013, Dr. Mehta reviewed her treatment of appellant and described the employment injury. She discussed test results and diagnosed positional nystagmus with aggravation secondary to the trauma sustained after the fall at work, cervical disc herniation due to the trauma at work, lumbar disc herniation due to the trauma at work, internal derangement of the shoulder due to the trauma at work, and gluteus medius and gluteus minimus tendinitis due to the trauma at work and microvascular ischemic changes in the internal auditory canals aggravated due to the trauma at work. Dr. Mehta opined that appellant was totally disabled.

Appellant requested a review of the written record by an OWCP hearing representative on May 17, 2013. She retired from the employing establishment on June 30, 2013. Dr. Mehta submitted an additional report dated July 26, 2013 repeating her earlier findings and conclusions.

By decision dated September 6, 2013, an OWCP hearing representative found that OWCP met its burden of proof to terminate appellant’s wage-loss and compensation benefits. He found that Dr. Lakin’s reports were entitled to the weight of the medical evidence. The hearing representative noted that Dr. Mehta did not provide any rationale in support of her opinion that appellant’s employment incident resulted in more serious diagnoses than those accepted by OWCP.

Counsel requested reconsideration on April 8, 2014. He reviewed Dr. Lakin’s report and noted that the report did not discuss diagnostic test results. Counsel argued that there was a conflict of medical opinion evidence between Dr. Mehta and Dr. Lakin.

By decision dated July 3, 2014, OWCP denied modification of the September 6, 2013 OWCP hearing representative's decision.

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

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>4</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>5</sup>

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>6</sup> Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.<sup>7</sup>

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

Appellant fell in the performance of duty on May 16, 2012 and OWCP accepted her claim for contusion of the right hip, contusion of the right shoulder, contusion of the scalp and contusion of the coccyx on July 9, 2012. Her attending physician, Dr. Jurado, continued to support appellant's total disability for work through September 11, 2012 diagnosing lower back pain and right hip pain. Dr. Mehta examined appellant on September 29, 2012 and diagnosed lumbosacral pain syndrome finding she was totally disabled.

OWCP then referred appellant for a second opinion evaluation with Dr. Lakin, who reviewed the statement of accepted facts and performed a physical examination. Dr. Lakin stated that appellant was able to get on and off the examination table with minimal difficulty and that she had an unremarkable gait. He reported that upper extremity sensation was intact and that her head was atraumatic. Dr. Lakin reported that appellant had negative impingement of the right

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<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Id.*

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>5</sup> *Id.*

<sup>6</sup> *T.F.*, 58 ECAB 128 (2006).

<sup>7</sup> *A.D.*, 58 ECAB 149 (2006).

shoulder with negative anterior apprehension and negative drop arm test and negative cross arm adduction test. He stated that ankle and knee jerks were equal bilaterally with normal muscle strength in the lower extremities. Dr. Lakin reported full range of motion in the right hip symmetric to the left with a negative Romberg's sign and an unremarkable gait. He concluded that appellant had minimal tenderness to the cervical and lumbosacral spine with an unremarkable right shoulder examination. Dr. Lakin opined that appellant had no disabling residuals of the accepted conditions and that there was no need for any further treatment due to her employment-related conditions. He stated that appellant was not disabled and was capable of returning to her full-duty, date-of-injury position. Dr. Lakin further opined that there were no objective findings that appellant experienced an aggravation of a prior condition as a result of the employment injury.

In his supplemental report on March 4, 2013, Dr. Lakin responded to inquiries from OWCP and stated that appellant had no objective findings in her right shoulder with full motion, no tenderness and normal motor strength as a result of her employment-related right shoulder contusion. He reported no objective findings in the right hip noting appellant had full range of motion and an unremarkable gait. Dr. Lakin also stated appellant's head was atraumatic on his examination. He reported that appellant's coccyx and lower back were essentially unremarkable with forward flexion to within six inches of her toes. Dr. Lakin opined that appellant was intact neurologically. He concluded that appellant's accepted conditions had resolved. Dr. Lakin stated that appellant was capable of performing her date-of-injury job as a nurse with excellent function of the spine and extremities.

The Board finds that Dr. Lakin's reports are sufficiently detailed and well-reasoned to constitute the weight of the medical opinion evidence and to meet OWCP's burden of proof to terminate appellant's wage-loss compensation and medical benefits. Dr. Lakin based his report of the statement of accepted facts and provided detailed findings on physical examination. He found that appellant's accepted right shoulder contusion had resolved. Dr. Lakin found that her head was atraumatic and that her head contusion had therefore resolved. He found no positive neurological findings in the spine or extremities and stated that appellant's gait was unremarkable supporting his opinion that appellant's hip and coccyx contusions had resolved. Dr. Lakin further clearly opined that appellant could return to her date-of-injury position and that she had no medical residuals. His reports are sufficient to meet OWCP's burden to terminate appellant's wage-loss compensation and medical benefits for her accepted conditions of contusions to the scalp, shoulder, hip, and coccyx.

Appellant submitted a series of reports from Dr. Mehta supporting additional diagnosis and periods of disability. The Board finds that these reports do not support continuing disability or medical residuals due to the accepted diagnoses of contusions to the scalp, shoulder, hip, and coccyx. Dr. Mehta specifically stated that she disagreed with the diagnoses accepted by OWCP and attributed appellant's continuing disability to a variety of conditions including cervical disc herniations, cervical spinal stenosis, cervical radiculopathy, peripheral nerve compromise, lumbar disc herniation, and neural foraminal stenosis with dizziness. While she opined that appellant's conditions were due to her employment incident, Dr. Mehta failed to provide any medical reasoning supporting her opinion. Dr. Mehta did not explain how the diagnosed conditions would result from the accepted fall and did not explain the delay in the onset of symptoms beyond those accepted by OWCP and initially diagnosed by Dr. Jurado. She further

found that appellant was totally disabled due to the additional diagnosed conditions rather than as a result of her accepted employment injuries.

Dr. Mehta also submitted a series of form reports indicating with a checkmark “yes” that various diagnosed conditions were due to appellant’s employment incident and opining that appellant was totally disabled. The Board has held that an opinion on causal relationship which consists only of a physician checking “yes” to a medical form report question on whether the claimant’s condition and resulting disability was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>8</sup> As Dr. Mehta failed to provide any medical rationale supporting her opinions that appellant’s sustained additional conditions and disability due to her accepted May 16, 2012 employment injury, she failed to support appellant’s claim for additional conditions with medical residuals and resulting disability for work.

Contrary to the arguments of counsel, the Board finds that Dr. Mehta’s reports are not sufficiently detailed and well-reasoned to create a conflict with Dr. Lakin’s reports and that OWCP therefore met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits effective May 8, 2013.

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

As OWCP met its burden of proof to terminate appellant’s compensation benefits, the burden shifted to appellant to establish that she had disability causally related to her accepted employment injury.<sup>9</sup> In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability and medical residuals which continued after termination of compensation benefits.<sup>10</sup> To establish a causal relationship between the condition, as well as any disability claimed, and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician’s detailed opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>11</sup>

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<sup>8</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>9</sup> *George Servetas*, 43 ECAB 424, 430 (1992).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008).

<sup>11</sup> *James Mack*, 43 ECAB 321 (1991).

## **ANALYSIS -- ISSUE 2**

OWCP terminated appellant's wage-loss compensation and medical benefits upon a finding that Dr. Mehta did not provide any rationale in support of her opinion that appellant's employment incident resulted in more serious diagnoses than those accepted by OWCP. Following OWCP's termination of appellant's wage-loss and medical benefits effective May 8, 2013, appellant continued to submit reports from Dr. Mehta. On May 17, 2013 Dr. Mehta reviewed her treatment of appellant and described the employment injury. She discussed test results and diagnosed positional nystagmus with aggravation secondary to the trauma sustained after the fall at work, cervical disc herniation due to the trauma at work, lumbar disc herniation due to the trauma at work, internal derangement of the shoulder due to the trauma at work, gluteus medius and gluteus minimus tendinitis due to the trauma at work, and microvascular ischemic changes in the internal auditory canals aggravated due to the trauma at work. Dr. Mehta opined that appellant was totally disabled.

Dr. Mehta's opinion regarding the causal relationship between appellant's currently diagnosed conditions and her accepted employment incident is not sufficient to meet appellant's burden of establishing new injuries related to her May 16, 2012 traumatic injury or to establish continuing disability due to this incident. She has provided evidence that appellant suffers from the conditions diagnosed. Dr. Mehta has not, however, provided the necessary medical rationale explaining how the diagnosed conditions were caused or aggravated by the accepted employment incident. The Board is unable to determine from Dr. Mehta's reports how conditions such as positional nystagmus or microvascular ischemic changes in the auditory canals would be aggravated by appellant's fall which immediately resulted in only the diagnosis of contusions. Dr. Mehta also fails to explain the processes by which appellant's employment incident caused or aggravated her spinal injuries or internal derangement of the shoulder or her gluteus tendonitis. Her reports are insufficient to establish disability or medical residuals continuing after May 8, 2013 due to the accepted employment injury as her reports presently of record do not provide any rationale in support of her opinion that appellant's employment incident resulted in more serious diagnoses than those accepted by OWCP.

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.

## **CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss and medical benefits effective May 8, 2013. The Board further finds that appellant has not submitted sufficient rationalized medical opinion evidence to establish any continuing disability or medical residuals after that date due to her May 16, 2012 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2015  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board