

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

L.R., Appellant

and

**TENNESSEE VALLEY AUTHORITY,
Soddy Daisy, TN, Employer**

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**Docket No. 14-1942
Issued: March 25, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 8, 2014 appellant filed a timely appeal from an April 8, 2014 merit decision and a June 25, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits effective April 7, 2013 on the basis that she no longer had any residuals or disability causally related to her accepted employment-related injury; (2) whether appellant has established continuing employment-related residuals or disability on or after April 7, 2013 as a result of her accepted June 24, 1985 employment injury; and (3) whether OWCP properly denied her request for further merit review under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 28, 1985 appellant, then a 32-year-old plant laborer, filed a traumatic injury claim alleging that on June 24, 1985 she sustained a concussion when she was opening a fire door and the pressure from the door knocked her into scaffold, causing her to fall and become unconscious. She sought emergency treatment, stopped work on June 24, 1985, and did not return. Appellant's position was terminated on August 8, 1985 due to lack of work.

By decision dated November 6, 1986, OWCP accepted the claim for concussion. It later expanded the claim to include cervical strain and cervical facet joint syndrome. On September 16, 1987 appellant received wage-loss compensation benefits for which she was placed on periodic rolls. She sought treatment with various providers since the onset of her work-related injury, including treatment with Dr. Cornelius Mance, a Board-certified neurologist.

On September 19, 2011 OWCP referred appellant, the case file, a series of questions, and a statement of accepted facts (SOAF)² to Dr. Tejanand G. Mulpur, a Board-certified neurologist, for a second opinion evaluation regarding appellant's current disability status. Dr. Mulpur detailed the employment incident and stated that appellant sustained a concussion approximately 25 years ago when she was thrown against steel scaffolding and lost consciousness. Appellant was taken to the hospital and was discharged that same date after review of imaging studies. She began to gradually experience headaches and severe pain all over her body which persisted to present day complaints. Dr. Mulpur provided findings on physical examination and noted that the neurological examination did not reveal any focal findings and appellant had good muscle strength. He diagnosed fibromyalgia, migraine headaches, and anxiety with depression. Dr. Mulpur noted that it was hard to believe that the concussion from 25 years ago was contributing to her symptomatology, especially since the injury did not result in any contusions or abnormal computerized tomography or neurological findings at that time.

On February 13, 2012 OWCP requested that Dr. Mulpur answer the previously provided questions and to arrange a functional capacity evaluation (FCE) to determine appellant's work capabilities.

In a February 16, 2012 addendum report, Dr. Mulpur concluded that appellant's work-related head injury had resolved and was unrelated to her current diagnoses of fibromyalgia, vascular headaches, anxiety, and depression. He noted that, while vascular headaches, fibromyalgia, anxiety, and depression could be exaggerated by a head injury, it would be unusual for these to last 25 years. Dr. Mulpur also noted that appellant should be referred for an FCE as he was not trained to evaluate her in that capacity. Because appellant had no focal motor deficits and her diagnosed conditions were treatable, he opined that she could return to work.

² The SOAF noted the following concurrent or preexisting conditions that were not considered work related: congenital abnormality 51 vertebral body, mild scoliosis, appendectomy 1973, hysterectomy 1978, hearing loss right ear, history of breast biopsy, fibromyalgia, chronic musculoskeletal recurring pains, hypothyroidism, bilateral carpal tunnel syndrome, temporomandibular joint, and right knee injury and surgery.

On June 11, 2012 OWCP notified appellant of a proposal to terminate her medical and wage-loss compensation benefits based on Dr. Mulpur's report that she was not experiencing any residuals or disability connected to the June 24, 1985 employment injury as her conditions had ceased. Appellant was provided 30 days to submit additional information.

In a June 24, 2012 narrative statement, appellant disputed the proposed termination and attributed her chronic pain and current diagnoses to the June 24, 1985 employment incident. In support of her claim, she submitted various medical reports previously of record.

By decision dated July 25, 2012, OWCP terminated appellant's medical and wage-loss compensation benefits effective July 29, 2012 finding that the weight of the medical evidence rested with Dr. Mulpur. It noted that the medical evidence provided by her was largely outdated and did not relate to her accepted conditions or establish continuing disability.

On August 17, 2012 appellant requested an oral hearing before the Branch of Hearings and Review disputing the July 25, 2012 termination decision.

By decision dated December 7, 2012, the Branch of Hearings and Review set aside the July 25, 2012 termination decision finding that OWCP failed to meet its burden of proof to terminate appellant's compensation benefits.³ OWCP's hearing representative noted that Dr. Mulpur's reports were not well rationalized, his opinion was speculative, and he failed to mention any review of medical records or the SOAF. OWCP remanded the case for a second opinion evaluation with a Board-certified neurologist to determine the nature and extent of appellant's employment-related condition and disability.

On remand, OWCP referred appellant, the SOAF, a series of questions, and the case file to Dr. Steven D. Graham, a Board-certified neurologist, for a second opinion examination.

In his January 16, 2013 medical report, Dr. Graham provided a history of injury, findings on physical examination, and noted review of prior medical reports and the SOAF. He diagnosed somatoform pain disorder which was negatively affected by underlying psychological factors such as depression and anxiety. Dr. Graham noted that appellant's preexisting fibromyalgia was likely a strong component contributing to the continuation of her pain and there was no clear, objective, neuropathological process which explained the continuation of her symptoms. He stated that, because the injury occurred in 1985 and was at best described as a mild head injury, her current complaints and examination findings could not be directly connected to the remote work-related injury. Dr. Graham further noted that appellant's subjective complaints of pain overshadowed examination findings, primarily because of the discrepancy in her complaints of pain versus normal neurological examination. He stated that her fibromyalgia and musculoskeletal pain had been diagnosed prior to her injury, noting that these preexisting conditions were likely aggravated by her underlying psychological factors leading to the continuation of the subjective complaints over the past 27 years, in the absence of any permanent brain or cervical spine anatomical derangement from the injury. Due to appellant's subjective complaints over the last 27 years, Dr. Graham stated that he did not

³ The Board notes that no hearing was held as the hearing representative determined based on preliminary review that the July 25, 2012 decision should be set aside and remanded for further development.

recommend additional treatment and was guarded in regard to prognosis for improvement of the somatoform pain disorder. He opined that, from a neurological standpoint, appellant was no longer experiencing direct residuals from the work injury. Dr. Graham's opinion was primarily based on the lack of objective examination or radiological findings, and the 27 years that had elapsed since the injury. With respect to resuming normal work activities, he explained that, from a neurological standpoint, there clearly was no anatomical derangement of the central or peripheral nervous system, specifically the brain, spinal cord, peripheral nerves, or muscles. However, because appellant had somatoform pain disorder with significant psychological factors negatively influencing her symptoms, Dr. Graham opined that it was doubtful she could return to any type of employment situation.

In medical reports submitted dated April 6 to October 6, 2011, Dr. Mance provided findings on physical examination and diagnosed fibromyalgia and soft tissue dysfunction.

On February 8, 2013 OWCP notified appellant of a proposal to terminate her medical and wage-loss compensation benefits based on Dr. Graham's report that she was not experiencing any residuals or disability connected to the accepted work-related conditions. Appellant was provided 30 days to submit additional information.

In a February 22, 2013 narrative statement, appellant disputed OWCP's proposed termination and argued that she continued to suffer from residuals and disability as a result of the June 24, 1985 employment incident.

In support of her claim, appellant submitted an August 30, 2012 narrative from Dr. Mance, who stated that he treated her post injury to her neck and shoulder on June 24, 1985 when a pressure door knocked her into a scaffold. Dr. Mance noted that she complained of continued neck and shoulder pain which was caused by soft tissue dysfunction. He stated that he had been treating appellant for both fibromyalgia and soft tissue problems which continued to be present since he initially treated her. Dr. Mance noted that, after treating her for multiple years without any benefit through use of various medications, she was basically living with continuous dysfunction and increased pain in her neck, shoulder, and headaches with increased activity or any activity that caused her to exert herself for any length of time. He stated that, even though the diagnosis of fibromyalgia was given, appellant's symptoms had always been the same with intractable neck and shoulder pain and soft tissue dysfunction.

In a February 19, 2013 treatment note, Dr. Mance reported complaints of pain and provided findings on physical examination. He diagnosed chronic pain with associated depression, other chronic pain, muscle spasm, and myalgia/myositis.

By decision dated March 13, 2013, OWCP terminated appellant's medical and wage-loss compensation benefits effective April 7, 2013 finding that the weight of the medical evidence rested with Dr. Graham.

On March 23, 2013 appellant requested an oral hearing before the Branch of Hearings and Review. She argued that Dr. Graham did not perform any medical testing to the brain, spinal cord, peripheral nerves, muscles, or cervical joints. Appellant further argued that Dr. Mance's report was more credible as it he had treated her over the last 28 years.

A telephone hearing was held on June 10, 2013. At the hearing, appellant argued that her current conditions and disability were caused by the June 24, 1985 employment incident.

By decision dated July 23, 2013, the Branch of Hearings and Review affirmed the March 13, 2013 decision terminating appellant's medical and wage-loss compensation benefits finding that she failed to establish ongoing disability on or after April 7, 2013 causally related to one or more of the accepted employment-related conditions. It noted that the weight of the medical evidence rested with Dr. Graham.

On August 28, 2013 appellant filed a timely appeal before the Board, which was docketed as No. 13-1989. By letter dated December 19, 2013, she requested that the appeal before the Board be dismissed and the case be filed for reconsideration with OWCP in light of new medical evidence. By order dated March 13, 2014, the Board granted appellant's request for dismissal of her appeal.⁴

On April 1, 2014 appellant requested reconsideration of OWCP's decision.

In support of her claim, appellant resubmitted Dr. Mance's August 30, 2012 narrative report and also submitted new diagnostic reports.

In a September 9, 2013 diagnostic report, Dr. Kilton D. Kingsman, a Board-certified diagnostic radiologist, reported that lateral chest x-rays revealed no acute cardiopulmonary disease. Seven views of the cervical spine revealed moderate right bony neural foraminal narrowing at C4-5 of uncertain clinical significance and moderate degenerative disc disease at C7-T1. The thoracic spine revealed unremarkable other than moderate disc disease at C7-T1 and mild multilevel degenerative disc disease T5-8. Dr. Kingsman stated that the lumbar spine revealed moderate dextroscoliosis and mild-to-moderate hypertrophic facet degenerative joint disease changes at L4-S1 while left hip series revealed unremarkable.

In a September 20, 2013 diagnostic report, Dr. Jeffrey E. Tipps, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of the cervical spine revealed cervical spondylosis, no evidence of myelomalacia or cord edema, and moderate neuroforaminal stenosis C3 through C5.

By decision dated April 8, 2013, OWCP affirmed the July 23, 2013 decision finding that appellant failed to establish ongoing disability on or after April 7, 2013 causally related to the accepted June 24, 1985 incident or injury sustained as a result thereof.

By letter dated June 16, 2013, appellant requested reconsideration of OWCP decision. She stated that her deteriorating cervical spine condition was caused by the June 24, 1985 injury which she argued was a major trauma. Appellant further stated that Dr. Graham failed to provide objective testing which she had recently submitted through x-ray and MRI scan reports. She argued that he was not a qualified psychiatrist and her depression and anxiety had been properly documented in her medical reports since the onset of her injury in 1985. Appellant noted that she had no preexisting injuries and was fully functional prior to the June 24, 1985 employment

⁴ Docket No. 13-1989 (issued March 13, 2014).

incident. Due to the injury, she argued she was unable to work and would not be able to return to work in the future. In support of her claim, appellant resubmitted Dr. Tipps' September 20, 2013 MRI scan report of the cervical spine.

By decision dated June 25, 2014, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ 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.⁸ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.¹⁰

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a concussion, cervical strain, and cervical facet joint syndrome as a result of the June 24, 1985 work-related incident. The issue is whether it properly terminated her medical and wage-loss compensation benefits effective April 7, 2013 as she was not experiencing any residuals or disability of the June 24, 1985 injury. The Board finds that OWCP properly terminated appellant's medical and wage-loss benefits.

In its termination decision, OWCP determined that the weight of the medical evidence rested with Dr. Graham, a Board-certified neurologist serving as the second opinion physician.

⁵ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁶ *Id.*

⁷ *Roger G. Payne*, 55 ECAB 535 (2004).

⁸ *Pamela K. Guesford*, 53 ECAB 726 (2002).

⁹ *T.P.*, 58 ECAB 524 (2007); *Furman G. Peake*, 41 ECAB 351 (1975).

¹⁰ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

The Board finds that Dr. Graham's well-rationalized report, which was based upon a proper factual and medical background, represents the weight of the medical evidence and establishes that appellant's concussion, cervical strain, and cervical facet joint syndrome ceased and was no longer experiencing residuals or disability related to the June 24, 1985 employment incident.¹¹

In his January 16, 2013 medical report, Dr. Graham diagnosed somatoform pain disorder which was negatively affected by underlying psychological factors such as depression and anxiety. He noted that appellant's preexisting fibromyalgia was likely a strong component contributing to the continuation of her pain and there was no clear, objective, neuropathological process which would explain the continuation of her symptoms. Dr. Graham stated that because the injury occurred in 1985 and was at best described as a mild head injury, her current complaints and examination findings could not be directly connected to the remote work-related injury. He opined that appellant was no longer experiencing direct residuals from the work injury because neurologically there was no objective examination or radiological findings and 27 years had elapsed since the injury.

The Board has carefully reviewed the opinion of Dr. Graham and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue in the present case.¹² Dr. Graham's opinion is based on a proper factual and medical history and he thoroughly reviewed the SOAF and medical records.¹³ He provided medical rationale for his opinion by explaining that appellant's current complaints were related to her preexisting fibromyalgia and musculoskeletal pain which were likely aggravated by her underlying psychological factors, leading to the continuation of the subjective complaints over the past 27 years, in the absence of any permanent brain or cervical spine anatomical derangement from the injury. Dr. Graham further explained that, from a neurological standpoint, there was no anatomical derangement of the central or peripheral nervous system, specifically the brain, spinal cord, peripheral nerves, or muscles. As there were no objective findings related to appellant's concussion, cervical strain, and cervical facet joint syndrome, he opined that her disability had ceased and any limitations on her physical ability to work did not relate to the June 24, 1985 injuries. Rather, Dr. Graham attributed appellant's inability to work to somatoform pain disorder influenced by significant psychological factors, conditions not accepted by OWCP. Thus, his opinion establishes that she was no longer experiencing residuals or disability related to the June 24, 1985 employment incident.

In support of her claim, appellant submitted medical reports from Dr. Mance, her treating physician. In medical reports dated April 6 to October 6, 2011, Dr. Mance noted findings on physical examination and diagnosed fibromyalgia and soft tissue dysfunction. In a February 19, 2013 treatment note, he diagnosed chronic pain with associated depression, other chronic pain, muscle spasm, and myalgia/myositis. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on

¹¹ *Y.M.*, Docket No. 14-1050, 14-1193 (issued December 24, 2014).

¹² *See R.W.*, Docket No. 12-375 (issued October 28, 2013).

¹³ *See Melvina Jackson*, 38 ECAB 443 (1987).

the issue of causal relationship.¹⁴ While these reports provided various diagnoses, Dr. Graham failed to provide an opinion that appellant was experiencing residuals or disability as a result of her accepted June 24, 1985 injuries.¹⁵

In an August 30, 2012 narrative report, Dr. Mance stated that he treated appellant post injury to her neck and shoulder on June 24, 1985 when a pressure door knocked her into a scaffold. He noted that she complained of continued neck and shoulder pain which was caused by soft tissue dysfunction. Dr. Mance stated that he had been treating appellant for both fibromyalgia and soft tissue problems which had continued to be present since he initially treated her. He noted that, after treating her for multiple years without any benefit through use of various medications, she was basically living with continuous dysfunction and increased pain in her neck, shoulder, and headaches with increased activity or any activity that caused her to exert herself for any length of time. Dr. Mance stated that, even though the diagnosis of fibromyalgia was given, appellant's symptoms had always been the same with intractable neck and shoulder pain and soft tissue dysfunction.

The Board finds that the opinion of Dr. Mance is not well rationalized and insufficient to overcome the weight of the medical evidence afforded to Dr. Graham.¹⁶ Dr. Mance attributed appellant's symptoms to fibromyalgia and soft tissue dysfunction, conditions not accepted by OWCP. He failed to provide any opinion that her current conditions were caused or aggravated by the June 24, 1985 employment incident. Dr. Mance only generally noted that he had been treating appellant for fibromyalgia and soft tissue problems since the employment incident but did not relate the conditions to the traumatic injury. To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.¹⁷ Dr. Mance's report is speculative and equivocal and does not support causation or continuing residuals of the accepted injuries.

Furthermore, Dr. Mance failed to address why appellant's head, neck, and shoulder complaints were not caused by her preexisting fibromyalgia disorder or soft tissue dysfunction. His report provided no discussion regarding whether the preexisting conditions had progressed beyond what might be expected from the natural progression of that condition.¹⁸ A well-rationalized opinion is particularly warranted when there is a history of preexisting conditions.¹⁹ Dr. Mance did not adequately explain why appellant continued to suffer from residuals or disability of the June 24, 1985 employment incident, more than 25 years after the initial incident, and made no reference to objective examination findings. As he failed to state

¹⁴ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁵ *J.H.*, Docket No. 12-1848 (issued May 15, 2013).

¹⁶ *See generally Floyd Stilley*, Docket No. 02-2016 (issued February 19, 2003).

¹⁷ *See Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁸ *R.E.*, Docket No. 14-868 (issued September 24, 2014).

¹⁹ The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship. *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

that appellant continued to suffer from residuals or disability of the accepted concussion, cervical strain, and cervical facet joint syndrome injuries, his report is of limited probative value.²⁰

The Board further notes that Dr. Mance's August 30, 2012 report, as well as older medical reports previously of record, did not discuss appellant's disability as of April 7, 2013. Dr. Graham's January 16, 2013 second opinion examination report provided a current assessment pertaining to the nature and extent of disability. The Board has held that stale medical evidence cannot form the basis for current evaluation of residual symptomology or disability determination.²¹ For this reason, the Board finds that these reports are of limited probative value regarding the current issue and do not create a conflict in medical evidence.²²

The Board finds that Dr. Graham's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions. The Board also notes that there are no current reports from appellant's treating physicians establishing employment-related disability or supporting any continuing residuals of the accepted conditions. Because appellant no longer has residuals or disability related to her accepted employment conditions, OWCP properly terminated entitlement to compensation and medical benefits effective April 7, 2013.²³ Accordingly, it met its burden of proof and its decision to terminate her compensation and medical benefits shall be affirmed.²⁴

On appeal, appellant argues that her injuries were not preexisting and that her medical records show a history of injury stemming back 27 years, which also includes a well-documented history of anxiety and depression. She further argues that Dr. Graham's report establishes that she is unable to resume employment. As previously noted, the conditions to which appellant is referring to have not been accepted by OWCP and Dr. Graham's disability findings related to these nonindustrial injuries.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

LEGAL PRECEDENT -- ISSUE 2

After termination of compensation benefits clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to the claimant. To prevail, the claimant

²⁰ *J.A.*, Docket No. 13-1657 (issued February 3, 2014).

²¹ See *Keith Hanselman*, 42 ECAB 680 (1991); *Ellen G. Trimmer*, 32 ECAB 1878 (1981) (reports almost two years old deemed invalid basis for disability determination and loss of wage-earning capacity determination.)

²² *Id.*

²³ *G.I.*, Docket No. 13-19 (issued April 2, 2013).

²⁴ *L.C.*, Docket No. 12-1177 (issued August 19, 2013).

must establish by the weight of the reliable, probative, and substantial evidence that she had an employment-related disability which continued after the termination of compensation benefits.²⁵

ANALYSIS -- ISSUE 2

OWCP met its burden of proof to termination compensation benefits as of April 7, 2013. Appellant therefore has the burden of proving by the weight of the substantial, reliable, and probative evidence a causal relationship between her claimed disability on or after April 7, 2013 and the accepted June 24, 1985 injuries.²⁶ The reports of her physicians do not provide a rationalized medical opinion finding her disabled for work after April 7, 2013 due to her accepted injuries. Therefore, the medical evidence submitted is insufficient to meet appellant's burden of proof.²⁷

In diagnostic reports dated September 9 and 20, 2013, Dr. Kingsman and Dr. Tipps provided radiographic findings pertaining to the chest, cervical spine, thoracic spine, lumbar spine, and left hip. These reports failed to discuss appellant's employment and medical history and did not provide any opinion regarding the cause of appellant's conditions. As the reports simply interpreted imaging studies and provided no opinion that she was totally disabled on or after April 7, 2013 due to the June 24, 1985 employment injuries, the reports are insufficient to meet her burden of proof.²⁸

The Board notes that it is appellant's burden to establish that the findings made in the diagnostic reports were causally related to the June 24, 1985 employment injury.²⁹ Because appellant has not submitted any reasoned medical opinion evidence to show that she was disabled on or after April 7, 2013 as a result of her accepted concussion, cervical strain, and cervical facet joint syndrome, the Board finds that OWCP properly denied her claim for disability compensation.³⁰

²⁵ See *I.J.*, 59 ECAB 408 (2008).

²⁶ See *Amelia S. Jefferson*, 57 ECAB 183 (2005).

²⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

²⁸ *L.J.*, Docket No. 14-523 (issued August 7, 2014).

²⁹ Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981). The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment. See *Lee R. Haywood*, 48 ECAB 145 (1996).

³⁰ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation. *L.L.*, Docket No. 13-2146 (issued March 12, 2014). See also *William A. Archer* 55 ECAB 674, 679 (2004).

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

LEGAL PRECEDENT -- ISSUE 3

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by it; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³¹ Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.³²

ANALYSIS -- ISSUE 3

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her June 16, 2013 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant repeated previously made arguments and alleged that she suffered from continued disability as a result of the June 24, 1985 employment incident. The underlying issue in this case was whether she was experiencing any residuals or disability of the June 24, 1985 injury. That is a medical issue which must be addressed by relevant medical evidence.³³ Appellant, however, failed to submit new and relevant medical evidence in support of her claim.

The only medical evidence submitted was Dr. Tipps' September 20, 2013 MRI scan report of the cervical spine. As the report repeats evidence already in the case record, it is duplicative and does not constitute relevant and pertinent new evidence. Material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case.³⁴ A claimant may obtain a merit review of an OWCP decision by submitting new and

³¹ *D.K.*, 59 ECAB 141 (2007).

³² *K.H.*, 59 ECAB 495 (2008).

³³ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

³⁴ *See Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

relevant evidence. In this case, appellant failed to submit any new and relevant evidence addressing continued disability.³⁵

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective April 7, 2013. The Board further finds that appellant failed to establish she continued to suffer from employment-related residuals or disability on or after April 7, 2013 as a result of her accepted June 24, 1985 employment injuries. The Board also finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the June 25 and April 8, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 25, 2015
Washington, DC

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

Patricia Howard Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

³⁵ *M.H.*, Docket No. 13-2051 (issued February 21, 2014).