



## **FACTUAL HISTORY**

On March 30, 2011 appellant, then a 44-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on March 24, 2011 she injured her shoulders, her neck, and her back in the performance of duty, while bending over and pushing medical equipment down hallways and into patient rooms. She stopped work on March 25, 2011.

Dr. Yvonne L. Jones, a family practitioner, reported on April 8, 2011 that appellant sustained an injury on March 24, 2011 as the result of bending, pushing and pulling medical equipment and that she had previously been involved in an automobile accident in 2009. She provided physical examination findings and checked the boxes for the orthopedic diagnoses of cervical, lumbar, and thoracic strain/sprain with dysautonomia, bilateral upper and lower radiculitis, bilateral shoulder sprain/strain and knee sprain/strain.

In a June 23, 2011 report, Dr. Mark D.T. Allen, an examining orthopedic surgeon, provided a history of the March 24, 2011 incident, medical history and physical examination findings. He diagnosed C3-4 and C4-5 bulging discs, C5-6 and C6-7 herniated discs, thoracic and lumbosacral sprain and strain, as well as shoulder, left wrist and left elbow conditions, which he attributed to appellant's March 24, 2011 employment duties.

OWCP denied appellant's claim in a decision dated July 22, 2011 as it found the evidence insufficient to establish a causal relationship between the diagnosed conditions and the accepted March 24, 2011 incident. On August 1, 2011 appellant requested a hearing before an OWCP hearing representative.

In reports dated October 12 and November 16 2011, Dr. Jones noted that appellant had been under her care for a March 24, 2011 employment injury, which had rendered appellant totally disabled. She diagnosed C6-7 radiculopathy; cervical myoligamentous sprain/strain with cervical radiculopathic symptoms, C3-4, C4-5, and C5-6 bulging discs, C2-3, C5-6, and C6-7 herniated nucleus pulposus/protrusions, lumbar, cervical, and thoracic strains, C5-6 central canal narrowing with right foraminal encroachment and cord displacements, L3-S1 sensory radiculopathy, L5-S1 diffuse annular bulge with minimal posterior disc bulge with right facet hypertrophic changes, L4-5 ligamentum flavum hypertrophy, left wrist contusion, post-traumatic left elbow lateral epicondylitis, left ankle inversion injury, post-traumatic patella chondromalacia, rule out knees internal derangement, anxiety/depression due to constant pain, and mild-to-moderate left supraspinatus tendinosis. Dr. Jones, in the November 16, 2011 report, opined that appellant's injuries were a direct result of the work performed on March 24, 2011. She noted that appellant's medical history included a prior back injury, which had fully resolved, and that the March 24, 2011 incident caused a severe exacerbation.

OWCP received an August 31, 2011 report from Dr. Steven J. Valentino, a treating osteopath, who diagnosed cervical and lumbar degenerative disc disease aggravation, radiculitis, left shoulder rotator cuff tendinitis, facet syndrome and sacroiliac dysfunction. Dr. Valentino attributed the diagnosed conditions to the March 24, 2011 employment incident. Based on the physical examination, a review of medical and diagnostic testing, and review of her employment and medical history, he opined that appellant was totally disabled due to the March 24, 2011 employment incident.

By decision dated January 18, 2012, an OWCP hearing representative vacated the July 22, 2011 denial and remanded the case for OWCP to refer appellant for a second opinion evaluation. She found that the medical evidence was sufficient to warrant further development of the record.

On April 11, 2012 OWCP prepared a statement of accepted facts and list of questions for an OWCP referral physician. On April 20, 2012 it referred appellant for a second opinion evaluation with Dr. Robert F. Draper, a Board-certified orthopedic surgeon, to determine whether the accepted March 24, 2011 incident resulted in an employment injury.

In an April 30, 2012 report, Dr. Draper reviewed the record and noted his physical examination findings. He diagnosed cervical, thoracic, lumbosacral, left shoulder, and right shoulder strain, and mild strains of the buttocks and right arm. Dr. Draper also diagnosed preexisting C3-4, C4-5, C5-6, and C6-7 degenerative cervical disc disease, C5-6 and C6-7 central disc protrusion based on a December 8, 2009 magnetic resonance imaging (MRI) scan, and L5-S1 central disc protrusion and lumbar degenerative disc disease based on a January 18, 2010 MRI scan. Dr. Draper explained that physical examination revealed exaggerated pain behaviors, such as crying or tearful behavior at the slightest touch. He reported that appellant also spontaneously jerked her body around and would jump with no examination or touching and that she became tearful and cried out with a small moan when performing these behaviors. While walking into his office, Dr. Draper observed appellant walking with a cane without putting weight on the cane. He reported physical examination findings and then opined that maximum effort was not put forth by appellant for either the cervical or lumbar range of motion testing. Based on his physical examination and review of the medical evidence, Dr. Draper reported that appellant sustained soft tissue injury of cervical, thoracic, and lumbar strains and possible mild, temporary aggravation of the C5-6 and C6-7 cervical disc disease. He concluded that any aggravation would have been temporary and would have lasted six months from the date of injury. Dr. Draper further noted that appellant exhibited exaggerated pain behavior which was inconsistent with the objective data. Thus, he concluded that any disability or residuals from the employment injury had ceased and no further medical treatment was recommended or warranted. Dr. Draper opined that appellant was capable of performing modified work but provided work restrictions related to her preexisting and nonwork-related degenerative disc disease.

On May 17, 2012, OWCP accepted the claim for neck thoracic and lumbar strains and mild temporary cervical intervertebral disc degeneration at C5-6, C6-7, which it found had all resolved, based on Dr. Draper's opinion.

On June 13, 2012 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits based upon Dr. Draper's opinion that appellant's accepted employment injury had resolved with no residuals.

Dr. Valentino, in reports dated June 20 and July 11, 2012, noted that appellant continued to have neck, low back and extremity pain, multiple arthralgias, myalgias, numbness, and weakness as a result of the March 24, 2011 employment injury. He noted that appellant had an October 9, 2009 nonemployment-related motor vehicle accident which had caused a left shoulder injury and C6-7 disc bulge. Dr. Valentino reviewed objective tests, medical reports, medical history, and performed a physical examination. Based on the physical examination findings and

review of the medical reports and history, he diagnosed cervical, thoracic, and lumbar strains, cervical degenerative disc aggravation, cervical disc herniation, radiculopathy, and history of fibromyalgia. Dr. Valentino attributed the diagnosed conditions to the March 24, 2011 employment injury, and concluded that appellant continued to be symptomatic and was totally disabled from her date-of-injury job.

In a June 25, 2012 report, Dr. Bruce H. Grossinger, an examining osteopath, reported a normal left upper extremity electromyography (EMG). He opined that appellant's neck symptoms were the result of the cervical degenerative joint disease aggravation caused by the March 24, 2011 injury. Lastly, Dr. Grossinger determined that appellant was unfit for duty as she was totally disabled.

In a July 30, 2012 report, Dr. Grossinger opined that appellant continued to suffer from residuals of her March 24, 2011 employment injuries of left upper extremity weakness and cervical degenerative joint disease aggravation with neck spasm and focal neurological deficits. He opined that appellant had trauma-induced fibromyalgia. Dr. Grossinger opined that appellant was totally disabled as a result of her employment-related medical conditions.

By decision dated September 10, 2012 OWCP terminated compensation benefits effective that date. It found the weight of the evidence rested with Dr. Draper, the second opinion physician.

On September 17, 2012 appellant's counsel requested an oral hearing of the September 10, 2012 termination decision before an OWCP hearing representative, which was held on December 28, 2012.

Prior to the December 28, 2012 oral hearing, counsel submitted medical evidence including the following reports from Dr. Shailen Jalali, an examining Board-certified anesthesiologist with a subspecialty in pain medicine, and Dr. Rishin A. Patel, an examining Board-certified anesthesiologist with a subspecialty in pain medicine.

Dr. Patel related in his November 23, 2011 report that appellant had very vague, widespread pain complaints.

In a December 16, 2012 report, Dr. Jalali noted that appellant had been his patient since October 7, 2011 when she had been referred to him by Dr. Valentino. He provided a medical and employment injury history and findings on physical examination. Dr. Jalali noted that appellant's medical history included a nonemployment-related automobile accident in 2009 which caused upper and lower back region pain, which had completely resolved within a few months. A physical examination revealed diminished cervical range of motion, neck and shoulder region spasms, tenderness bilaterally over the facet joints, bilateral positive Spurling's maneuver, positive bilateral compression test, negative bilateral Adson test, and significant low back muscle spasms. A review of a June 9, 2011 lumbar MRI scan revealed L5-S1 disc desiccation and disc height loss BS L4-5 ligamentum flavum hypertrophy with some lateral stenosis recess and L5-S1 diffuse annular bulge with right facet hypertrophy. Based on his review of the objective data, medical reports, medical and employment injury history, and physical examination, Dr. Jalali diagnosed lumbar radiculitis, lumbar facet disease, lumbar disc

displacement, sacroilitis, lumbar disc degeneration, multiple muscle group spasms, cervical facet disease, cervical disc degeneration, and cervical radiculitis. He noted his disagreement with Dr. Draper's assessment, as he had noted that the focus of Dr. Draper's examination was more on appellant's pain behavior than physical examination findings. He concurred with Dr. Draper regarding appellant's previous injuries, but noted that prior to the March 24, 2011 employment injury appellant had been working and functioning. In addition, Dr. Jalali noted the progression of the lumbar and cervical disease was clearly shown in comparing MRI scan studies taken both before and after the March 24, 2011 employment injury. He observed that due to Dr. Draper's focus on appellant's pain behavior he missed spinal pathology supporting her pain presentation in the diagnostic studies. It was only after the March 24, 2011 employment injury that appellant was unable to work.

By decision dated March 28, 2013, an OWCP hearing representative affirmed the September 10, 2012 decision terminating appellant's compensation benefits, finding that the weight of the evidence at the time of the termination rested with the second opinion physician, Dr. Draper. However, the hearing representative found there was an unresolved conflict in the medical opinion evidence between Drs. Draper and Jalali on the issue of whether appellant had continuing disability due to appellant's accepted March 24, 2011 employment injury and that referral to an impartial medical examiner was required.

On May 23, 2013 OWCP referred appellant to Dr. Ronald N. Rosenfeld, an osteopath Board-certified in orthopedic surgery, to resolve the conflict in the medical opinion evidence between Drs. Draper and Jalali on the issue of whether appellant had continuing disability due to the accepted March 24, 2011 employment injury.

In a June 7, 2013 report, Dr. Rosenfeld, based upon a review of the record, noted that OWCP had accepted the conditions of thoracic, neck, and lumbar sprains and mild temporary aggravation of C5-6, C6-7 cervical disc disease. His physical examination of appellant revealed tenderness on palpation in bilateral trapezius area, bilateral lateral thorax, paravertebral thoracic musculature, lumbar musculature, left thigh, medial aspect of both knees, lateral bilateral hips, posterior sacroiliac spine, and bilateral posterior buttock regions. Dr. Rosenfeld related examination findings. Next, he detailed the evidence including objective testing that he was given to review. Dr. Rosenfeld opined that the accepted employment conditions had resolved with no continuing disability. In reaching this conclusion, he observed that, while appellant's pain complaints started with the March 24, 2011 injury, comparisons of objective testing taken before and after the injury did not provide objective evidence of any continuing disability. Dr. Rosenfeld attributed appellant's disability and pathology to a chronic pain condition such as fibromyalgia rather than to any ongoing orthopedic pathology. He noted that studies revealed that fibromyalgia usually occurs following an automobile accident or work injury, but whether this condition was employment related was outside his orthopedic specialty.

On June 26, 2013 OWCP received progress reports from Drs. Jalali, and Patel, as well as from Dr. Miteswar Purewar, an examining Board-certified anesthesiologist with a subspecialty in pain medicine, and Dr. John Park, an examining Board-certified anesthesiologist with a subspecialty in pain medicine. These progress reports covered the period February 13, 2012 to April 16, 2013. The reports detailed physical examination findings and noted that appellant was seen for pain medication management. OWCP also received an October 7, 2011 report from

Dr. Jalali addressed to Dr. Valentino, which provided physical examination and diagnostic test findings. Dr. Jalali diagnosed lumbar radiculitis, disc displacement, facet disease, and disc degeneration; sacroiliitis, multiple muscle root spasms; and cervical face disease, degenerative disc disease, and radiculitis.

By decision dated July 25, 2013, OWCP found the evidence insufficient to establish that appellant had any continuing residuals or disability due to her accepted March 24, 2011 employment injury, after September 10, 2012. In reaching this conclusion, it relied upon the opinion of the impartial medical examiner, Dr. Rosenfeld.

By letter dated July 30, 2013, counsel requested an oral hearing before an OWCP hearing representative of the July 25, 2013 decision. In a follow-up letter of November 6, 2013, counsel requested that, in light of the termination effective September 10, 2012, OWCP issue a final decision as to why it had only paid appellant compensation through September 24, 2011. In the alternative, he requested “a formal decision, with appeal rights, as to why such payment is not being made.” A video hearing was held on November 15, 2013.

On January 6, 2014 OWCP received a July 14, 2011 left shoulder MRI scan and November 11, 2013 report from Dr. Patrick Murphy, an examining Board-certified physiatrist. Dr. Murphy related that appellant’s symptoms and pain had progressed since the March 24, 2011 employment injury. Appellant had described her physical symptoms which included sleep disruption brought on by pain and discomfort increased by wet weather. A review of a December 2009 MRI scan revealed a C5-6 disc protrusion C6-7 disc bulge with decreased left neural foramen, and C7-T1 left-sided disc bulge with moderated left neural foamen decrease. Next, Dr. Murphy reviewed an MRI scan taken in July 2013 which revealed an increased C5-6 disc bulge with small central herniation, C6-7 disc bulge with small left parcentral disc herniation, borderline mild foraminal narrowing, and mild central canal narrowing. A review of a November 11, 2013 electromyography (EMG) study revealed abnormal findings including electrophysiologic evidence of chronic C7 left side radiculopathy and right side C5 radiculitis without true radiculopathy. Dr. Murphy reported that the EMG study showed no evidence of bilateral upper extremity peripheral neuropathy, brachial plexopathy, or myopathy. He reported C7 chronic left side radiculopathy, right-sided C5 radiculitis without true radiculopathy, and normal C5-T1 root screens and sampling of multiple muscles of the right arm. Dr. Murphy offered no opinion regarding the cause of appellant’s diagnosed conditions, or disability status.

By decision dated January 31, 2014, an OWCP hearing representative affirmed the July 25, 2013 decision denying appellant’s claim for continuing employment-related disability following the termination of wage-loss compensation and medical benefits effective September 10, 2012. However, the hearing representative found that the medical evidence submitted subsequent to the hearing required Dr. Rosenfeld to provide a supplemental report.

On February 21, 2014 OWCP received a December 2, 2013 office note from Dr. Grossinger diagnosing chronic pain syndrome.

By letter dated March 21, 2014, OWCP requested that Dr. Rosenfeld review the attached July 14, 2011 left shoulder MRI scan, November 11, 2013 upper extremity EMG, and November 11, 2013 report by Dr. Murphy. It asked Dr. Rosenfeld to provide an opinion as to

whether his opinion remained the same or changed after reviewing the attached diagnostic studies.

In an April 28, 2014 supplemental report, Dr. Rosenfeld reviewed the evidence OWCP provided for further review and summarized Dr. Murphy's findings. He reported that at the time of his original report that he had reviewed the July 14, 2011 MRI scan, which he found to be normal except for an indication of mild-to-moderate supraspinatus tendinosis with superimposed tear. Dr. Rosenfeld concluded that his opinion that appellant's accepted neck, thoracic, and lumbar strains and C5-6, C6-7 mild temporary cervical disc aggravation had resolved with no disability or residuals remained unchanged.

By decision dated May 28, 2014, OWCP found the evidence insufficient to establish that appellant had any continuing disability from the accepted March 24, 2011 employment injury.

In a letter dated June 4, 2014, appellant's counsel requested an oral hearing before an OWCP hearing representative, which was held on October 27, 2014.

Following her request for an oral hearing, appellant submitted a March 18, 2014 report from Dr. Valentino who diagnosed neck pain, facet mediated pain, rotator cuff tear, and cervical degenerative disc disease. Dr. Valentino reported significantly decreased range of motion, limited bilateral shoulder range of motion, and significant spinal spasms on palpation. He stated that review of an MRI scan revealed tendinitis and small partial-thickness tear, but he did not identify the date of the MRI scan. Diagnoses included neck pain, cervical degenerative joint disease, rotator cuff tear, and facet mediated pain. Dr. Valentino concluded that appellant was totally disabled and was currently receiving social security disability benefits.

By decision dated December 9, 2014, an OWCP hearing representative affirmed the May 28, 2014 decision finding that appellant had not established continuing disability after September 10, 2012.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's 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> After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.<sup>4</sup> In order to prevail, appellant must establish by the weight of the reliable, probative,

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<sup>2</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>3</sup> *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>4</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955); *see also T.W.*, Docket No. 15-1020 (issued November 13, 2015); *Talmadge Miller*, 47 ECAB 673, 679 (1996).

and substantial evidence that he had an employment-related condition or disability which continued after termination of compensation benefits.<sup>5</sup>

Section 8123(a) provides that, if there is 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 an examination.<sup>6</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.<sup>7</sup>

### ANALYSIS

As instructed by the hearing representative on March 28, 2013, OWCP properly referred appellant to Dr. Rosenfeld to resolve the conflict in medical opinion between Dr. Jalali, an examining physician, and Dr. Draper, an OWCP referral physician, regarding whether appellant had continuing disability due to the March 24, 2011 employment injury. Due to this unresolved conflict of medical opinion evidence, OWCP properly referred appellant to Dr. Rosenfeld, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a June 7, 2013 report, Dr. Rosenfeld, based upon a review of the record noted the accepted conditions were thoracic, neck, and lumbar sprains and mild temporary aggravation of C5-6, C6-7 cervical disc disease. He provided his own physical examination findings and detailed the medical evidence including objective testing and nonmedical evidence that he was given to review. Dr. Rosenfeld also summarized objective testing relied on in the medical reports he reviewed including Dr. Valentino's August 31, 2011 report which noted a December 8, 2009 cervical MRI scan and January 18, 2010 lumbar MRI scan. He opined that the accepted employment conditions had resolved with no residuals or disability. In reaching this conclusion, based on comparisons of objective testing taken before and after the injury, Dr. Rosenfeld found insufficient objective evidence supporting any continuing disability due to the accepted March 24, 2011 employment injury. He attributed her current disability and pathology to a chronic pain condition such as fibromyalgia syndrome rather than to any ongoing orthopedic pathology. Dr. Rosenfeld noted that studies revealed that fibromyalgia usually occurs following an automobile accident or work injury, but that whether this condition was employment related was outside his orthopedic specialty.

At OWCP's request, Dr. Rosenfeld completed a supplemental report on April 28, 2014. He reviewed the evidence OWCP provided for further review and summarized Dr. Murphy's findings. Dr. Rosenfeld reported that at the time of his original report that he had reviewed the July 14, 2011 MRI scan, which he found to be normal except for an indication of mild-to-moderate supraspinatus tendinosis with superimposed tear. He concluded that appellant's

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<sup>5</sup> *T.W. and Talmadge Miller, id.*

<sup>6</sup> 5 U.S.C. § 8123(a). See *S.R.*, Docket No. 09-2332 (issued August 16, 2010); *Y.A.*, 59 ECAB 701 (2008); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>7</sup> *A.R.*, Docket No. 09-1566 (issued June 2, 2010); *M.S.*, 58 ECAB 328 (2007); *Bryan O. Crane*, 56 ECAB 713 (2005).

accepted neck, thoracic, and lumbar strains and C5-6, C6-7 mild temporary cervical disc aggravation had resolved with no disability. Dr. Rosenfeld's opinion remained unchanged.

Dr. Rosenfeld's report is based on a proper history of injury and medical background. He provided medical reasoning in support of his conclusions that appellant's accepted neck, thoracic, and lumbar strains and C5-6, C6-7 mild temporary cervical disc aggravation had resolved with no disability or residuals. Dr. Rosenfeld explained that the additional MRI scan and EMG evidence OWCP requested he review did not change his opinion. While Dr. Rosenfeld attributed appellant's continuing complaints to fibromyalgia, a condition which was not accepted by OWCP, the Board notes that there is no rationalized medical opinion of record substantiating that this condition was causally related to the accepted injury. The Board finds that Dr. Rosenfeld's report was entitled to the special weight of the medical evidence and establishes that appellant had no continuing disability related to her March 24, 2011 employment injury.

The record contains additional progress reports from Drs. Jalali, Patel, Purewar, and Park for the period February 13, 2012 to April 16, 2013 detailing physical findings and that appellant was seen for medication management.

Since Dr. Jalali was on one side of the conflict in medical opinion that Dr. Rosenfeld resolved, the continuing reports from Dr. Jalali are insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.<sup>8</sup>

The Board notes that Drs. Patel, Purewar, and Park did not discuss appellant's disability status on and after September 10, 2012. As they did not discuss appellant's disability, these reports are of limited probative value and insufficient to create a new conflict with Dr. Rosenfeld.

Appellant also submitted a November 11, 2013 report from Dr. Murphy diagnosing C7 chronic left side radiculopathy, right-sided C5 radiculitis without true radiculopathy, and normal C5-T1 root screens and sampling of multiple muscles in right arm. Dr. Murphy did not discuss appellant's disability status. OWCP also received a March 14, 2014 report from Dr. Valentino diagnosing neck pain, facet pain, rotator cuff tear, and cervical degenerative disc disease. Dr. Valentino opined that appellant was totally disabled. Dr. Valentino did not explain whether appellant's current diagnoses were still causally related to the accepted employment injury, and if so whether they caused disability. He therefore failed to provide sufficient medical rationale to explain how appellant continued to be disabled from her March 24, 2011 employment injury.<sup>9</sup> Thus, these medical opinions are of diminished probative value and insufficient to create a new conflict with Dr. Rosenfeld's opinion.

On appeal counsel argues that Dr. Rosenfeld's opinion is based on an incomplete review of the medical record as the physician failed to review a December 8, 2009 cervical MRI scan

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<sup>8</sup> *J.I.*, Docket No. 15-516 (issued September 21, 2015).

<sup>9</sup> *W.F.*, Docket No. 12-473 (issued November 27, 2012); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Dean E. Pierce*, 40 ECAB 1249 (1989).

and a January 18, 2010 lumbar MRI scan. The tests referenced by counsel were contained in reports from Dr. Valentino which were reviewed by Dr. Rosenfeld. In addition, Dr. Rosenfeld detailed the findings of the MRI scan reports noted by Dr. Valentino. Thus, contrary to counsel's contention, Dr. Rosenfeld opinion was based on a complete and accurate view of the medical record.<sup>10</sup>

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 appellant has not established continuing disability after September 10, 2012 causally related to her accepted employment injury.

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<sup>10</sup> Counsel also contended on appeal that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits on and after September 10, 2012. The Board notes, however, that on March 28, 2013 an OWCP hearing representative affirmed the termination and remanded the case on the issue of continuing employment-related disability. Subsequently, the only issue developed and adjudicated by OWCP was that of continuing employment-related disability, which shifted the burden of proof to appellant. Thus, the issue of continuing employment-related disability is the only issue properly before this Board on appeal. See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 9, 2014 is affirmed.

Issued: January 28, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board