

to whether appellant sustained an injury on January 5, 2010 and, if so, did she have any concurrent disability for work on or after that date.² Subsequent to the Board's November 23, 2011 decision, OWCP referred appellant to Dr. R. Derry Crosby, a Board-certified osteopath specializing in orthopedic surgery, for a second opinion evaluation. In reports dated February 27 and April 19, 2012, Dr. Crosby advised that appellant sustained cervical and thoracic strains on January 5, 2010 and had appropriate treatment for the conditions. He indicated that her strains had resolved at the time of his examination on February 27, 2012. Dr. Crosby concluded that no treatment was indicated for appellant's neck and thoracic region, and that she had no disability or need for restricted duty as far as the neck or thoracic spine were concerned. Following a May 11, 2012 initial denial, on January 22, 2013 OWCP accepted that appellant sustained thoracic and cervical sprains, ceased by February 27, 2012. By decision dated March 28, 2013, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 27, 2012, because Dr. Crosby advised on February 27, 2012 that her cervical and thoracic sprains had resolved. In an August 4, 2014 decision, the Board found that OWCP met its burden of proof to terminate appellant's wage-loss compensation effective February 27, 2012 because she had no employment-related disability. The Board further found that OWCP did not meet its burden of proof to terminate appellant's medical benefits because it had not provided her with a required pretermination notice.³ The law and facts of the prior Board decisions are incorporated herein by reference.

On September 30, 2014 OWCP issued a notice of proposed termination of medical benefits, finding that, based on the opinion of Dr. Crosby, appellant no longer had residuals of the accepted neck and thoracic sprains. In correspondence dated October 22, 2014, appellant disagreed with the proposed termination, asserting that the medical evidence established continuing residuals.⁴ By decision dated November 14, 2014, OWCP finalized the termination of medical benefits, effective November 16, 2014. It found that the weight of the medical opinion evidence rested with Dr. Crosby.

Appellant timely requested a review of the written record. She submitted treatment notes dated September 4 and October 22, 2012 in which Dr. Christopher S. Rumana, a Board-certified neurosurgeon, noted a chief complaint of neck and right arm pain, low back and leg pain, and reported that appellant had a slip and fall at work in 2010. He discussed neck examination findings and diagnosed thoracic myofasciitis/sprain and neck pain. Dr. Rumana indicated that appellant could be having myofascial neck pain or right cervical radiculopathy and

² Docket No. 11-1166 (issued November 23, 2011). On January 5, 2010 appellant, a laundry supervisor, filed a traumatic injury claim, alleging that she was injured when she fell to the floor that day. She returned to regular duty on March 1, 2010 and submitted claims for intermittent compensation beginning February 23, 2010. On April 30, 2010 OWCP denied the claim. In a September 28, 2010 decision, an OWCP hearing representative affirmed the April 30, 2010 decision. In a merit decision dated February 3, 2011, OWCP denied modification of the prior decisions. The record also indicates that on September 8, 2005 OWCP accepted aggravation of lumbar radiculopathy, adjudicated by OWCP under file number xxxxxx606. The instant claim was adjudicated under file number xxxxxx486.

³ Docket No. 13-1940 (issued August 4, 2014).

⁴ The letter indicated that 20 enclosures were included. However, the record contains no enclosures forwarded at that time.

recommended a cervical magnetic resonance imaging (MRI) scan. In reports dated December 11, 2012 to July 28, 2014, Dr. Joshua E. Fuhrmeister, Board-certified in anesthesiology and pain medicine, noted a two-year history of neck pain which could be related to an employment injury, and that appellant had been in a motor vehicle accident in 2002. He described her complaints of neck and back pain and muscle aches and indicated that examination of the cervical spine demonstrated mild tenderness and mild-to-moderate limitation of range of motion. Dr. Fuhrmeister noted that a November 9, 2012 MRI study of the cervical spine showed minor disc bulging with no significant foraminal narrowing. He opined that appellant's pain was likely multifactorial, including cervical radiculitis and chronic cervicothoracic spasms.

By decision dated May 27, 2015, an OWCP hearing representative discussed Dr. Rumana's reports and found the weight of the medical evidence rested with the opinion of Dr. Crosby. She affirmed the November 14, 2014 decision.

The Board finds that this case is not in posture for decision. Appellant properly filed a timely request for review of the written record before the Branch of Hearings and Review. She submitted new and relevant medical evidence not previously considered. Specifically, appellant submitted numerous medical and diagnostic reports dated September 4, 2012 to July 28, 2014 from Dr. Fuhrmeister and Dr. Rumana. While the hearing representative briefly mentioned that Dr. Rumana's reports showed basically normal findings on examination, she did not mention Dr. Fuhrmeister's reports at all.⁵ Thus, OWCP did not review all evidence received prior to the issuance of the May 27, 2015 decision.

As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.⁶ Because OWCP did not consider the new medical evidence submitted by appellant, the Board cannot review such evidence for the first time on appeal.⁷ The case will therefore be remanded to OWCP to enable it to properly consider all of the evidence. Following such further development as OWCP deems necessary, it shall issue an appropriate *de novo* final decision on the claim.⁸

⁵ See *William A. Couch*, 41 ECAB 548 (1990) (OWCP is obligated to consider all evidence properly submitted by a claimant and received by it before a final decision is issued).

⁶ *Id.*

⁷ *Supra* note 1.

⁸ See *E.P.*, Docket No. 14-0278 (issued February 26, 2014).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 27, 2015 is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: March 10, 2016
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