



## **FACTUAL HISTORY**

On July 15, 2013 appellant, a 51-year-old transportation security officer, injured his lower back when he slipped and fell on a wet surface. He filed a traumatic injury claim (Form CA-1), which OWCP accepted for acute exacerbation of lumbar degenerative disc disease. OWCP commenced payment for total disability on the periodic rolls as of February 9, 2014.

In a report dated February 4, 2014, Dr. Maury R. Ellenberg, Board-certified in physical medicine and rehabilitation, noted that appellant was experiencing severe back pain, right lower extremity pain, and some right leg pain, with a possible radicular component. He reported that his goal was to return appellant back to work. Dr. Ellenberg scheduled appellant to undergo a magnetic resonance imaging (MRI) scan of his lumbar spine, in addition to an electromyogram (EMG).

The February 19, 2014 MRI scan of the lumbar spine demonstrated extensive artifacts from metallic hardware stemming from a previous L5-S1 fusion. This limited the evaluation of the L4-5 and L5-S1 disc space levels. The study also found a small-to-moderate broad-based disc herniation centrally and eccentric to the right L4-5 level, which, along with degenerative changes, led to marked spinal stenosis at L4-5 and mild-to-moderate bilateral neural foramen narrowing.

In a February 25, 2014 report, Dr. Ellenberg advised that appellant had an L5-S1 fusion procedure in approximately 2000. He noted that on physical examination appellant displayed a large amount of pain behavior and reaction. Dr. Ellenberg reported that an EMG test of appellant's lumbar paraspinals and lower extremities showed some positive waves in both lumbar paraspinals around the areas of the scar from the 2000 surgery. These were normal findings related to the 2000 surgery. Dr. Ellenberg reported that appellant had lumbar disc displacement with no definitive findings of radiculopathy in his lower extremities. He diagnosed a broad-based L4-5 disc protrusion, diffuse centrally and slightly to the right. Dr. Ellenberg opined that these findings did not correspond with the lower back symptoms appellant displayed on examination. He asserted that, while appellant did have some spinal stenosis at L4-5, this did not correspond well with his current symptom complex.

To determine appellant's current condition and ascertain whether he still suffered residuals from his accepted conditions, OWCP referred him for a second opinion examination with Dr. Emmanuel N. Obianwu, Board-certified in orthopedic surgery. In a June 6, 2014 report, Dr. Obianwu reviewed the medical history and the statement of accepted facts, reported findings on examination, and concluded that appellant had no residuals from the July 15, 2013 employment injury. He noted that Dr. Ellenberg, appellant's treating physician, did not believe that the description of the broad-based L4-5 disc protrusion reflected appellant's current symptomatology. Dr. Obianwu made the following diagnoses: status post fusion L5 to S1 with pedicle screws, 2000; multilevel mild-to-moderate degenerative disc disease at L4-5 and L3-4; spinal stenosis at L4-5; lumbar spondylosis with moderate bilateral neural foramen stenosis; disc bulge at L4-5; and overt symptom magnification.

Dr. Obianwu noted that appellant had experienced low back problems for a long period of time, which he attributed to extensive degenerative changes in his lumbar spine. He opined

that appellant did not suffer from any active residuals of the accepted condition of acute exacerbation of lumbar degenerative disc disease.

On examination appellant showed no tightness of the muscles of the lumbar spine and had no overt neurologic findings. Dr. Obianwu asserted that his findings indicated that any acute exacerbation of the lumbar degenerative disc disease which occurred in July 2013 had subsided and resolved. He opined that appellant did not have any residuals of the July 15, 2013 work injury. Although Dr. Obianwu found appellant not medically capable of returning to his date-of-injury job, he determined that was due to his preexisting problems. Dr. Obianwu reported that appellant was treated conservatively for a relatively long period of time and that his inability to perform the full duties of a transportation security officer had nothing to do with the July 15, 2013 acute exacerbation of the lumbar degenerative disc disease.

On November 14, 2014 OWCP issued a notice of proposed termination of compensation. It found that the weight of the medical evidence, as represented by the opinion of Dr. Obianwu, the second opinion physician, established that his accepted acute exacerbation of lumbar degenerative disc disease had resolved and that he had no further residuals from the July 15, 2013 work injury. OWCP afforded appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

In reports dated October 2014, Dr. Aaron J. Blanzly, an osteopath and appellant's primary care physician, noted that appellant experienced low back pain and stated findings on examination. He found that the pain appellant was experiencing now was worse than that he had before his fall.

By decision dated December 22, 2014, OWCP terminated appellant's compensation, finding that Dr. Obianwu's referral opinion represented the weight of the medical evidence.

Appellant, through his counsel, requested an oral hearing, which was held on July 1, 2015.

Following the termination of benefits, appellant submitted handwritten medical notes prepared by Dr. Blanzly from December 2014. These notes advised that appellant experienced low back pain and stated findings on examination, but are largely illegible.

By decision dated August 19, 2015, an OWCP hearing representative affirmed the December 22, 2014 termination decision.

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

Under FECA, once OWCP accepts a claim, it has the burden of justifying 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

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<sup>2</sup> *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001); *Alice J. Tysinger*, 51 ECAB 638, 645 (2000).

employment.<sup>3</sup> This includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>5</sup>

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

In this case, OWCP based its decision to terminate appellant's compensation on the opinion of Dr. Obianwu, the OWCP second opinion physician. The Board finds that OWCP met its burden of proof.

Dr. Obianwu, the second opinion physician, in his June 6, 2014 report, found that appellant's accepted acute exacerbation of lumbar degenerative disc disease had ceased and that he no longer had any residuals from this condition. He explained that appellant had experienced low back problems for a long period of time due to extensive degenerative changes in his lumbar spine. Dr. Obianwu opined that these changes, however, were secondary to the underlying degenerative changes which had been present for many years. He found that appellant no longer suffered residuals of the accepted acute exacerbation of lumbar degenerative disc disease and that the acute exacerbation of the lumbar degenerative disc disease which occurred in July 2013 had subsided and resolved.

Dr. Obianwu opined that, while appellant was not medically capable of returning to his date-of-injury job, this was due to his preexisting problems.

The Board finds that Dr. Obianwu's opinion was well rationalized and based on an accurate history and examination findings. It established that appellant no longer was disabled and had no residuals due to the accepted condition. The Board has held that the opinion of a second opinion physician could constitute the weight of the medical evidence to terminate compensation benefits if it was of probative value with respect to its conclusions. The opinion must be based on a proper factual and medical history and provide medical rationale for the opinion that the work-related conditions had resolved by explaining that there were no objective medical findings to indicate that the accepted work-related conditions were still active.<sup>6</sup>

Appellant's treating physician, Dr. Ellenberg, reported on February 25, 2014 that appellant had broad-based L4-5 disc protrusion; however, he related that these findings did not correlate with appellant's low back symptoms on examination. He also explained that appellant had undergone L5-S1 fusion procedure in 2000, and the EMG findings were related to the

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<sup>3</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284 (1988). *L.J.*, Docket No. 14-1682 (December 11, 2015).

<sup>5</sup> *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

<sup>6</sup> *See C.P.*, Docket No. 15-0617 (issued August 4, 2015).

residuals of the 2000 surgery. Dr. Ellenberg offered no opinion to substantiate that appellant had disabling residuals of the accepted July 15, 2013 injury. Similarly, Dr. Blanzzy, in his October 14, 2014 report, related that appellant's pain had worsened; however, he offered no opinion as to whether appellant was disabled from residuals of the accepted condition or the preexisting condition. These reports are therefore not sufficient to establish a conflict in the medical opinion evidence.<sup>7</sup>

Therefore, OWCP properly found that Dr. Obianwu's second opinion was sufficient to establish that any residuals or disability from the accepted July 15, 2013 employment injury had resolved.<sup>8</sup>

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

Following a proper termination of compensation benefits, the burden of proof shifts back to the claimant to establish continuing employment-related disability.<sup>9</sup> To establish a causal relationship between the condition, any attendant disability, and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.<sup>10</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>11</sup> To prevail, the claimant must establish by the weight of the reliable, probative, and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.<sup>12</sup>

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

The issue of whether appellant has established continuing disability following termination is a medical one, based on the medical evidence of record.<sup>13</sup> While appellant submitted treatment notes from Dr. Blanzzy, these notes were primarily illegible and did not provide a probative medical opinion as to whether he was disabled or currently required medical treatment due to the employment-related condition. A mere conclusion without the necessary medical rationale to explain how and why the physician believes that appellant still has residuals of the accepted condition is not sufficient to meet appellant's burden of proof.<sup>14</sup> The medical

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<sup>7</sup> *Id.*

<sup>8</sup> *See V.A.*, Docket No. 15-1073 (issued November 25, 2015).

<sup>9</sup> *Id.*

<sup>10</sup> *Supra* note 7.

<sup>11</sup> *See Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>12</sup> *See J.A.*, Docket No. 15-0908 (issued August 6, 2015).

<sup>13</sup> *Supra* note 12.

<sup>14</sup> *Supra* note 7.

evidence must also include rationale explaining how the physician reached his conclusion.<sup>15</sup> The Board finds that appellant has failed to meet his burden of proof to establish continuing disability after December 22, 2014.

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 compensation benefits as of December 22, 2014. The Board finds that appellant has failed to meet his burden to establish continuing disability after December 22, 2014.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>15</sup> See *T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).