

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

---

A.K., Appellant

and

DEPARTMENT OF HOMELAND SECURITY,  
FEDERAL AIR MARSHAL SERVICE,  
Hanover, MD, Employer

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 16-0124  
Issued: March 18, 2016**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 26, 2015 appellant filed a timely appeal from a May 1, 2015 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 over the merits of this case.

**ISSUE**

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation benefits, effective May 3, 2015, as she was no longer disabled due to her accepted work-related conditions.

**FACTUAL HISTORY**

On September 5, 2013 appellant, then a 34-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) for an injury sustained on July 12, 2013 while boarding an airplane in

---

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

the performance of her federal duties. She had a backpack on her back and was pulling her carry-on luggage when her foot caught onto the jet bridge. Appellant fell forward with all the weight on her back. She stopped work on September 6, 2013 and claimed compensation from that date forward. OWCP accepted the claim for degeneration of lumbar or lumbosacral intervertebral disc, displacement of lumbar intervertebral disc without myelopathy, and sciatica. Appellant received on the periodic rolls as of December 15, 2013.

In a May 2, 2014 report, Dr. Peter Rinaldi, a Board-certified family practitioner, opined that appellant was unable to perform the essential functions of her position. In a work capacity evaluation, he provided work restrictions. Dr. Rinaldi advised that appellant had major psychological stress from her disability which affected her athletic lifestyle and ability to work. He also noted that she was on narcotic pain medication which impacted driving and cognition.

In a June 5, 2014 report, Dr. Vivian M. Moise, a Board-certified physiatrist, noted appellant's history of injury and advised that the negative electromyogram (EMG) and negative magnetic resonance imaging (MRI) scan reports showed no significant nerve impingement or disc touching the left L5 nerve root, which was thought to be a possible etiologic factor for her ongoing pain. She indicated that even after biofeedback and left L5 nerve block treatment, she did not believe appellant would ever be able to safely return to her prior occupation. On July 31, 2014 Dr. Moise opined that appellant was not a surgical candidate and would be at maximum medical improvement (MMI) after a trial of biofeedback and repeat left L5 injections. She opined that appellant would need a permanent lighter-duty job, without prolonged sitting. Dr. Moise indicated that appellant's lumbar strain was unchanged.

On May 12, 2014 OWCP referred appellant to Dr. Alfred I. Blue, a Board-certified orthopedic surgeon, for a second opinion examination to determine appellant's disability status.

Appellant underwent a functional capacity evaluation (FCE) on July 23, 2014 by J. Zachary Strandy, a physical therapist. In this report Mr. Strandy noted that, while appellant gave maximal effort, some symptom magnification appeared to be present. Appellant's high pain reports were not consistently supported by objective signs of discomfort, decline in performance or acute signs of distress. Mr. Strandy related that appellant's perception of her abilities was less than what she actually could do. He further explained that appellant presented with organic impairments secondary to her work injury, which resulted in functional limitations, ultimately affecting her work tolerance and abilities. Mr. Strandy found that appellant demonstrated full-time work ability, with restrictions. Restrictions were at the sedentary physical demand level, with limited walking, standing, and sitting.

On August 14, 2014 OWCP received the second opinion report from Dr. Blue. Dr. Blue noted appellant's history of injury and his review of the statement of accepted facts and the complete medical record. He provided examination findings (from a June 7, 2014 examination) and diagnosed mechanical low back pain with degenerative changes aggravated by a July 12, 2013 work injury. Dr. Blue reported that appellant's lower back had not returned to preinjury status. He noted that there was no evidence of EMG changes and thus no definite permanent weakness by EMG. Dr. Blue found appellant at MMI. He noted that appellant had undergone an FCE and that, based on that evaluation, it was his opinion that appellant did not have any work restrictions and should not require a work hardening program. Dr. Blue explained that there

were no restrictions related to the work injury based on his examination and the fact that the FCE noted symptom magnification.

In an August 18, 2014 report, Dr. Rinaldi advised that appellant was incapable of ever returning to her prior position as a federal air marshal. He advised that this opinion was supported by Dr. Moise and by the July 23, 2014 the FCE.

OWCP determined that a conflict of medical opinion existed between appellant's treating physicians, Dr. Rinaldi and Dr. Moise, and OWCP's second opinion physician, Dr. Blue, regarding appellant's ability to return to work. Therefore an impartial evaluation was arranged with Dr. Lowell Anderson, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion.

In an October 30, 2014 report, Dr. Anderson reviewed appellant's history of injury, the statement of accepted facts (SOAF), and appellant's medical record. He thereafter set forth examination findings. Dr. Anderson determined that, based on his examination findings and inconsistency with her history and other sources of information, appellant did not have any work-related disability from the July 12, 2013 work injury. He indicated that her history and examination findings were inconsistent with subjective complaints. Dr. Anderson explained that nonphysiologic findings, including symptom magnification indicated that she was capable of performing her date-of-injury job. He indicated that appellant had no significant limitations that could be documented with objective findings or contemporaneous medical records. No imaging studies or diagnostic studies corroborated her subjective complaints. Dr. Anderson opined that MMI had been reached but, due to appellant's conviction that she was disabled, it was unlikely that she would be able to return to full-time, full-duty work activity. He opined that appellant had no significant limiting factors that would preclude her from returning to unrestricted work activity. Dr. Anderson, therefore, opined that appellant could perform the physical activities described in the job analysis.

On November 19, 2014 OWCP issued a notice of proposed termination of wage-loss compensation benefits to appellant. It credited that Dr. Anderson's impartial medical opinion constituted the special weight of the medical evidence and established that appellant no longer was disabled from work due to her work injury. Appellant was provided 30 days in which to submit additional evidence or argument.

OWCP received a December 15, 2014 narrative statement from appellant. Appellant expressed her concerns that both Dr. Anderson and Dr. Blue's opinions, which found that she could return to work, conflicted with the FCE performed by Mr. Strandy.

In a January 8, 2015 report, Dr. Rinaldi diagnosed subacute lumbar radiculopathy, herniated lumbar intervertebral disc, anxiety, depression and insomnia unspecified and indicated that appellant's work capacity had not changed.

By decision dated May 1, 2015, OWCP terminated appellant's wage-loss compensation benefits, effective May 3, 2015, as the special weight of the medical evidence of file established that she was no longer disabled from work as a result of the July 12, 2013 work injury. Appellant's claim remained open for medical treatment.

## LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>2</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup>

Section 8123(a) of FECA 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>4</sup> The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>5</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>6</sup>

## ANALYSIS

The Board finds that OWCP properly terminated appellant's wage-loss compensation benefits as her accepted conditions no longer caused disability.<sup>7</sup>

OWCP accepted appellant's claim for aggravation of sciatica, aggravation of displacement of lumbar intervertebral disc without myelopathy, and aggravation of degeneration of lumbar or lumbosacral intervertebral disc. It terminated her wage-loss compensation benefits finding that the accepted employment-related conditions no longer caused disability based on the opinion of the impartial medical examiner, Dr. Anderson. It is OWCP that bears the burden to justify modification or termination of benefits.<sup>8</sup>

OWCP referred appellant to Dr. Anderson to resolve the conflict in medical opinion between appellant's treating physicians, Drs. Rinaldi and Moise, who opined that she continued to be totally disabled, and the OWCP referral physician Dr. Blue, who found appellant was at

---

<sup>2</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>3</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>4</sup> 5 U.S.C. § 8123(a).

<sup>5</sup> 20 C.F.R. § 10.321.

<sup>6</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

<sup>7</sup> *See H.P.*, Docket No. 15-0568 (issued September 14, 2015).

<sup>8</sup> *See Curtis Hall*, 45 ECAB 316 (1994); *see also K.B.*, Docket No. 15-11 (issued April 7, 2015).

MMI and had no restrictions related to the work injury. OWCP referred appellant to Dr. Anderson to resolve the conflict in medical opinion evidence, pursuant to 5 U.S.C. § 8123(a).

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation benefits based on the October 30, 2014 referee opinion of Dr. Anderson. Dr. Anderson reviewed the SOAF and the medical record, including the FCE, and set forth examination findings. He noted that appellant's history and examination findings were inconsistent with subjective complaints and that nonphysiologic findings, symptom magnification, and alternate source of information supported that she was capable of performing her date-of-injury job. Dr. Anderson found no significant limitations that could be documented with objective findings or contemporaneous medical records and the imaging studies and diagnostic studies did not corroborate her subjective complaints. He opined that MMI had been reached but, due to appellant's disability conviction, it was unlikely that she would be able to return to full-time, full-duty work activity. Dr. Anderson reiterated the significant discrepancy between the subjective complaints and objective findings on physical examination, imaging studies and electrodiagnostic studies, as well as observed activities. He opined that appellant had no significant limiting factors that would preclude her from returning to unrestricted work activity and opined that she could perform the physical activities described in the job analysis.

The Board finds that Dr. Anderson's report represents the special weight of the medical evidence and OWCP properly relied on his report in terminating appellant's wage-loss compensation benefits. The Board finds that he had full knowledge of the relevant facts and evaluated the course of her condition, he is a specialist in the appropriate field, his opinion is based on proper factual and medical history, and his report contained a detailed summary of this history. Dr. Anderson addressed the medical records and made his own examination findings to reach a reasoned conclusion regarding appellant's condition and to support her full-duty release.<sup>9</sup> At the time appellant's wage-loss compensation benefits were terminated, he found no basis on which to attribute continued disability to her accepted conditions. Dr. Anderson's opinion as set forth in his October 30, 2014 report is found to be probative evidence and reliable. The Board finds that his opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's termination of wage-loss compensation benefits.

In his January 8, 2015 report, Dr. Rinaldi opined that appellant's work capacity had not changed. However, he offered no objective findings to support such a conclusion and diagnosed additional medical conditions, which have not been accepted by OWCP as causally related to the July 12, 2013 employment injury.<sup>10</sup> Thus, Dr. Rinaldi's report is of diminished probative value and is insufficient to overcome the special weight properly accorded to Dr. Anderson's report as the impartial medical examiner, or to create a new conflict.<sup>11</sup> Reports from a physician who was

---

<sup>9</sup> See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

<sup>10</sup> See *T.M.*, Docket No. 08-975 (issued February 6, 2009) (for conditions not accepted or approved by OWCP as being due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

<sup>11</sup> See *Dorothy Sidwell*, 41 ECAB 857 (1990); *J.M.*, Docket No. 11-1257 (issued January 18, 2012).

on one side of a medical conflict that an impartial medical examiner resolved are generally insufficient to overcome the weight of the impartial medical examiner, or to create a new conflict.<sup>12</sup>

On appeal, and before OWCP, appellant argues that her treating physicians and the FCE supports that she cannot return to her date-of-injury position. However, the Board finds that the special weight of the medical opinion evidence rests with the opinion of Dr. Anderson who opined that appellant was no longer disabled from work based on his review of the entire case file, a thorough physical examination and provided a well-reasoned and unequivocal medical opinion sufficient to resolve the conflict in medical opinion evidence.

### **CONCLUSION**

The Board finds OWCP properly terminated appellant's wage-loss compensation benefits as she is no longer disabled from work due to her accepted conditions.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 1, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 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

---

<sup>12</sup> *D.V.*, Docket No. 15-1895 (issued February 22, 2016); *see also I.J.*, 59 ECAB 408 (2013).