

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

---

**P.S., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
L. STOKES MEDICAL CENTER,  
Cleveland, OH, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 16-0890  
Issued: November 9, 2016**

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant*<sup>1</sup>  
*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 March 29, 2016 appellant, through counsel, filed a timely appeal of a February 16, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

---

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292 (2006). Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 13, 2014.

On appeal counsel contended that OWCP's decision was contrary to fact and law.

## FACTUAL HISTORY

On February 22, 2012 appellant, then a 53-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on February 18, 2012 a patient hit her from behind with his power wheel chair, thereby knocking the breath out of her. The patient then put his wheelchair into reverse pinning her between his wheel chair and the closet. She alleged that she sustained injuries to her middle back and the back of both thighs and both legs. Appellant stopped work on February 19, 2012, but returned to work full-time restricted duty on March 26, 2012.

On May 9, 2012 appellant was in a nonwork-related motor vehicle accident. She was hospitalized for a nonwork-related condition on May 17, 2012. Appellant returned to restricted duty on May 25, 2012. She stopped work again on June 14, 2012, and filed a claim for wage-loss compensation (Form CA-7) commencing June 17, 2012. Appellant was on military leave from June 17 through 30, 2012. By letter dated June 29, 2012, the employing establishment controverted her claim for further wage-loss compensation.

On July 2, 2012 OWCP accepted appellant's claim for sprain of the lumbar region and thoracic regions of the back, and contusions of the back, left hip, and left thigh. On October 11, 2012 it expanded the acceptance to include left L5-S1 herniated disc to the list of accepted conditions. Appellant returned to restricted duty on February 13, 2013 and returned to full-time sedentary duty on April 15, 2013. Effective September 8, 2013, she was assigned to work a new temporary modified full-time position.

In a November 15, 2013 progress note, Dr. Jerome B. Yokiell, appellant's treating physician Board-certified in anesthesiology and pain medicine, diagnosed lumbar strain. He noted that appellant was having persistent symptoms for what was described as a lumbar strain injury, but that she had persistent symptoms of radicular-type pain. On March 5, 2014 Dr. Yokiell diagnosed lumbar strain, thoracic strain, and back contusion.

On July 25, 2014 OWCP prepared a statement of accepted facts and referred appellant to Dr. Manhal Ghanma, a Board-certified orthopedic surgeon, for a second opinion regarding the status of appellant's accepted conditions. In an August 27, 2014 opinion, Dr. Ghanma listed appellant's allowed conditions as lumbar sprain, thoracic sprain, back contusion, hip contusion, thigh contusion, and left L5-S1 disc herniation. He reviewed appellant's medical record and provided results on physical examination. Regarding appellant's March 2, 2012 MRI scan report, Dr. Ghanma noted multiple abnormalities with a central disc at L3-L4, bulging disc at L4-L5, and left central disc herniation at L5-S1. Dr. Ghanma noted that his physical examination of appellant's lumbosacral spine revealed no evidence of spine listing or abnormal curvature and no bruising or discoloration. He noted no scarring and no swelling or increased temperature in the lumbar region. Dr. Ghanma noted that she was tender to palpitation in her low back, but there

was no lumbar spasm on examination. He related that appellant complained of global decrease in left leg and left foot sensation, but that appellant gave almost no effort to move her left big toe or other muscles of her foot, and exhibited breakaway weakness to testing of her right foot and ankle muscles. Dr. Ghanma noted 20 degrees each of right and left lateral lumbar bend. He indicated that her knee and ankle reflexes were depressed bilaterally. Dr. Ghanma noted that appellant's examination was characterized by significant abnormal illness behavior and symptom magnification, and that it was his opinion that the examination findings with respect to motor function were nonphysiologic, as were the sensory examination findings. He found that her thoracic examination and hip motion were normal.

In response to a question from OWCP which requested that he provide a rationalized opinion, documented with objective findings, as to whether appellant had any active residuals of the accepted conditions, Dr. Ghanma responded that appellant no longer had any residuals of the accepted conditions, her examination findings reflected abnormal illness behavior and symptom magnification, as opposed to any actual evidence of injury. He opined that appellant was capable of returning to her normal work duties, and he indicated that he had no recommendation for any further treatment. Dr. Ghanma concluded that appellant had recovered from her work injury and that her prognosis was excellent.

In an October 7, 2014 report, Dr. Todd S. Hochman, Board-certified in internal medicine, indicated that he had read Dr. Ghanma's report. He conducted a physical examination and determined that appellant had midline discomfort in her lumbar region and that there was tenderness to the right and left of midline. Dr. Hochman noted that appellant complained of pain to the posterolateral lower extremities with straight leg raising, more on the left. He noted that patellar reflexes were decreased but symmetrical, that appellant was very guarded with lumbar flexion and extension, and that there was some weakness throughout her lumbar extremities. Dr. Hochman opined that, based on the history as reported by appellant and the physical examination, it was evident that appellant remained symptomatic from the February 18, 2012 work injury, and could not return to her full-duty position as a nurse in the spinal cord unit. He ordered an updated lumbar MRI scan, and requested a functional capacity evaluation. Dr. Hochman recommended that appellant remain under the care of Dr. Yokiell for pain management.

On October 27, 2014 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits as she no longer had residuals of the February 18, 2012 employment injury. Appellant was afforded 30 days to file a response and submit further evidence.

In an October 9, 2014 note, Dr. Hochman noted that he requested an updated MRI scan and functional capacity evaluation, and that he would keep appellant's attorney advised of any changes to appellant's medical condition.

In an October 29, 2014 report, Dr. Yokiell diagnosed lumbar sprain, noted that appellant was improved, but recommended a new MRI scan and functional capacity evaluation.

In a November 1, 2014 MRI scan of the lumbar spine, Dr. Douglas S. Arnson, a Board-certified radiologist, listed T12-L1 disc herniation impinging the dural sac without stenosis; L3-4

mild bilateral foraminal impingement; and L5-S1 disc herniation impinging the epidural fat with contact to the dural sac.

In a November 5, 2014 functional capacity evaluation report, Visar Duane, an occupational therapist indicated that the preponderance of evidence indicated less than full participation, and the performance criteria profile was consistent with possible symptom magnification. He opined that the demonstrated impairment data suggested that appellant may possess true dysfunction though the data may not represent her true status at this time. Mr. Duane opined that the demonstrated physical functions data should not be used to project current work capacity since appellant could likely have higher functional ability. He opined that appellant should be able to function at least at a sedentary physical demand level.

In a November 28, 2014 note, Dr. Yokiell contended that appellant had disc herniation of her lumbar spine which appeared to be related to the accident in question, as he was not aware of any previous MRI scan examination of the lumbar spine or difficulties with her spine prior to the accident. He opined that unless there was evidence to the contrary, he believed that the lumbar disc herniation should be added as an allowance in her claim which he believed the source of her significant pain and the source of her inability to work.

By decision dated December 9, 2014, OWCP terminated appellant's wage-loss compensation and medical benefits, effective December 13, 2014.

On December 15, 2014 appellant requested a hearing before an OWCP hearing representative.

In a September 30, 2015 report, Dr. Yokiell indicated that appellant returned with continued complaints of low back pain with radiation down the lower extremities bilaterally. He listed his impression as lumbar disc displacement, and noted that he would like to schedule a bilateral L4-5 and L5-S1 nerve root injection.

At a hearing held on December 18, 2015, appellant noted that she was then working as a community health nurse coordinator with the employing establishment. She contended that she was not cured from her injury, and she noted that she continued to have low back pain, spasm, pain radiating to both sides of her hip all the way down both legs to the calves of her side, worse on the left side of the leg all the way down to the ankles.

By decision dated February 16, 2016, the hearing representative affirmed the December 9, 2014 termination decision, finding that the weight of the medical evidence rested with the second opinion physician, Dr. Ghanma.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to

---

<sup>3</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991); *see also J.P.*, Docket No. 13-1049 (issued August 16, 2013).

compensation for disability.<sup>4</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.<sup>5</sup>

### ANALYSIS

OWCP accepted appellant's claim for sprain of the lumbar region and thoracic regions of the back, contusions of the back, left hip and left thigh, and L5-S1 herniated disc. The hearing representative affirmed the termination of appellant's medical benefits and wage-loss compensation, effective December 13, 2014. In reaching this conclusion, OWCP determined that the weight of the medical evidence was represented by the opinion of the second opinion physician, Dr. Ghanma.

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits. Dr. Ghanma conducted a physical examination and reviewed appellant's record, including the medical evidence. He noted that appellant's March 2, 2012 MRI scan report, revealed multiple abnormalities, including the left central disc herniation at L5-S1. Dr. Ghanma opined that appellant no longer had any residuals of the accepted conditions, based upon his physical examination of appellant wherein he related that appellant gave a reduced effort when asked to move, and that her examination was characterized by abnormal illness behavior and symptom magnification.

The Board notes that prior to the termination of appellant's compensation benefits but after Dr. Ghanma had examined appellant, the treating physicians, Dr. Hochman and Dr. Yokiell, both recommended that appellant undergo a new MRI scan in 2014 to determine the status of her accepted conditions. Based upon their recommendation, appellant underwent a November 1, 2014 MRI scan of the lumbar spine, which was interpreted by Dr. Arnson as revealing disc herniations from T12 through L5-S1. OWCP however did not provide the updated MRI scan results to Dr. Ghanma for review prior to termination of compensation benefits. Further, new medical reports had been received by OWCP from Drs. Hochman and Yokiell, as well as a functional capacity evaluation. Their reports were also not provided to Dr. Ghanma for his review prior to the termination. Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>6</sup> Dr. Ghanma's opinion regarding the status of appellant's accepted conditions was, therefore, not based on the entire evidence of record and cannot serve as the weight of the medical evidence.<sup>7</sup>

The Board finds that Dr. Ghanma's second opinion was insufficient to establish that all residuals from the accepted February 18, 2012 employment injury had resolved.<sup>8</sup>

---

<sup>4</sup> See *T.P.*, 58 ECAB 524 (2007).

<sup>5</sup> See *I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>6</sup> See *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

<sup>7</sup> See *M.S.*, Docket No. 08-99 (issued May 13, 2008); *James R. Taylor*, 56 ECAB 537 (2005).

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

**CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective December 13, 2014.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 16, 2016 is reversed.

Issued: November 9, 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