



## **FACTUAL HISTORY**

OWCP accepted that on March 27, 1995 appellant, then a 40-year-old flat sorter clerk, sustained injuries to her neck, back, shoulder, legs, and arms when an escalator that she was standing on suddenly stopped and she was thrown forward. She stopped work on March 28, 1995 and returned to limited duty on May 30, 1995. OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and sprain of back, neck, shoulder, upper arm, knee, and leg.

Appellant stopped work again and on October 20, 1997 filed a claim for recurrence of disability (Form CA-2a) for the period August 18 to September 3, 1997. OWCP accepted her recurrence of disability claim and paid wage-loss compensation. Appellant continued to receive medical treatment. She returned to work on November 3, 1998.

On November 5, 1998 OWCP granted a schedule award for 13 percent permanent impairment of each upper extremity and 12 percent permanent impairment of each lower extremity.

In a decision dated January 23, 2001, OWCP reduced appellant's compensation based on her actual wages as a manual distribution clerk. It found that she had demonstrated her ability to perform the duties of her job since November 3, 1998 and that her actual wages met or exceeded the current wages of her date-of-injury job.

In 2001, appellant underwent a lumbar nerve block and stopped work again. On December 2, 2003 she returned to part-time light duty.

Appellant was treated by Dr. Daniel R. Ignacio, Board-certified in physical medicine and rehabilitation. In narrative reports dated February 11 to June 26, 2015, he noted a date of injury of March 27, 1995. Dr. Ignacio related that she continued to suffer significant injuries and experience persistent pain along her neck, back, and extremities due to an injury she sustained on March 27, 1995. Upon examination of appellant's cervical spine, he observed spasm that restricted her motions along the cervical spine, tenderness along the interspinous ligaments and paraspinal muscles, and trigger points along the cervical area, and bilateral upper trapezius. Examination of the lower and upper extremities revealed tenderness, hypoesthesia, and weakness along the left arm, knees, and leg. Range of motion was slow. Dr. Ignacio further reported restricted motion and tenderness along the midthoracic and lower lumbar paraspinal muscles with trigger points. He diagnosed chronic cervical strain syndrome, chronic cervical disc syndrome, chronic bilateral shoulder strain syndrome, chronic lumbar disc syndrome with lumbar radiculopathy, chronic bilateral carpal tunnel syndrome, chronic synovitis of the bilateral knees, and chronic internal derangement along the knee.

On May 26, 2015 OWCP scheduled appellant for a second opinion evaluation with Dr. D. Burke Haskins, a Board-certified orthopedic surgeon, to determine whether she continued to suffer residuals and remained disabled due to her March 27, 1995 employment injury.

In a July 14, 2015 report, Dr. Haskins reviewed the statement of accepted facts (SOAF) and accurately described the March 27, 1995 employment injury. He discussed appellant's history and the medical records that he reviewed. Dr. Haskins related her complaints of pain in

the neck, lumbar spine, and bilateral knees and intermittent radiation of symptoms in both arms. Upon examination of appellant's cervical spine, he reported pain in the paracervical region, but no deformities or spasm. Range of motion testing revealed forward flexion to three fingerbreadths from the sternum, active rotation to the left to 10 degrees, active rotation to the right to 15 degrees, and extension to 5 degrees. Dr. Haskins examined appellant's shoulders and noted normal musculature. He provided range of motion findings and indicated that there was full internal rotation bilaterally and external rotation to the neutral position bilaterally. Speed sign was negative for discomfort. Examination of the upper extremities revealed intact sensation with no thenar or hypothenar atrophy of the hands. Dr. Haskins reported that appellant's elbows were normal in appearance and carrying angles. He indicated that left flexion was to 125 degrees, right to 120 degrees, and full extension, pronation, and supination. Upon examination of appellant's lumbar spine, Dr. Haskins observed normal lumbar lordosis and active forward flexion and extension. Straight leg raise testing was to 90 degrees and produced neck and knee pain. Dr. Haskins reported that during the physical examination appellant presented with various exaggerated pain behaviors, such as moaning, groaning, and grimacing, but did not reveal any obvious pathology.

Responding to questions posed by OWCP, Dr. Haskins diagnosed unresolved carpal tunnel syndrome unrelated to the accident, right shoulder degenerative joint disease unrelated to the industrial accident, bilateral osteoarthritis of the knees with meniscal tear unrelated to the industrial accident, cervical disc disease and spondylosis unrelated to the accident, hematoma extremities unrelated to the accident, lumbar spondylosis unrelated to the accident, shoulder strain, knee strain, and cervical strain. He explained that the conditions of shoulder strain, cervical strain, knee strain, and lumbar strain were medically connected to appellant's work injury. Dr. Haskins reported that she did not suffer any residuals of the cervical strain, shoulder strain, knee strain, or lumbar strain and pointed out that there was no evidence of radiculopathy in the extremities based on the history or examination other than by nerve conduction studies performed by Dr. Ignacio. He indicated that there were significant signs of symptom magnification. Dr. Haskins opined that appellant had reached maximum medical improvement for any injuries she sustained in the 1995 work accident and that her current treatment was for unrelated conditions. He noted that her work restrictions were due to unrelated factors, including obesity, and deconditioning. Dr. Haskins included a work capacity evaluation form of appellant's work restrictions.

In a July 10, 2015 report, Dr. Philip B. Bovell, an orthopedic surgeon, indicated that he reexamined appellant for progressive degenerative joint disease of the left knee. He noted that she was going to water therapy to treat her medical condition and needed an extension of this water therapy program.

On August 4, 2015 OWCP issued a notice of proposed termination of appellant's wage-loss compensation because she no longer suffered residuals or disability causally related to the March 27, 1995 employment injury. It determined that the weight of medical evidence rested on the July 14, 2015 second opinion report of Dr. Haskins. Appellant was afforded 30 days in which to submit additional evidence or argument.

Appellant submitted an examination note dated July 24, 2015 by Dr. Ignacio, which indicated that she had a follow-up appointment on August 27, 2015 and needed neural enhancement therapy.

In a July 24, 2015 report, Dr. Ignacio indicated that appellant continued to experience significant pain along her neck, shoulders, wrists, back, and bilateral knees. Upon examination of her cervical spine, he observed palpable spasm with limited motion. Dr. Ignacio also reported slow movements with pain and tenderness on the bilateral shoulders. He noted hypoesthesia and weakness along the left arm. Examination of the thoracolumbar spine revealed tenderness along the midthoracic and lower lumbar paraspinal muscles. Straight leg raise testing was limited to 70 degrees. Upon examination of appellant's lower extremities, Dr. Ignacio observed limited motion in the knees and hypoesthesia and weakness along the legs. He diagnosed chronic cervical strain syndrome, chronic bilateral shoulder strain syndrome, chronic cervical disc syndrome, chronic lumbar disc syndrome with lumbar radiculopathy, chronic bilateral carpal tunnel syndrome, chronic synovitis of the bilateral knees, and chronic internal derangement along the knees. Dr. Ignacio recommended that appellant continue with pain medication and conservative treatment.

On August 7, 2015 appellant was examined again by Dr. Bovell for progressive degenerative joint disease of the left knee.

On September 4, 2015 OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of medical evidence rested on the July 14, 2015 second opinion report of Dr. Haskins who determined that appellant no longer suffered residuals of her March 27, 1995 employment injury.

On September 21, 2015 OWCP received appellant's request for reconsideration.

Appellant submitted reports by Dr. Ignacio dated August 7 and 28, 2015. Dr. Ignacio described the March 27, 1995 employment injury and reviewed her history. He indicated that appellant's condition had not improved over the years and had worsened to the point that she needed surgery to both hands due to continuing pain, numbness, and weakness. Dr. Ignacio provided examination findings and noted diagnoses of chronic cervical strain, chronic bilateral shoulder strain, chronic lumbar strain, chronic bilateral carpal tunnel syndrome, status post bilateral wrist surgery with residual pain, chronic lumbar strain, chronic internal derangement of the knees, chronic synovitis of the knees, chronic cervical disc syndrome with cervical radiculopathy, and chronic pain syndrome. He opined that appellant continued to suffer with the above-mentioned medical conditions, which she sustained on March 27, 1995 and was not able to return to work. Dr. Ignacio noted his disagreement with Dr. Haskin's July 14, 2015 report. He mentioned that appellant would continue with pain management and a rehabilitation program.

In a decision dated December 24, 2015, OWCP denied further merit review of appellant's claim finding that her request did not meet any of the requirements warranting merit review under 5 U.S.C. § 8128(a). It specifically found that the medical reports she submitted were cumulative and substantially similar to evidence that was previously considered by OWCP.

### LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>6</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer had residuals of an employment-related condition, which would require further medical treatment.<sup>7</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for her March 27, 1995 employment injuries.

OWCP accepted appellant's March 27, 1995 traumatic injury claim for bilateral carpal tunnel syndrome and sprain of back, neck, shoulder, upper arm, knee, and leg. In order to determine her current work status and need for medical treatment, on May 26, 2015 it scheduled her for a second opinion evaluation with Dr. Haskins. In a July 14, 2015 report, Dr. Haskins reviewed appellant's history and noted the March 27, 1995 employment injury. He related her current complaints of pain in the neck, lumbar spine, and bilateral knees and intermittent radiation of symptoms in both arms. Dr. Haskins provided physical examination findings of appellant's cervical and lumbar spines and upper and lower extremities. He reported that during the physical examination she presented with various exaggerated pain behaviors, but did not reveal any obvious pathology. Responding to questions posed by OWCP, Dr. Haskins opined that appellant did not suffer any residuals of the cervical strain, shoulder strain, knee strain, or lumbar strain. He pointed out that there was no evidence of radiculopathy in the extremities and indicated that there were significant signs of symptom magnification. Dr. Haskins indicated that appellant had reached maximum medical improvement for any injuries she sustained in the 1995 work accident and that her current work restrictions were due to unrelated factors, including obesity, and deconditioning.

The Board finds that the weight of the medical opinion evidence rests with Dr. Haskins, who directly addressed the issue of whether appellant continued to suffer residuals of her March 27, 1995 employment injury. Dr. Haskins based his opinion on a proper factual and

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<sup>3</sup> *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>4</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

<sup>5</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>6</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>7</sup> *Kathryn E. Demarsh*, *id*; *James F. Weikel*, 54 ECAB 660 (2003).

medical history derived from the SOAF and her medical records.<sup>8</sup> He provided essentially normal findings on physical examination and indicated that appellant showed signs of symptoms magnification. Dr. Haskins concluded that she had reached maximum medical improvement for her work injuries and that her current work restrictions were not due to her employment. Because he provided a well-rationalized opinion based on medical evidence of record regarding appellant's ability to work, the Board finds that OWCP properly relied on his July 14, 2015 report in terminating her wage-loss compensation and medical benefits for the March 27, 1995 employment injury.<sup>9</sup>

Appellant submitted reports by Dr. Ignacio regarding her need for continued medical treatment. In reports dated February 11 to July 24, 2015, Dr. Ignacio related that appellant continued to suffer significant pain along her neck, shoulders, wrists, back, and bilateral knees since a March 27, 1995 work-related injury. Upon examination, he observed spasms and tenderness along her cervical area and bilateral upper trapezius. Dr. Ignacio also noted tenderness, hypoesthesia, and weakness along appellant's lower and upper extremities. He diagnosed chronic cervical strain syndrome, chronic cervical disc syndrome, chronic bilateral shoulder strain syndrome, chronic lumbar disc syndrome with lumbar radiculopathy, chronic bilateral carpal tunnel syndrome, chronic synovitis of the bilateral knees, and chronic internal derangement along the knee. Dr. Ignacio recommended that appellant continue to receive medical treatment.

Although Dr. Ignacio mentioned the March 27, 1995 employment injury and diagnoses based on examination findings, the Board finds that he has not provided a rationalized medical opinion relating appellant's disability or need for medical care due to her accepted injuries.<sup>10</sup> On the contrary, he attributed her need for medical treatment to various conditions, including chronic cervical disc syndrome, chronic lumbar disc syndrome with lumbar radiculopathy, chronic synovitis of the bilateral knees, and chronic internal derangement along the knee, which are not accepted by OWCP. Accordingly, Dr. Ignacio's reports fail to establish appellant's continued disability and need for medical treatment due to her accepted injuries.<sup>11</sup> Similarly, Dr. Bovell's July 10 and August 7, 2015 medical notes also fail to establish her continued disability and need for medical treatment as he did not opine on her inability to work or need for continued treatment for his accepted March 27, 1995 employment injury. The Board finds that these medical reports are not of sufficient probative value to establish that appellant continues to suffer residuals of her March 27, 1995 employment injury.

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<sup>8</sup> See *N.P.*, Docket No. 15-1580 (issued September 1, 2016); see also *Melvina Jackson*, 38 ECAB 443 (1987).

<sup>9</sup> See *L.S.*, Docket No. 09-1508 (issued May 6, 2010). See also *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

<sup>10</sup> *Supra* note 5.

<sup>11</sup> *Id.*

## LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.<sup>12</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>13</sup>

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>14</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>15</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>16</sup>

## ANALYSIS -- ISSUE 2

On September 4, 2015 OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. On September 21, 2015 it received her request for reconsideration. In a decision dated December 24, 2015, OWCP denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128(a). The Board finds that OWCP properly refused to reopen her case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

Along with her reconsideration request, appellant provided medical reports from Dr. Ignacio dated August 7 and 28, 2015. Although these medical reports were not previously considered by OWCP, the Board finds that they are substantially similar and duplicate evidence previously considered and reviewed by OWCP. Dr. Ignacio mentioned the March 27, 1995 employment injury, provided examination findings and diagnosis, and opined that appellant continued to suffer residuals from her employment injury. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>17</sup> As these medical reports do not constitute relevant new evidence, the Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

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<sup>12</sup> 5 U.S.C. § 8128(a).

<sup>13</sup> 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>14</sup> *Id.* at § 10.607(a).

<sup>15</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>16</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>17</sup> *E.M.*, Docket No. 09-39 (issued March 3, 2009).

The Board finds that as appellant did not meet any of the necessary requirements for further consideration of the merits of her claim under 5 U.S.C. § 8128(a), OWCP properly denied further merit review of her traumatic injury claim.

**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 4, 2015 as she no longer suffered residuals or disability causally related to the March 27, 1995 employment injury. The Board also finds that OWCP properly denied further merit review of her case pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 24, 2015 nonmerit decision and September 4, 2015 merit decision of the Office of Workers' Compensation Programs are affirmed.

Issued: October 11, 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