



On appeal counsel argues that the decision is contrary to fact and law.

**FACTUAL HISTORY**

On October 20, 2012 appellant, then a 64-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained neck and back sprains when his motor vehicle was rear ended. He stopped work on October 20, 2012. OWCP accepted the claim for cervical sprain. The acceptance was expanded to include lumbar and thoracic sprains and aggravation of lumbosacral degenerative L5-S1 intervertebral disc disease. Appellant received wage-loss compensation benefits on the periodic rolls as of January 13, 2013.

On April 10, 2013 OWCP referred appellant for a second opinion evaluation with Dr. Stanley W. Collis, a Board-certified orthopedic surgeon, to determine the status of his work-related conditions. In a May 14, 2013 report, Dr. Collis attributed appellant's current pain to his L5-S1 preexisting degenerative disc disease, which had been aggravated by the October 20, 2012 employment-related motor vehicle accident. He reported that appellant had no neurological issues and that his main concern was his lower back pain. Dr. Collis opined that appellant was capable of working with restrictions and recommended reevaluation in four to five months. He related that he could not offer an opinion as to whether the aggravation of appellant's preexisting L5-S1 degenerative disc disease was temporary or permanent.

On August 29, 2013 appellant accepted a modified job rural carrier position at the employing establishment, returned to work on August 30, 2013, and stopped work the next day. OWCP paid appellant wage-loss compensation on the supplemental rolls during the period August 31 to December 14, 2013. As of December 15, 2013, it again paid appellant compensation on the periodic rolls.

In an October 6, 2013 report, Dr. Andrew Hamon, a treating physician Board-certified in obstetrics and gynecology, diagnosed cervical radiculitis, lumbar radiculitis, muscle spasms, facet lumbar hypertrophy, intervertebral disc disorders, lumbar area neural encroachment, sacroiliitis, lumbar disc degeneration, cervical, lumbar and thoracic strains/sprains, and radial tear. He attributed appellant's lumbar and cervical symptoms to the October 20, 2012 employment-related motor vehicle accident. Dr. Hamon noted appellant's underlying osteophytic changes and that return to work had aggravated his symptoms. He opined that appellant was totally disabled from work and recommended appellant be referred to a neurosurgeon.

In reports covering the period October 14, 2013 to June 18, 2014, Dr. Michael J. Doyle, a treating physician Board-certified in neurosurgery, diagnosed lumbar strain and sprain and spinal stenosis without neurogenic claudication. He continually related that appellant should remain off work until his next medical appointment.

On January 22, 2014 OWCP found that a conflict existed in the medical opinion evidence between Dr. Hamon, appellant's treating physician, and Dr. Collis, the second opinion physician, regarding appellant's work capacity.

OWCP referred appellant to Dr. Stacie L. Grossfeld, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a report dated February 24, 2014, Dr. Grossfeld related appellant's history of injury, noted her examination findings, and reviewed appellant's x-ray and magnetic resonance imaging (MRI) scan findings. She concluded that appellant had a history of preexisting osteoarthritis of the cervical and lumbar spine and that he would have permanent work restrictions. Dr. Grossfeld recommended that appellant undergo a functional capacity examination to determine his permanent work restrictions.

On July 23, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Edward Gregory Fisher, a Board-certified orthopedic surgeon, for assessment of his work-related conditions and disability status.

In an August 5, 2014 report, Dr. Doyle diagnosed lumbar strain and sprain and spinal stenosis without neurogenic claudication. He reported that appellant had multilevel spinal degenerative disease. Dr. Doyle noted that appellant continued to have severe back pain radiating down into his legs. A physical examination revealed negative straight leg raising and 5/5 strength. Under assessment, Dr. Doyle reported a lumbar strain with neurogenic claudication symptoms suggestive of lumbar stenosis.

In an August 15, 2014 report, Dr. Fisher noted that OWCP had accepted cervical, lumbar, and thoracic strains and aggravation of lumbar degenerative disc disease as causally related to appellant's October 20, 2012 employment motor vehicle accident. He related that appellant's physical examination revealed normal gait with no obvious lower extremity motor weakness, full cervical range of motion, no tenderness on palpation of the cervical muscles, negative bilateral Spurling test, no tenderness on palpation of the thoracic and lumbar regions, decreased lateral bending and flexion, and no tenderness over the S-1 joint. Dr. Fisher reviewed a January 18, 2013 MRI scan which revealed severe L2-3 disc bulging with bilateral facet hypertrophy and no significant spinal stenosis; moderate L3-4 and L4-5 disc bulging with bilateral facet hypertrophy; a radial tear with borderline spinal stenosis at L3-4, an L5 radial tear over the posterior disc, and L5-S1 severe diffuse disc bulging with significant spinal stenosis.

Based on review of appellant's medical records, the statement of accepted facts, and appellant's physical examination, Dr. Fisher opined that appellant's lumbar, cervical, and thoracic strains had resolved without residuals. He reported no objective clinical findings showing any cervical, thoracic, or lumbar strains. Dr. Fisher explained that appellant's soft tissue injuries would have resolved or healed within a few weeks to two months following the injury. With respect to the lumbar degenerative disc disease aggravation, he found that appellant continued to have residuals based on the reduced flexion and restricted lateral bending. However, Dr. Fisher opined that appellant required no further definitive treatment for this condition other than exercise and over the counter medications, as needed. He concluded that appellant was disabled from performing his date-of-injury job, but was capable of performing light-duty work. Dr. Fisher indicated that appellant's work restrictions were permanent due to chronic aggravation of his lumbar degenerative disc disease.

On October 22, 2014 OWCP referred appellant to Dr. Robert Jacob, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Drs. Fisher

and Doyle on the issue of appellant's work capacity. It also requested Dr. Jacob's opinion on whether appellant continued to have residuals of his accepted employment conditions.

In a January 30, 2015 report, Dr. Jacob related that appellant's accepted conditions were cervical, thoracic, and lumbar strains and aggravation of lumbar degenerative disc disease. He provided a history of appellant's medical treatment and noted appellant's current symptoms. Dr. Jacob indicated that appellant's physical examination revealed normal stride and arm swing, nonantalgic gait, no tenderness on palpation of paracervical muscles, no C5-T1 sensory deficits, no lumbar paravertebral muscle spasms, and no radiculopathy complaints.

Dr. Jacob related that appellant's 2014 electromyography (EMG) study was normal and showed no evidence of any neurologic impairment. In addition, he observed that sequential objective tests established that appellant's conditions had improved. Dr. Jacob opined that appellant was capable of returning to his date-of-injury position with restrictions based on age-related degenerative changes. He found no objective evidence showing any residuals of the accepted cervical, thoracic, and lumbar strains. Dr. Jacob concluded that appellant had a temporary aggravation of his preexisting degenerative disc disease, which had not been permanently aggravated by the employment injury. He explained that his conclusion was based on comparison of EMG studies performed in 2013 and 2014.

On February 26, 2015 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the opinion of Dr. Jacob, the impartial medical examiner. Appellant was afforded 30 days to submit additional medical evidence. No response was received within the time allotted.

By decision dated April 2, 2015 OWCP finalized the proposed termination of appellant's wage-loss compensation and medical benefits, effective April 5, 2015.

In an April 9, 2015 letter, counsel requested a telephonic hearing before an OWCP hearing representative, which was held on November 19 2015.

By decision dated February 26, 2016, an OWCP hearing representative affirmed the April 2, 2015 decision. It found that Dr. Jacob's opinion that appellant's accepted conditions had resolved with no residuals or disability constituted the special weight of the medical opinion evidence.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>3</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

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<sup>3</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

Section 8123(a) of FECA provides in pertinent part: 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>6</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.<sup>7</sup>

### ANALYSIS

The Board finds that OWCP properly relied upon Dr. Jacob's opinion in terminating appellant's wage-loss compensation and medical benefits effective April 5, 2015.

OWCP accepted appellant's claim for cervical, lumbar, and thoracic sprains and aggravation of lumbar or lumbosacral degenerative L5-S1 intervertebral disc disease. It referred appellant to Dr. Jacob to resolve the conflict in the medical opinion evidence between Drs. Fisher and Doyle on the issue of appellant's work capacity. OWCP also requested Dr. Jacob's opinion on whether appellant continued to have residuals due to his accepted employment conditions. The Board finds that there was a conflict in the medical opinion evidence on appellant's work capacity and whether the accepted lumbar, cervical, and thoracic strains had resolved.

In a January 30, 2015 report, Dr. Jacob reviewed appellant's history of injury and medical history. Based on an accurate factual and medical background, he opined that appellant did not have residuals of the accepted cervical, lumbar, and thoracic sprains, and that appellant's aggravation of lumbar or lumbosacral degenerative L5-S1 intervertebral disc disease had ceased. Dr. Jacob explained that appellant was capable of working with restrictions. Appellant's current work restrictions were due to age-related degenerative changes and unrelated to the accepted conditions. Dr. Jacob found no evidence of the accepted lumbar, cervical, and thoracic strains.

The Board finds that Dr. Jacob provided a rationalized medical opinion in explaining why appellant no longer had any residuals or disability due to the accepted conditions. As an impartial medical examiner, Dr. Jacob's report is entitled to special weight with respect to his conclusion that the accepted lumbar, thoracic, and cervical strains resolved without any residuals, based on the objective evidence of record.

At the time of the referral, however, there was no conflict in the medical opinion evidence regarding whether the accepted aggravation of appellant's preexisting L5-S1

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<sup>4</sup> *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>5</sup> *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>6</sup> 5 U.S.C. § 8123(a); *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>7</sup> *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

intervertebral disc disease had resolved. If an impartial medical examiner's report is not entitled to the special weight afforded to an opinion of an impartial medical specialist, his or her report can still be considered for its own intrinsic value and can still constitute the weight of the medical evidence.<sup>8</sup> Thus, Dr. Jacob's opinion would not be entitled to special weight as to whether appellant's aggravation of his preexisting L5-S1 intervertebral disc disease had resolved. Rather his opinion will be weighed for its own intrinsic value as that of a second opinion physician.

The Board finds that, as a referral physician, Dr. Jacob's opinion that the aggravation of the preexisting L5-S1 degenerative intervertebral disc disease was temporary constitutes the weight of the medical opinion evidence. Dr. Jacob found that there was a temporary aggravation of appellant's underlying L5-S1 degenerative disc disease due to the October 20, 2012 employment-related motor vehicle accident. He found that appellant did not require further medical treatment due to the accepted aggravation of L5-S1 degenerative disc disease and that appellant's continuing disability was not due to his accepted employment injury, but due to his age and preexisting degenerative condition. Dr. Jacob indicated that the aggravation of the preexisting lumbosacral degenerative L5-S1 intervertebral disc disease was temporary and not permanent. He explained that his conclusion was based on the evidence that appellant's most recent 2014 EMG results were normal. Dr. Jacob also explained that sequential objective tests established that appellant's condition had improved.

For the above reasons, the Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 5, 2015.

On appeal counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds counsel's arguments are not substantiated.

### **CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 5, 2015.

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<sup>8</sup> See *D.B.*, Docket No. 16-0648 (issued July 21, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 26, 2016 is affirmed.

Issued: October 24, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board