

FACTUAL HISTORY

On October 19, 2012 appellant, then a 34-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained mild arthritic changes in her lower back as a result of her employment duties. She first became aware of her condition and realized that it resulted from her employment on August 21, 2012. Appellant stopped work on August 28, 2012.

OWCP accepted appellant's claim for lumbar sprain. It paid disability compensation and placed her on the periodic rolls, effective December 4, 2012. Appellant continued to receive medical treatment.²

In a May 22, 2013 report, Suzanne Meeks, a nurse practitioner, indicated that she had evaluated appellant for back pain and headache related to a workers' compensation claim from August 2012. She explained that appellant had sustained a back injury in 2005 as a result of lifting a mail tub at work and was off work for three and a half years. Ms. Meeks related that appellant returned to modified duty, but injured her back again due to the repetitive movements of her job. She reported that physical examination of appellant's back demonstrated decreased range of motion to the lumbosacral spine with no swelling or erythema. Ms. Meeks diagnosed back pain and radiculopathy.

On August 27, 2013 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a copy of the record, to Dr. Allan Brecher, a Board-certified orthopedic surgeon and a second opinion examiner, to determine whether she still suffered residuals and remained disabled due to her work-related injury.

In an October 14, 2013 report, Dr. Brecher indicated that he had reviewed the SOAF and appellant's history. He discussed her employment duties as a mail processing clerk and her medical records. Dr. Brecher noted that a December 4, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine showed moderate arthritic changes of the lower lumbar facet joints and slight disc degeneration at L5-S1. Upon physical examination of appellant's lumbar spine, he observed tenderness along the right greater than left paraspinal muscles and some tenderness less than that over the sacroiliac (SI) joints. Straight leg raise testing was negative. Dr. Brecher opined that appellant's back pain was more subjective than objective and diagnosed low back pain. He concluded that she had no residuals of her work-related lumbar sprain and that she was able to return to full-time work. Dr. Brecher included a work capacity evaluation form (Form OWCP-5), which clarified that appellant was capable of performing her regular, full-duty job.

On February 20, 2014 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because her work-related injury had resolved. It found that the weight of medical evidence rested with the October 14, 2013 second opinion report of Dr. Brecher, who found that her work-related lumbar condition had ceased and that she was no longer disabled as a result of her accepted injury. Appellant was afforded 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

² Appellant had a prior work injury on June 21, 2005 which was accepted for lumbar sprain under OWCP File No. xxxxxx420. Benefits were terminated for this injury on January 25, 2008.

In a February 28, 2014 electromyography and nerve conduction velocity (EMG/NCV) study reports, Dr. Ryan Unger, a physical medicine and rehabilitation specialist, indicated that the motor and sensory NCV could not be obtained due to significant background interference, but that the EMG study was abnormal and revealed evidence suggestive of a right L5-S1 radiculopathy (possibly L4 as well), which appeared chronic in nature.

Appellant also sought treatment from Dr. Barry S. Ring, a pain management and anesthesiology specialist. In a March 11, 2014 note, Dr. Ring indicated that she was off work for ongoing symptoms of pain from her lumbar spine injury. He provided handwritten examination notes dated February 25 and March 1, 2014.

In a March 19, 2014 new consultation report, Dr. Ring related that appellant had a work-related accident on or about August 21, 2012, which she described as an aggravation of her old work injury. He related that she continued to complain of low back pain and he noted that she had not returned to work. Dr. Ring provided examination findings and diagnosed lower back pain, lumbar disc syndrome, and multiple areas of trigger point pain. He recommended continued pain management treatment and that appellant remain off work.

OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective April 2, 2014 in a decision of that same date. It found that the weight of medical evidence rested with Dr. Brecher, the second opinion physician, who had determined, in an October 14, 2013 report, that she no longer had any residuals of the work-related lumbar strain and could perform the duties of her date-of-injury job without restrictions. OWCP further determined that the reports by Dr. Ring, appellant's treating physician, were of little probative value and were insufficient to establish a conflict in medical opinion evidence.

On October 7, 2014 OWCP received appellant's request for reconsideration. In an attached statement appellant explained that, if she were to return to work her job duties would only aggravate and worsen her back injury. She alleged that she submitted paperwork which supported her claim that she still had residuals of her on-the-job injury.

Appellant submitted a report dated March 14, 2014 by Ms. Meeks, a nurse practitioner, who had examined her for continued complaints of back pain. Ms. Meeks reviewed appellant's history and provided findings upon physical examination. She diagnosed back pain and muscle spasticity.

On May 5, 2014 appellant was treated in the emergency room by Charity Donahue, a nurse practitioner. In discharge records, Ms. Donahue noted diagnoses of back pain and lumbosacral radiculopathy.

Dr. Ring continued to treat appellant. In April 15 and May 7, 2014 reports, he related appellant's complaints of progressively worsening lower back pain, which began in 2012. Upon physical examination, Dr. Ring reported positive Kemp's, Facets, Lasegues, Fabere's, Bragard's, and trigger points on the left and right of appellant's lumbar spine. He diagnosed low back pain, lumbar disc syndrome without myelopathy, and cervical disc syndrome with myelopathy. Dr. Ring recommended that appellant remain off work until further notice.

In a June 19, 2014 MRI scan of the lumbar spine, Dr. Ayis Pyrros, a diagnostic radiologist, observed normal lumbar lordosis and no abnormalities of alignment. He diagnosed stable minimal spondylitic changes of the lumbar spine with no significant interval progression, mild bilateral L5-S1 foraminal stenosis with mild disc desiccation and loss of distal height at L5-S1, mild facet arthropathy seen at L4-5 and L5-S1, slightly advanced bilateral SI joint arthrosis, and preserved vertebral body heights.

Appellant received treatment from Dr. Michael J. Spence, Board-certified in physical medicine and rehabilitation. In a September 12, 2014 report, Dr. Spence related her complaints of ongoing lower back pain since an August 2012 work-related injury. He reviewed appellant's history and observed tenderness and limited lumbar range of motion of the lumbar spine. Dr. Spence diagnosed L4-5, L5-S1 facet arthritis with stenosis with sacroilitis and lumbar strain and lumbar facet pain. He reported that residuals of appellant's work-related injury included lumbar facet pain. Dr. Spence opined that there was insufficient medical evidence available to assess work capacity and recommended a comprehensive functional capacity examination.

By decision dated January 5, 2015, OWCP denied modification of its April 2, 2014 termination decision. It found that the new medical evidence submitted was insufficient to overcome the weight of medical evidence given to Dr. Brecher, the second opinion examiner, who opined in his October 14, 2013 report that appellant no longer had residuals of her work-related lumbar injury and was capable of returning to work.

Appellant again requested reconsideration on June 10, 2015. She included an October 8, 2012 lumbar spine MRI scan report by Dr. Pyrros who reported mild spondylitic changes of the lumbar spine with no significant interval progression, mild bilateral L5-S1 foraminal stenosis with mild disc desiccation and loss of disc height at L5-S1, and mild facet arthropathy scan at L4-5 and L5-S1. Appellant also resubmitted Dr. Unger's February 28, 2014 EMG/NCV report.

Dr. Bruce J. Montella, an orthopedic surgeon, began to treat appellant. In a May 22, 2015 narrative report, he noted her complaints of bilateral low back pain following an August 21, 2012 employment injury. Dr. Montella reviewed appellant's history and provided findings on physical examination of her lumbar spine. He observed mild tenderness and lumbar spasm upon palpation of the lower spine. Dr. Montella reported diminished range of motion in flexion and extension with pain. Strength testing was 5/5 bilaterally and straight leg raise testing was 5/5 bilaterally. Dr. Montella diagnosed work-related lumbar disc herniation.

In a June 9, 2015 letter, Dr. Montella indicated that he initially examined appellant on May 22, 2015 for a work-related lumbar spine injury. He noted that she worked as a mail processing clerk, which required repetitive heavy lifting, bending, squatting, twisting, turning, and reaching. Dr. Montella indicated that examination findings of appellant's lumbar spine revealed mild tenderness and spasms with no evidence of a mass. He reported that range of motion was diminished and painful. Straight leg raise testing was positive bilaterally. Dr. Montella noted that a lumbar spine MRI scan dated October 8, 2012 revealed a lumbar disc herniation at the L4-5 level and a February 28, 2014 EMG/NCV showed multiple disc herniations. He opined that appellant sustained a work-related injury due to the repetitive work and heavy lifting required by her job. Dr. Montella recommended that she remain off work.

By decision dated September 28, 2015, OWCP denied modification of its January 5, 2015 decision. It found that the weight of medical evidence rested with the October 14, 2013 report of Dr. Brecher, the second opinion physician, who found that appellant no longer had any residuals of her work-related lumbar strain and was capable of working full duty. OWCP found that Dr. Montella's medical opinion was of little probative value because it was not based on a complete and accurate medical history.

On December 29, 2015 appellant again requested reconsideration.

In a letter dated September 28, 2015, Dr. Montella noted that appellant had a work-related lumbar strain and he believed that a second diagnosis of lumbar disc herniation should accompany the lumbar strain diagnosis. He reported that he reviewed Dr. Brecher's October 14, 2013 second opinion evaluation and disagreed with his conclusions. Dr. Montella explained that appellant had objective evidence of work-related injury in the form of her history, physical examination findings, radiographs, clinical course, and responses to treatment. He opined that she suffered lumbar disc herniation and lumbar strain conditions from her employment injury and that she had ongoing residuals. Dr. Montella noted that it would be unreasonable for appellant to participate at work in any way.

Dr. Montella continued to reiterate in an October 25, 2015 letter that appellant sustained an accepted lumbar sprain injury due to her duties as a mail processing clerk. He reported that there was an abundance of objective medical evidence, including physical examination findings, radiographs, clinical course, response to treatment, and serial examinations in support of the opinion that her lumbar disc injury/herniation was directly related to the August 21, 2012 work injury. Dr. Montella indicated that appellant was going to try to return to light-duty work.

In a December 15, 2015 MRI scan of appellant's lumbar spine, Dr. Matthew J. Evon, a diagnostic radiologist, reported low-grade generalized lumbar spondylosis without high-grade spinal stenosis. He indicated that there was early degenerative desiccation of the L5-S1 disc, but the other discs remained decently hydrated.

In a December 16, 2015 letter, Dr. Montella reviewed appellant's history of injury for her lumbar strain and her duties as a mail processing clerk. He indicated that he reviewed Dr. Brecher's October 14, 2013 report and a December 15, 2015 MRI scan report. Dr. Montella reported that he disagreed with Dr. Brecher's conclusions. He explained that, although appellant had ongoing residuals from her prior injury, her lumbar condition was substantially worsened by her most recent August 21, 2012 employment injury. Dr. Montella indicated that her prior lumbar sprain and more recent lumbar disc herniation were similar as they both included her lumbar spine and were both work-related injuries. He noted that both injuries caused past and ongoing problems to date. Dr. Montella explained that while sprains got better slowly over time disc herniations tended to linger on. He opined that appellant sustained a work-related injury on August 21, 2012 due to the repetitive work and heavy lifting that her job required and that it would be unsafe for her to return to any kind of work at this time. Dr. Montella also requested that appellant's claim be accepted for lumbar disc herniation as related to her work injury on August 21, 2012. He noted that the lumbar disc herniations were proven through symptoms, examinations, and MRI scans. Dr. Montella indicated that appellant's duration of disability was unknown at this time.

OWCP determined that Dr. Montella's opinion was sufficient to create a conflict in medical opinion with Dr. Brecher, the second opinion physician. It referred appellant to Dr. Donald W. Kucharzyk, D.O, a Board-certified orthopedic surgeon and impartial medical examiner, to resolve the conflict in medical opinion regarding whether she continued to suffer residuals of her accepted lumbar sprain condition and was capable of returning to work. OWCP also requested that he opine whether her claim should be expanded to include lumbar disc herniation at L4-5 and L5-S1.

In a May 1, 2016 report, Dr. Kucharzyk indicated that he reviewed appellant's medical records and provided an accurate description of her duties as a mail processing clerk. He noted that she tried to return to work on January 16, 2016, but was unable to continue to work due to the increasing intensity of pain. Dr. Kucharzyk related that appellant continued to complain of back pain along with soreness, stiffness, and weakness radiating into both lower extremities. Upon physical examination of appellant's lumbar spine, he observed tenderness over the posterior-superior iliac spine, iliac crest, and over the SI joints. Dr. Kucharzyk noted normal alignment and no evidence of any scoliosis. He provided range of motion findings. Dr. Kucharzyk reported that, based upon his evaluation, clinical examination, and review of appellant's history, she suffered from "preexisting degenerative joint disease with degenerative facet arthropathy preexisting with degenerative SI joint arthritis preexisting that were exacerbated by the August 21, 2012 injury." He noted that MRI scan reports from 2011, 2014, and 2015 all consistently showed no acute changes with no evidence of any herniated nucleus pulposus. Dr. Kucharzyk indicated that appellant sustained "an acute exacerbation of facet arthropathy and SI joint arthritis that [wa]s now quiescent (inactive)." He opined that she had completely recovered from these conditions and could return to full-duty work with no restrictions. Dr. Kucharzyk indicated that there was no indication for any surgical intervention, but that appellant could benefit from injections and anti-inflammatories.

In a decision dated May 23, 2016, OWCP denied modification of its September 28, 2016 decision. It found that the special weight of the medical evidence rested with Dr. Kucharzyk, the referee medical examiner, who opined in a May 1, 2016 report that her work-related conditions had resolved and that she was capable of returning to full-duty work.

On May 31, 2016 appellant again requested reconsideration. She asserted that she continued to suffer from preexisting degenerative joint disease with degenerative facet arthropathy and degenerative joint arthritis, which were exacerbated by the August 21, 2012 employment injury.

In a June 3, 2016 report, Dr. Montella provided an accurate description of appellant's October 19, 2012 work injury and her duties as a mail processing clerk. He indicated that he had initially evaluated appellant on May 22, 2015 for complaints of continued back pain. Dr. Montella noted that previous diagnostic examination showed clear evidence of lumbar facet injury at L5-S1 and L4-5 and pointed out that lumbar disc herniations were different than a lumbar sprain. He explained that lumbar sprains improved overtime, but a lumbar disc injury tended to cause recurrence and ongoing problems. Dr. Montella also indicated that disc herniation was consistent with appellant's examination findings of loss of range of motion and tenderness and spasms in her lumbar spine. He reported that there was an abundance of objective medical evidence to support that her work injury caused the injuries as shown on the

MRI scan findings. Dr. Montella noted that he disagreed with the impartial medical examiner that appellant's lumbar conditions were degenerative in nature, and not related to her employment. He noted that her history and examination findings were consistent with the traumatic nature of her injuries as reported on the MRI scans. Dr. Montella opined that appellant still suffered residuals of her prior lumbar sprain and more recent lumbar disc herniation. He also reported that it would be unreasonable and unwise for her to return to any level of work.

By decision dated September 20, 2016, OWCP denied appellant's May 31, 2016 reconsideration request. It found that she had not submitted any evidence to warrant further merit review of her claim under 5 U.S.C. § 8128(a). OWCP determined that Dr. Montella's June 3, 2016 report was cumulative and substantially similar to his previous letters, which were previously considered by OWCP.

LEGAL PRECEDENT -- ISSUE 1

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.³ OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a lumbar strain as a result of her repetitive duties as a mail processing clerk. It terminated her wage-loss compensation and medical benefits, effective April 2, 2014 based on the October 14, 2013 second opinion report of Dr. Brecher. The Board finds that OWCP met its burden of proof to terminate appellant's compensation on April 2, 2014.

OWCP properly determined that Dr. Brecher's second opinion report dated October 14, 2013 constituted the weight of the medical evidence, as of April 2, 2014. Dr. Brecher related that he had reviewed the SOAF and had discussed appellant's employment duties and her medical history with appellant. He noted that a December 4, 2011 MRI scan of her lumbar spine

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

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

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

⁶ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *A.P.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

showed moderate arthritic changes and slight disc degeneration at L5-S1. Dr. Brecher reviewed appellant's examination findings and concluded that her pain complaints were more subjective than objective and that she no longer had any residuals of the work-related lumbar sprain. The Board finds that his report is entitled to the weight of the medical opinion evidence and that it establishes that her employment-related injury and disability had resolved. This report was based on a proper history of injury and found that, while appellant had subjective complaints, objective findings did not support residuals of the accepted lumbar sprain.⁸

The remaining contemporaneous medical evidence submitted prior to the termination is insufficient to overcome the weight afforded to the opinion of Dr. Brecher. Reports from treating physician, Dr. Ring noted appellant's pain complaints, diagnosed lumbar disc syndrome, and recommended that she remain off work. He did not, however, relate that she continued to have residuals or disability due to the accepted lumbar sprain. As such Dr. Ring's reports were of limited probative medical value.⁹

OWCP also received diagnostic studies dated February 28, 2014 from Dr. Unger. While Dr. Unger noted that appellant's EMG was suggestive of a chronic right L5-S1 radiculopathy, he again offered no opinion regarding the accepted condition of lumbar sprain.¹⁰

OWCP also received evidence from a nurse practitioner, however, this evidence is of no probative medical value as nurse practitioners are not considered physicians as defined under FECA.¹¹

LEGAL PRECEDENT -- ISSUE 2

When OWCP meets its burden of proof to terminate appellant's compensation, the burden shifts to appellant to establish that she has continued disability and medical residuals causally related to the accepted employment injury.¹²

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.¹³ The implementing regulations provide that, if a conflict exists between the medical opinion of the employee's physician and

⁸ See *A.W.*, Docket No. 16-1606 (issued January 18, 2017).

⁹ See *J.P.*, Docket No. 16-1103 (issued November 25, 2016). In so far as Dr. Ring diagnosed lumbar disc syndrome, he offered no opinion on causal relationship between this diagnosis and the accepted employment injury.

¹⁰ *Id.*

¹¹ *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

¹² See *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

¹³ 5 U.S.C. § 8123(a); see *Y.A.*, 59 ECAB 701 (2008).

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.¹⁴ When 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.¹⁵

ANALYSIS -- ISSUE 2

Appellant submitted multiple requests for reconsideration of the termination decision and additional medical evidence. OWCP subsequently determined that a conflict in medical opinion existed between Dr. Brecher, OWCP second opinion physician who determined that she no longer suffered residuals or disability causally related to her accepted lumbar sprain, and Dr. Montella, appellant's treating physician who opined that she continued to suffer residuals and disability of her accepted lumbar sprain. It referred appellant to an impartial medical examiner, Dr. Kucharzyk, to resolve the conflict. OWCP determined that the report of Dr. Kucharzyk was entitled to the special weight in denying her claim for ongoing benefits.

The Board finds, however, that Dr. Kucharzyk's opinion was not sufficiently rationalized because it was based on an inaccurate background and accordingly, failed to resolve the conflict in medical opinion evidence. The Board notes that appellant's October 19, 2012 occupational disease claim was accepted for lumbar sprain. In its referral letter OWCP instructed Dr. Kucharzyk to determine whether she had residuals of her accepted work injury. In his May 1, 2016 report, however, Dr. Kucharzyk did not offer any opinion regarding appellant's lumbar sprain condition. On the contrary, he reported that she sustained "an acute exacerbation of facet arthropathy and SI joint arthritis that is now quiescent (inactive)." Dr. Kucharzyk indicated that appellant had completely recovered from these conditions and could return to full duty with no restrictions. Because he failed to address her accepted lumbar condition and attributed her previous disability to conditions which were not accepted by OWCP, his medical opinion is not based on an accurate history and background and is of limited probative value.¹⁶

The Board also notes in this regard that, while OWCP's referral letter referred to a SOAF, the SOAF of record was last updated on August 27, 2013 and was not attached to the referral letter. Dr. Kucharzyk did not mention the SOAF in his May 1, 2016 report, nor did he mention knowledge of the accepted condition in this case. Furthermore, he also failed to opine whether appellant's claim should be expanded to include lumbar disc herniation or the acute exacerbation of facet arthropathy and SI joint arthritis, now quiescent, which he diagnosed.

¹⁴ 20 C.F.R. § 10.321.

¹⁵ *V.G.*, 59 ECAB 635 (2008).

¹⁶ The Board has held that medical reports based on an incomplete or inaccurate factual and medical background are of limited probative value. *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

OWCP procedures provide that accepted conditions must be included in a SOAF and further provide that, when a referral physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is diminished.¹⁷ When OWCP obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, it must secure a supplemental report from the specialist to correct the defect in his original report.¹⁸

The Board finds that Dr. Kucharzyk's opinion was insufficient to resolve the conflict in medical opinion evidence regarding whether appellant continued to have residuals or disability due to her accepted lumbar condition after April 2, 2014.¹⁹ OWCP shall prepare an updated SOAF and then request that he clarify whether she had residuals of the accepted lumbar sprain condition or any other lumbar condition causally related to her accepted employment injury which continued to cause disability after April 2, 2014. After such further development as necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 2, 2014 and that the case is not in posture for decision as to whether she had continuing residuals of the accepted injury after April 2, 2014.²⁰

¹⁷ See *T.W.*, Docket No. 13-1706 (issued January 23, 2014).

¹⁸ *J.B.*, Docket No. 13-1057 (issued November 22, 2013).

¹⁹ See *L.A.*, Docket No. 14-1138 (issued September 9, 2014) (the Board reversed OWCP's decision terminating a claimant's wage-loss compensation and medical benefits because the referee examiner did not acknowledge the claimant's accepted conditions of lumbosacral neuritis or radiculitis).

²⁰ Because of the disposition of the second issue, the third issue regarding appellant's reconsideration request are moot.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed in part, and set aside in part. The case is remanded for further proceedings consistent with this opinion.

Issued: July 6, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board