



## **FACTUAL HISTORY**

On March 25, 1985 appellant, then a 39-year-old part-time clerk, injured her lower back while handling a mail sack that weighed approximately 55 pounds. OWCP accepted her traumatic injury claim (Form CA-1) for lumbosacral strain and herniated nucleus pulposus (HNP) at L4-5 and L5-S1. Appellant received continuation of pay from March 26 through May 9, 1985, and OWCP compensated her for lost wages for the period May 13 through September 29, 1985, at which time she returned to work in a full-time, limited-duty capacity as a distribution clerk. OWCP later accepted a recurrence of disability beginning February 21, 1988, and paid appellant wage-loss compensation for temporary total disability through August 22, 1992. Effective August 22, 1992, appellant returned to work as a part-time (4 hours), modified distribution clerk. OWCP subsequently adjusted her wage-loss compensation based on her earnings as a part-time, modified distribution clerk. On October 23, 1992 it issued a formal loss of wage-earning capacity (LWEC) determination based on appellant's part-time weekly wages (\$318.28) effective August 22, 1992.

Appellant stopped work on October 15, 1993 and subsequently filed a claim for recurrence of disability (Form CA-2a). She reportedly stopped work due to a combination of her lumbar pain and an emotional condition. By decision dated September 21, 1994, OWCP denied appellant's claimed recurrence of disability beginning October 15, 1993.<sup>3</sup> Appellant continued to receive FECA wage-loss compensation for the four hours a day based on the October 23, 1992 LWEC determination.<sup>4</sup>

Effective May 10, 2003, appellant did return to work part time (4 hours daily), as a modified distribution clerk.

By letter dated May 19, 2013, OWCP advised both the employing establishment and appellant that her recent reemployment would not affect her entitlement to FECA wage-loss compensation for four hours a day because she had already been rated on the same position in 1992. It enclosed a copy of its October 23, 1992 LWEC determination.

For more than a decade afterwards, OWCP continued to compensate appellant for four hours a day based on the October 1992 LWEC determination.

Appellant submitted a February 13, 2014 report from Dr. David Weiss, a rheumatologist, who diagnosed chronic pain related to fibromyalgia. Dr. Weiss noted that appellant had a history of a work-related lower back injury, multilevel degenerative disc disease, and osteoporosis.

OWCP referred appellant to Dr. Douglas Lurie, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her employment-related

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<sup>3</sup> OWCP found that appellant had not established that her accepted lumbar condition had materially worsened to the extent that she was no longer capable of performing her part-time, modified distribution clerk position. It further explained that it had not accepted a psychological/emotional condition in connection with appellant's March 25, 1985 employment injury.

<sup>4</sup> Although eligible for a disability retirement through the Office of Personnel Management, appellant elected to continue to receive FECA wage-loss compensation.

conditions. In his June 26, 2014 report, Dr. Lurie reviewed a statement of accepted facts, the history of the injury, and the medical evidence of record. He conducted a physical examination and found that appellant showed no trouble getting up from a chair without assistance. Appellant was easily able to get into a supine position and had a negative straight leg-raising test. She exhibited no pain with range of motion of either of her hips and she had no tenderness to touch in the hip bursa on both sides. In the prone position, appellant had no tenderness to touch in the lumbar spine, no difficulty going from prone to standing with greater than 90 degrees of lumbar flexion, and no obvious strength deficits, skin lesions, or deformity. Dr. Lurie diagnosed low back pain with degenerative change and opined that appellant's March 25, 1985 work injury was unrelated to her current complaints. He noted that appellant had degenerative changes in her back at multiple levels, but he did not see any correlation between her current symptoms and the accepted conditions. Dr. Lurie concluded that appellant was capable of working regular duty and any required work restrictions were due to age-related degenerative changes, and not employment related.

Appellant submitted Dr. Weiss' follow-up treatment reports dated July 21, November 17, 2014, and February 23, 2015. He diagnosed chronic low back pain and postmenopausal osteoporosis. In his February 23, 2015 report, Dr. Weiss indicated that appellant's chronic low back pain caused her to be symptomatic most days of the week. Appellant also submitted a February 23, 2015 diagnostic report regarding her calcium and serum levels.

On April 8, 2015 OWCP proposed to terminate wage-loss compensation and medical benefits relying on Dr. Lurie's June 26, 2014 report as her accepted conditions had ceased without residuals. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination of FECA benefits.

In response, appellant submitted an April 20, 2015 diagnostic report regarding her vitamin D levels.

By decision dated June 9, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found the weight of the evidence was afforded to the opinion of Dr. Lurie.

On July 8, 2015 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Prior to the hearing she submitted reports dated February 23, 2015 through January 21, 2016 from Dr. Weiss, who diagnosed chronic pain with fibromyalgia, chronic low back pain with sciatica, spondylosis, degenerative disc disease, and intermittent lumbar radiculopathy, in addition to osteoporosis with vitamin D deficiency. Dr. Weiss opined that appellant's conditions greatly interfered with her activities of daily living and household chores.

On March 15, 2016 a telephonic oral hearing was held before an OWCP hearing representative.

By decision dated May 3, 2016, OWCP's hearing representative affirmed the June 9, 2015 termination decision finding that the weight of the evidence was afforded to the opinion of Dr. Lurie.

## LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>5</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 related to the employment.<sup>6</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>8</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>9</sup>

## ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for a lumbosacral strain and HNP at L4-5 and L5-S1. It subsequently terminated her wage-loss compensation and medical benefits effective June 9, 2015 based on the June 26, 2014 report from Dr. Lurie, a Board-certified orthopedic surgeon serving as a second opinion examiner. On appeal, appellant contends that OWCP's termination is unjustified as the medical evidence of record established that her disability has neither ceased nor lessened.

OWCP had referred appellant to Dr. Lurie for a second opinion evaluation to determine the nature and extent of her accepted employment-related conditions. In his June 26, 2014 report, Dr. Lurie diagnosed low back pain with degenerative changes and opined that appellant's March 25, 1985 work injury was unrelated to her current complaints. He found that appellant showed no trouble getting up out of a chair with no assistance and was easily able to get into a supine position. Appellant's straight leg-raising test was negative and she had no pain with range of motion in the hips. She also had no tenderness to touch in the hip bursa on both sides and no tenderness to touch in the lumbar spine. Appellant had greater than 90 degrees of lumbar flexion and demonstrated no obvious strength deficits, skin lesions, or deformity. Dr. Lurie noted that appellant had degenerative changes in her back at multiple levels, but he did not see any correlation between her current symptoms and the accepted conditions. He concluded that appellant was capable of working regular duty. Dr. Lurie explained that any work restrictions would be due to appellant's age-related degenerative changes.

The Board finds that Dr. Lurie's report represented the weight of the medical evidence at the time OWCP terminated benefits and that OWCP properly relied on his opinion in terminating

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<sup>5</sup> See *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>6</sup> See *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>7</sup> See *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>8</sup> See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>9</sup> See *James F. Weikel*, 54 ECAB 660 (2003).

appellant's wage-loss compensation and medical benefits. Dr. Lurie had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is also a specialist in the appropriate field. Dr. Lurie's opinion is based on a proper factual and medical history, and his report contained a detailed summary of the history of the claim. Additionally, he addressed the medical records, examined appellant, and reached a reasoned conclusion regarding appellant's conditions.<sup>10</sup> At the time benefits were terminated, Dr. Lurie found no basis on which to attribute any residuals or continued disability to appellant's accepted conditions. His June 26, 2014 report is both probative and reliable evidence regarding appellant's current lumbar condition. Accordingly, the Board finds that Dr. Lurie's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions.

In his reports, Dr. Weiss diagnosed chronic pain related to fibromyalgia, chronic low back pain, and postmenopausal osteoporosis. He noted that appellant had a history of a work-related lower back injury and multilevel degenerative disc disease, and reported that appellant's chronic low back pain caused her to be symptomatic most days of the week. However, Dr. Weiss did not provide any medical rationale explaining how appellant's current condition was causally related to her March 25, 1985 employment injury. Thus, his reports are of diminished probative value and insufficient to overcome the weight of Dr. Lurie's report or to create a medical conflict.<sup>11</sup>

Other medical evidence of record, including diagnostic test reports, is of limited probative value as it does not contain an opinion from a physician as to whether appellant continues to have residuals from the accepted lumbar conditions.

Accordingly, the Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective June 9, 2015.

### **LEGAL PRECEDENT -- ISSUE 2**

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of the reliable, probative, and substantial evidence that she had an employment-related disability which continued after termination of benefits.<sup>12</sup>

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<sup>10</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>11</sup> See *S.S.*, Docket No. 15-1160 (issued January 11, 2016). The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion. *James Mack*, 43 ECAB 321 (1991).

<sup>12</sup> See *A.B.*, Docket No. 14-1510 (issued October 23, 2014).

## ANALYSIS -- ISSUE 2

On appeal, appellant contends that she continues to suffer from her accepted lumbar sprain and herniated discs. The Board finds, however, that appellant has not met her burden of proof to establish any continuing employment-related residuals or disability.

After OWCP's June 9, 2015 termination decision, appellant submitted additional medical evidence which she felt established that she was entitled to compensation due to residuals or disability of her accepted employment-related injuries. Given that the Board has found that OWCP properly relied on the opinion of its referral physician, Dr. Lurie, in terminating appellant's compensation effective June 9, 2015, the burden shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and finds that it is insufficient to establish that she had any continuing employment-related residuals or disability after June 9, 2015.

In his reports dated February 23, 2015 through January 21, 2016, Dr. Weiss diagnosed chronic pain with fibromyalgia, chronic low back pain with sciatica, spondylosis, degenerative disc disease, intermittent lumbar radiculopathy, and osteoporosis with vitamin D deficiency. He failed to provide a well-rationalized explanation as to how and whether these conditions, which have not been accepted by OWCP, were causally related to appellant's employment injuries.<sup>13</sup> Thus, Dr. Weiss' reports are of diminished probative value and insufficient to overcome the weight accorded Dr. Lurie's report as the second opinion examiner or to create a new conflict.<sup>14</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

## CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective June 9, 2015, as her accepted conditions had ceased without residuals. The Board further finds that appellant has not met her burden of proof to establish any continuing employment-related residuals or disability on or after June 9, 2015.

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<sup>13</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>14</sup> See *Dorothy Sidwell*, 41 ECAB 857 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 3, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 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