



## **ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 6, 2015; and (2) whether appellant met his burden of proof to establish continuing disability after October 6, 2015 causally related to the accepted July 17, 2013 employment injury.

## **FACTUAL HISTORY**

On July 17, 2013 appellant, then a 49-year-old immigration enforcement agent, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his back while picking up a box of files in his cubicle. He stopped work on the date of injury. OWCP accepted the claim for a thoracic strain. OWCP paid appellant wage-loss compensation from September 1, 2013 to February 7, 2015 on the supplemental rolls, and on the periodic rolls commencing February 8, 2015.

On August 25, 2014 OWCP referred appellant to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding appellant's current condition and disability status.<sup>3</sup>

In a report dated September 8, 2014, Dr. Lakin reviewed the statement of accepted facts and the medical record, and provided results on examination. He noted minimal tenderness in the upper midline thoracic. Dr. Lakin reviewed magnetic resonance imaging (MRI) scans. A May 28, 2009 MRI scan showed T6-7 and T8-9 disc bulges and no significant myelopathy or spinal stenosis while a May 24, 2013 MRI scan showed T8-9 central posterior herniated disc. Dr. Lakin noted appellant's minimal thoracic tenderness was the only objective finding and there were no objective findings of a thoracic disc herniation. He reported that appellant's symptoms were consistent with the diagnosis of a thoracic sprain. Dr. Lakin noted that, while appellant had a preexisting thoracic pathology, based on prior MRI scans, he saw no aggravation caused by the accepted July 17, 2013 work injury. Dr. Lakin opined that appellant's accepted thoracic sprain had resolved without residual. Regarding appellant's disability status, he related that appellant had been disabled from July 17, 2013 until his examination. However, appellant could now return to full-duty work with no restrictions and that no further medical treatment was required.

In disability notes dated October 3 and 31 and December 5, 2014, Dr. John Joseph Smith, a Board-certified internist and treating physician, related that appellant would continue to be disabled from work until January 9, 2015.

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<sup>3</sup> OWCP, in a July 24, 2014 letter, had referred appellant for a second opinion evaluation with Dr. Dana Mannor, a Board-certified orthopedic surgeon, on August 7, 2014 at 12:00 p.m. Appellant failed to appear for the appointment. Following an August 11, 2014 notice proposing to suspend his benefits for failing to attend a scheduled examination under 5 U.S.C. § 8123(d), appellant advised OWCP that he had been out of the country on the date of the examination. He provided copies of his airline tickets showing that he had been traveling outside the country. OWCP subsequently referred appellant to Dr. Lakin.

On November 5, 2014 OWCP requested a supplemental report from Dr. Lakin clarifying his opinion regarding whether appellant continued to have residuals of the accepted thoracic sprain due to conflicting answers and findings in his report.

Dr. Lakin, in a November 6, 2014 addendum, reiterated that appellant had objective evidence of minimal upper midline thoracic tenderness; however, appellant had excellent spinal motion and was neurologically intact.

On November 19, 2014 OWCP requested further clarification from Dr. Lakin as to why he determined that appellant was capable of returning to full-duty work based on the objective finding of minimal upper thoracic tenderness and why he concluded that appellant's thoracic sprain had resolved.

In a December 3, 2014 second addendum, Dr. Lakin reported that appellant's thoracic tenderness on palpation was minimal and would not impact his ability to work. He explained that appellant's intact upper and lower extremity neurological function and no limitation of his thoracic motion or strength, established that he could return to full-duty, full-time work. Dr. Lakin also explained that appellant had sustained a thoracic sprain, based on clinical findings and history. Appellant's thoracic sprain had resolved with no residuals or disability because appellant lacked any significant findings which would require further treatment.

On January 8, 2015 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits based on Dr. Lakin's opinion that his thoracic sprain had resolved without residuals or disability.

In a January 19, 2015 progress note, Dr. Dhimant J. Balar, an examining osteopath Board-certified in internal medicine, related appellant's history of injury, symptoms, and recent medical treatment. He noted appellant's constant upper back pain following the accepted July 2013 work injury. Dr. Balar also noted that a May 24, 2013 MRI scan showed T8-9 disc herniation without root compression and right-sided C5-6 herniated nucleus pulposus, as well as scattered degenerative changes. He explained that appellant's physical examination findings included tenderness on palpation of the lower cervical muscles, marked limited cervical range of motion due to pain, paraspinal muscle spasm, positive Spurling's test, decreased bilateral shoulder range of motion, and tenderness on palpation bilateral deltoid muscles. Dr. Balar diagnosed cervical radiculopathy, cervical intervertebral disc degeneration, C5-6 herniated disc, shoulder impingement syndrome, shoulder/arm sprain/strain, and intervertebral disc displacement. He recommended that appellant not return to work due to his cervical and back pain. However, Dr. Balar also noted that appellant was currently not working based on a treating psychiatrist's recommendation.

By letter dated February 5, 2015, counsel disagreed with OWCP's proposal to terminate appellant's compensation benefits. He contended that appellant's disability extended beyond his back condition and that he also suffered from a disabling post-traumatic stress disorder (PTSD).

On February 11, 2015 OWCP received additional evidence. In an April 24, 2013 report, Dr. Jacob Jacoby, a treating psychiatrist, provided a history of appellant's illness and that he was

upset due to being passed over for promotion. He related appellant's diagnoses as panic disorder, and dependent personality traits.

In a January 20, 2015 report, Angelo F. Contino, Ph.D. and clinical psychologist, advised that appellant was under his care for treatment of PTSD. He noted appellant's symptoms, work duties, and work assignments. Dr. Contino attributed appellant's PTSD to appellant's work duties and assignments as an immigration enforcement agent. He reported that appellant felt frustrated due to his lack of promotion, which he attributed to cronyism and ethnic prejudice.

Dr. Patrick Rowan, a treating psychiatrist, and Christopher Nackos, a licensed certified social worker, in a January 21, 2015 report noted that appellant had been treated for major depression, PTSD, and obsessive-compulsive disorder. He had first been admitted to the treatment program on January 12, 2014 and had been hospitalized from December 30, 2014 through January 8, 2015.

In a January 24, 2015 report, Dr. Thomas D'Amato, a treating psychiatrist, noted that he had treated appellant for major depression and PTSD since February 18, 2014. He reported that appellant had periods of hospitalizations for these conditions. Dr. D'Amato opined that appellant was disabled from work due to past work incidents and the diagnosed conditions.

Progress notes from Dr. Anatoliy Yanovskiy, a treating psychiatrist, dated January 26, 2015, diagnosed PTSD exacerbated by marital and work factors. He provided a history of appellant's treatment and hospitalizations. Dr. Yanovskiy opined that appellant was totally disabled from work due to his PTSD caused by his work and home stress.

In a February 3, 2015 report, Dr. Smith provided a history of the July 17, 2013 work injury and opined that it caused cervical, right shoulder, and thoracic injuries. He opined that appellant was unable to perform the duties of an immigration enforcement agent. Dr. Smith noted that appellant continued to have cervical and thoracic pain, herniated cervical and thoracic discs as well as lumbago and right shoulder problems. He diagnosed panic disorder, PTSD, depression, cervical sprain/strain due to herniated discs and osteoarthritis/osteoarthritis, thoracic herniated discs, persistent mechanical strain/sprain syndrome, low back pain, lumbago, and myofascial pain. Dr. Smith noted that appellant had experienced two mental breakdowns and had been institutionalized twice. He concluded that appellant currently was disabled from work due to his psychiatric conditions and musculoskeletal issues.

On June 25, 2015 OWCP referred appellant to Dr. Dean Carlson, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Smith, appellant's treating physician, and Dr. Lakin, an OWCP referral physician, as to whether appellant had residuals or disability due to the accepted employment injury, and whether there was a causal relationship between any other current condition and the accepted July 17, 2013 work injury.

In a July 16, 2015 report, Dr. Carlson concluded that appellant no longer had any residuals or disability due to the accepted thoracic strain based on a review of the statement of accepted facts, the medical record, medical history, and physical examination. He observed that appellant injured his thoracolumbar back on July 17, 2013 while moving file boxes, that

appellant stopped work that day, and that he had not returned. Dr. Carlson noted that appellant had related that his back pain prevented him from working and had impacted his daily personal activities. Appellant also had related feelings of depression due to his back pain.

Appellant's physical examination revealed no cervical muscle local tenderness, normal cervical range of motion, diffuse tenderness on palpation of the second thoracic spinous process to the fourth lumbar spinous process, normal upper and lower extremity sensory testing, and normal upper extremity motor power. Review of a May 24, 2013 MRI scan showed a nonwork-related T8-9 central posterior herniated disc, which was now resolved. Dr. Carlson reported appellant's accepted diagnosis as thoracic strain. Nonwork-related diagnoses included cervical radiculopathy, cervical intervertebral disc degeneration, C4-5 herniated disc, shoulder impingement syndrome, shoulder and arm sprain/strain, and intervertebral disc displacement. Dr. Carlson concluded that appellant's accepted thoracic strain had resolved based on full cervical range of motion and no cervical or thoracic osteoarthritis findings on examination. He further found no disability or residuals from working due to the accepted July 17, 2013 work injury. Next, Dr. Carlson opined that appellant's claim should not be expanded to include additional conditions.

On August 17, 2015 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits based on the opinion of the impartial medical examiner (IME), Dr. Carlson, that appellant's accepted employment injury had resolved without residuals or disability.

In a September 15, 2015 letter, counsel disagreed with OWCP's proposal to terminate appellant's benefits. He contended that appellant's disability extended beyond his back condition and requested that appellant's claim be expanded to include additional unspecified conditions.

In a September 10, 2015 updated report, Dr. D'Amato related appellant's complaints, medical history, treatment provided, and mental status examination. Diagnoses included rule out PTSD, major depression, panic disorder, generalized anxiety disorder, and obsessive-compulsive disorder. Dr. D'Amato noted that appellant had complaints of chronic thoracic herniated disc pain. He reviewed appellant's job description and opined that appellant was unable to perform the duties of his position, and was disabled from any work activity. Dr. D'Amato also opined that if appellant returned to work he would decompensate.

Dr. Smith, in a September 15, 2015 report, reiterated his opinion that appellant was totally disabled from performing his usual employment due to his orthopedic and psychiatric conditions. He attributed appellant's psychiatric conditions to his duties, and the dangers inherent in the job, as an immigration enforcement agent. Dr. Smith again opined that appellant was totally disabled from performing any type of work currently or in the future.

By decision dated October 6, 2015, OWCP finalized the termination of appellant's compensation benefits, effective that date. It found the report of Dr. Carlson, the IME, constituted the special weight of the medical opinion evidence and established that appellant's thoracic condition had resolved without residuals. OWCP also found the evidence insufficient to

establish that appellant sustained a psychiatric condition due to the accepted July 17, 2013 employment injury.

On October 22, 2015 appellant and counsel requested an oral hearing before an OWCP hearing representative, which was held on January 27, 2016.

By decision dated March 1, 2016, the hearing representative affirmed the October 6, 2015 decision terminating appellant's benefits. She found the weight of the medical opinion evidence rested with Dr. Carlson, the impartial medical examiner, who concluded that appellant no longer had any residuals or disability due to the accepted July 17, 2013 work injury.

Counsel requested reconsideration on April 5, 2016. In support of his request, he resubmitted a January 19, 2015 report and submitted a March 28, 2016 report by Dr. Balar.

Dr. Balar, in a March 28, 2016 report, briefly noted appellant's history and treatment. He reported that appellant was not currently working based on his treating psychiatrist's opinion that he was totally disabled due to PTSD. Dr. Balar reported that appellant had a fall a few months ago which caused increased back, shoulder, and neck pain.

By decision dated July 1, 2016, OWCP denied modification. It found that the evidence submitted by appellant was insufficient to establish that OWCP erred in terminating his compensation benefits or that he had any continuing disability and residuals on or after the date benefits had been terminated.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.<sup>4</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>5</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>7</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>8</sup>

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<sup>4</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>5</sup> *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>6</sup> *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>8</sup> *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

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>9</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>10</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained a thoracic strain due to the accepted July 17, 2013 employment injury and paid benefits. Appellant stopped work on the date of the injury and was subsequently placed on OWCP's periodic compensation rolls. OWCP terminated his wage-loss compensation and medical benefits on October 6, 2015 based on the report of Dr. Carlson, the IME. By decision dated March 1, 2016, an OWCP hearing representative affirmed OWCP's October 6, 2015 termination decision. OWCP denied modification of the termination in a July 1, 2016 decision. The Board finds that OWCP met its burden of proof.

OWCP determined that a conflict in the medical opinion evidence existed between appellant's treating physician, Dr. Smith, who continued to support appellant's need for treatment of his accepted thoracic sprain, and Dr. Lakin, a second opinion physician, who found that he was capable of returning to his regular-duty position and had no residuals or disability due to the accepted thoracic sprain. It referred appellant to Dr. Carlson for an impartial medical examination to resolve the conflict in medical opinion evidence regarding whether he continued to suffer residuals of his accepted employment injury and was unable to work due to the accepted employment injury.

In a July 16, 2015 report, Dr. Carlson described the July 17, 2013 employment injury and upon physical examination, reported no cervical muscle local tenderness, normal cervical range of motion, diffuse tenderness on palpation of the second thoracic spinous process to the fourth lumbar spinous process, normal upper and lower extremity sensory testing, and normal upper extremity motor power. Based on review of a May 24, 2013 MRI scan, Dr. Carlson reported a nonwork-related T8-9 central posterior herniated disc, which had resolved. He opined that appellant's accepted thoracic strain had also resolved. Dr. Carlson noted that his opinion was based on objective findings of full cervical range of motion and no cervical or thoracic osteoarthritis findings on examination. Thus, he found that appellant was capable of performing his usual work and there were no residuals of the accepted July 17, 2013 work injury. Finally, Dr. Carlson concluded that appellant's claim should not be expanded to include additional conditions.

The Board finds that Dr. Carlson's report is well rationalized and based on a complete and accurate history, a complete statement of accepted facts, physical examination and review of the medical record. He examined appellant thoroughly, reviewed the medical records, and reported accurate medical and employment histories. Thus, the Board finds that Dr. Carlson's

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<sup>9</sup> 5 U.S.C. § 8123(a); *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>10</sup> *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

opinion as set forth in his July 16, 2015 report is probative and reliable evidence and entitled to the special weight of the evidence accorded to an IME.<sup>11</sup> Accordingly, Dr. Carlson's opinion is sufficient to justify OWCP's termination of his compensation benefits effective October 6, 2015.

The additional medical evidence submitted in response to Dr. Carlson's report is insufficient to overcome the special weight accorded to him as an impartial medical specialist regarding this issue. While Dr. Smith submitted a September 15, 2015 report reiterating that appellant was totally disabled due to his orthopedic and psychiatric conditions, he had been on one side of the conflict in medical opinion regarding whether there were any residuals of the employment-related conditions and whether they were disabling. Reports from a physician who was on one side of the medical conflict that an IME was obtained to resolve, are generally insufficient to overcome the special weight accorded to the opinion of the impartial physician or to create a new conflict.<sup>12</sup>

Appellant also relies upon the medical opinions of his treating psychiatrists and psychologist, Drs. D'Amato, Jacoby, Contino, Rowan, Yanovskiy, to establish that he was totally disabled due to an employment condition. Dr. Jacoby diagnosed panic disorder, dependent personality traits, upset due to being passed over for a promotion, and overwhelming panic. Dr. Contino diagnosed PTSD which he attributed to appellant's immigration enforcement work duties. Similarly, Dr. Rowan diagnosed PTSD, major depression, and obsessive-compulsive disorder and noted that appellant had been hospitalized twice. Dr. D'Amato also diagnosed PTSD and major depression which he attributed to work incidents and opined that appellant was totally disabled. Dr. Yanovskiy diagnosed PTSD which he attributed to appellant's marital discord and work and opined that appellant was totally disabled due to his PTSD. OWCP has not, however, accepted the currently diagnosed psychiatric conditions as causally related to the accepted July 17, 2013 employment injury. As previously noted, it has accepted only a thoracic strain in this case. For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relationship.<sup>13</sup> None of physicians attributed the diagnosed psychiatric conditions to the accepted July 17, 2013 employment injury nor contain any rationale explaining how these conditions had been caused or aggravated by the accepted July 17, 2013 employment injury. Thus, the reports are insufficient to create a conflict with Dr. Carlson's report. Regarding the request to expand the claim to include psychiatric conditions, as discussed above, none of the reports appellant submitted attribute these conditions to the accepted July 17, 2013 employment injury. Thus, these reports are insufficient to create a conflict with Dr. Carlson's opinion.

Appellant also relied upon a January 19, 2015 progress note by Dr. Balar in support of his claim that he remained totally disabled due to an employment injury condition. Dr. Balar provided examination findings and reviewed objective and medical evidence. He diagnosed

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<sup>11</sup> See *E.H.*, Docket No. 08-1862 (issued July 8, 2009); *Bryan O. Crane*, 56 ECAB 713 (2005).

<sup>12</sup> *S.J.*, Docket No. 09-1794 (issued September 20, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>13</sup> *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, *supra* note 12; *Alice J. Tysinger*, 51 ECAB 638 (2000).



cervical radiculopathy, cervical intervertebral disc degeneration, C5-6 herniated disc, shoulder impingement syndrome, shoulder/arm sprain/strain, and intervertebral disc displacement. According to Dr. Balar appellant's current work disability was based on recommendations from his treating psychiatrist. He recommended that appellant not return to work due to his cervical and back pain, but provided no opinion on the cause of the conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>14</sup> As discussed above, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relationship for conditions not accepted by OWCP as being employment related.<sup>15</sup> Dr. Balar also did not offer a rationalized medical opinion explaining how the conditions he diagnosed were causally related to the accepted July 17, 2013 employment injury, or why any of these conditions would cause disability.<sup>16</sup> Thus, his report is of diminished probative value and insufficient to create a conflict with Dr. Carlson's opinion.

Therefore, the Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective October 6, 2015, as the special weight of the competent medical evidence established that the accepted thoracic sprain had resolved without residuals or disability. The Board further finds that OWCP properly denied expanding the claim to include additional conditions.

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

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had any disability causally related to his accepted injury.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not established any continuing residuals or disability from his accepted July 17, 2013 thoracic sprain injury, on or after October 6, 2015.

Following the termination of compensation benefits on October 6, 2015 and OWCP's hearing representative's decision affirming the termination on March 1, 2106, appellant submitted a new March 28, 2016 report by Dr. Balar. Dr. Balar reported that due to a recent fall appellant had increased neck, shoulder and back pain and was currently totally disabled due to his PTSD, based on a treating psychiatrist's opinion. He did not address causal relationship between appellant's disability and continuing residuals and the accepted thoracic sprain.<sup>18</sup> Thus, Dr. Balar's report is insufficient to create a conflict with Dr. Carlson's report.

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<sup>14</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>15</sup> *Supra* note 13.

<sup>16</sup> *See I.J.*, *supra* note 5.

<sup>17</sup> *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>18</sup> *See Ricky S. Storms*, 52 ECAB 349 (2001).

Consequently, appellant has failed to establish an employment-related condition or disability after October 6, 2015.

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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 6, 2015. The Board further finds that appellant has not established continuing disability after October 6, 2015, causally related to the accepted July 17, 2013 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 1, 2016 is affirmed.

Issued: May 15, 2017  
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