



employment injury; and (2) whether she met her burden of proof to establish continuing employment-related disability after November 28, 2012.

### **FACTUAL HISTORY**

On April 5, 2012 appellant, then a 46-year-old statistical assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2012 she injured her hips, leg, left arm, and lower back in the performance of duty. She stopped work on March 29, 2012. OWCP accepted the claim for left sciatica, lumbar sprain, and a left shoulder and upper arm sprain and paid appellant compensation for total disability beginning May 14, 2012. It noted in its acceptance letter that she had a history of prior back complaints.

A magnetic resonance imaging (MRI) scan dated May 21, 2012 revealed degenerative spondylosis resulting in mild-to-moderate bilateral neural foraminal narrowing at L5-S1.

On July 18, 2012 OWCP referred appellant to Dr. Stanley W. Collis, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated July 31, 2012, Dr. Collis reviewed appellant's history of a March 27, 2012 injury and previous history of back injuries in 2001 and 2006. On examination, he found no muscle spasms, weakness, or loss of sensation, mild tenderness with flexion, adequate motion, and a negative straight leg raise. Dr. Collis noted that a May 21, 2012 MRI scan showed no disc herniation, but mild-to-moderate bilateral neuroforaminal narrowing at L5-S1. He related, "The examination of [appellant's] back and lower extremities and the neurological examination were entirely negative. X-rays of the lumbar spine were not remarkable either. So, overall, I did not find any obvious objective findings." Dr. Collis advised that the narrowing at L5-S1 was preexisting. He opined that appellant aggravated and sprained her back on March 27, 2012, but that the aggravation had resolved. Dr. Collis found no evidence of trochanteric bursitis. He determined that appellant had no further back condition or sciatica due to the March 27, 2012 employment injury. Dr. Collis opined that she could resume work without restrictions and had no need for any particular medical treatment. OWCP requested clarification from Dr. Collis as to appellant's accepted shoulder sprain.

In a progress report dated August 3, 2012, Dr. Kevin R. Burke, an attending internist, discussed appellant's history of an injury at work on March 27, 2012 when she jumped away from a falling object while holding food containers. He noted that her problem was "recurrent." Dr. Burke diagnosed back pain, degenerative disc disease, lumbar strain, and hip strain. On August 6, 2012 he took appellant off work from August 3 to 17, 2012.

In an addendum dated August 14, 2012, Dr. Collis advised that appellant had no left shoulder complaints at the time of his evaluation. He found that she had no employment-related left shoulder condition and could resume her usual employment. Dr. Collis opined that appellant required no further left shoulder treatment.

By letter dated September 14, 2012, OWCP requested that Dr. Burke review and discuss the findings by Dr. Collis.

Dr. Burke, in a September 24, 2012 progress report, advised that appellant could resume work on September 27, 2012 if there were no changes at a September 26, 2012 appointment.

In a note signed October 16, 2012, Dr. Burke advised that the date on the September 24, 2012 progress report releasing appellant to work was incorrect and that the release date should have been one month after the September 24, 2012 appointment. He indicated that he was treating appellant for pain in the left lower extremity and low back, which made it difficult to work.

OWCP, on October 18, 2012, notified appellant of its proposed termination of her wage-loss compensation and medical benefits as the weight of the evidence established that she had no further disability or residuals of her March 27, 2012 employment injury.

Dr. Burke, on October 26, 2012, reviewed appellant's complaints of increasing and decreasing back pain after a March 2012 injury.<sup>3</sup> On examination he found a positive straight leg raise on the left. Dr. Burke diagnosed lumbar radiculopathy, degenerative disc disease, and myalgia.

By decision dated November 28, 2012, OWCP terminated appellant's wage-loss compensation and entitlement to medical benefits effective that date. It found that the opinion of Dr. Collis represented the weight of the evidence and established that she had no further disability or need for medical treatment as a result of her accepted work injury.

Dr. Burke, in a report dated November 1, 2012, received by OWCP on December 4, 2012, related that appellant clearly states that she suffered back and leg pain and other symptoms after stumbling and falling at work on March 27, 2012. He diagnosed radiculopathy at S1 from a disc bulge at L5-S1. Dr. Burke advised, "Clinically, [appellant] also appears to have an S1 radiculopathy based on her symptoms of left posterior lateral thigh and calf numbness and pain, back pain, a positive straight leg raising test on the left, weakness of hip extension and knee flexion on the left, and an absent ankle jerk on the left." He noted that these symptoms began after her March 27, 2012 work injury and attributed the S1 radiculopathy to her employment injury.

On October 28, 2013 appellant requested reconsideration. She submitted another report from Dr. Burke, undated, which reflected that he had been treating appellant since 1995 and that she had no problems with her back or hip before a November 2001 work injury. Dr. Burke discussed his diagnoses of degenerative disc disease, lumbar strain, hip strain, and back pain. He determined that the March 27, 2012 work injury clearly aggravated appellant's degenerative disc disease, noting that she was carrying supplies in both arms, lunged forward to avoid being hit by a wall partition sliding towards her making her land unevenly on her feet, jarring her body. Dr. Burke advised that appellant could not perform extensive sitting or standing.

By decision dated January 22, 2014, OWCP denied modification of its November 28, 2012 decision. It found that the newly submitted evidence from Dr. Burke was insufficiently reasoned and thus of little probative value.

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<sup>3</sup> Dr. Burke continued to submit progress reports describing appellant's treatment.

Dr. Burke, in a report dated January 20, 2015, discussed appellant's March 27, 2012 work injury.<sup>4</sup> He diagnosed back pain, degenerative disc disease, lumbar strain, hip strain, and S1 radiculopathy due to her March 27, 2012 employment injury. Dr. Burke asserted that Dr. Collis' opinion that the 2012 injury temporarily aggravated appellant's condition was "completely at odds" with his experience as her attending physician. He maintained that the results of the MRI scan supported her subjective complaints.

Appellant requested reconsideration on January 22, 2015. Counsel, in a January 21, 2015 statement, asserted that Dr. Burke's opinion was entitled to more weight than the opinion of Dr. Collis as he was her long-time attending physician.

OWCP determined that a conflict existed between Dr. Collis and Dr. Burke regarding whether appellant had any continuing employment-related disability. On July 27, 2015 it referred appellant to Dr. Stacie Grossfeld, a Board-certified orthopedic surgeon, for an impartial medical examination. OWCP, in its questions for the referee physician, listed the accepted conditions as an aggravation of effusion of the right knee joint, an aggravation of localized primary osteoarthritis of the right knee, chronic left knee pain, left knee osteoarthritis, left knee effusion, a left knee medial meniscus tear, and a left knee gait disturbance. It asked the impartial medical examiner to address whether there were residuals of the accepted conditions of right medial epicondylitis, an aggravation of right medial epicondylitis, an aggravation of myofascial pain, and an aggravation of carpal tunnel syndrome, which were not the appropriate accepted conditions.

In a report dated August 26, 2015, Dr. Grossfeld reviewed appellant's history of a March 27, 2012 employment injury and subsequent medical treatment received, including a spinal fusion at L5-S1 on February 11, 2015. On examination she found reduced motion of the cervical and lumbar spine. Dr. Grossfeld noted that appellant experienced difficulty moving due to pain without a loss of sensation or atrophy. She found that a straight leg raise was equivocal due to her reduced range of motion. Dr. Grossfeld, in response to the question of whether appellant had residuals of the accepted conditions of right medial epicondylitis, an aggravation of right medial epicondylitis, an aggravation of myofascial pain, and an aggravation of carpal tunnel syndrome, opined that she sustained only lumbar strain due to her work injury. She related, "[appellant's] current condition does not relate back to the March 27, 2012 work injury. The only work-related injury was a lumbar strain which should have resolved based on medical probability six weeks after the injury occurred." Dr. Grossfeld advised that the accepted work injury did not prevent appellant from resuming her usual employment and recommended no further treatment.

By decision dated February 19, 2016, OWCP denied modification of its January 22, 2014 decision. It found that the opinion of Dr. Grossfeld constituted the weight of the evidence and established that appellant had no continuing employment-related disability.

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<sup>4</sup> In a report dated April 9, 2014, Dr. Sharon T. Laufer, who specialized in family medicine, advised that appellant experienced a work injury on April 3, 2014 to her upper back and right shoulder. She noted that appellant had a prior work injury in March 2012. On April 15, 2014 Dr. Laufer diagnosed trapezius muscle spasms, lumbar paraspinal muscle spasm, sacroiliac pain, and a work injury.

On appeal counsel contends that Dr. Burke's opinion was entitled to greater weight as an attending physician and that Dr. Collis overlooked the changes on the May 21, 2012 MRI scan attributable to her work injury. Consequently, he asserts that the record did not contain a conflict in medical opinion. Counsel further argues that Dr. Grossfeld's opinion is not reasoned and that she failed to consider the properly accepted conditions of left sciatica, lumbar sprain, and left shoulder and upper arm sprain. He asserts that Dr. Grossfeld determined that a lumbar strain should have resolved within six weeks rather than making a specific finding regarding appellant's recovery.

### **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. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</sup> OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup> Additionally, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> 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.<sup>8</sup>

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

OWCP accepted that appellant sustained left sciatica, lumbar sprain, and a sprain of the left shoulder and upper arm due to a March 27, 2012 employment injury. It paid wage-loss compensation for total disability beginning May 14, 2012.

On July 31, 2012 Dr. Collis, an OWCP referral physician, discussed appellant's March 27, 2012 employment injury and noted that she had a history of previous injuries to her back in 2001 and 2006. On examination, he found no muscle spasm, weakness, reduced sensation or inadequate motion. Dr. Collis further found a negative straight leg raise, but some mild tenderness with flexion. He reviewed the medical evidence of record, including the May 21, 2012 MRI scan showing mild-to-moderate neuroforaminal narrowing bilaterally, but no herniated disc. Dr. Collis diagnosed a back sprain and aggravation of a back condition on March 27, 2012 that had resolved. He noted that appellant's L5-S1 narrowing predated her injury and that there were currently no objective findings of her injury on examination. Dr. Collis advised that she could resume work without restrictions and did not require additional medical treatment for her employment injury.

In a supplemental report dated August 14, 2012, Dr. Collis related that appellant had no left shoulder complaints at the time of his examination. He determined that she did not have any

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<sup>5</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>6</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>7</sup> *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>8</sup> *Id.*

current left shoulder condition or need for treatment and that she could resume her usual employment. Dr. Collis thoroughly reviewed the factual and medical background and accurately summarized the relevant medical evidence. Moreover, he provided detailed findings on examination and reached conclusions regarding appellant's condition which comported with his findings.<sup>9</sup> Consequently, the opinion of Dr. Collis represents the weight of the evidence and establishes that appellant had no disability or need for further medical treatment due to her March 27, 2012 employment injury as of November 28, 2012.<sup>10</sup>

The remaining evidence of record submitted prior to OWCP's termination of compensation is insufficient to show that appellant had further disability due to her employment injury. Dr. Burke, in a progress report dated August 3, 2012, discussed her history of a March 27, 2012 work injury and diagnosed back pain, degenerative disc disease, lumbar strain, and hip strain. On August 6, 2012 he advised that appellant could not work from August 3 to 17, 2012. In a September 24, 2012 progress report, Dr. Burke found that she could return to work on September 27, 2012. However, in an October 16, 2012 report, he indicated that the return to work date in the September 24, 2012 report should have been one month after the evaluation. Dr. Burke related that appellant had trouble working due to pain in her low back and left lower extremity. In his reports, however, Dr. Burke failed to provide medical rationale supporting his opinion that she was unable to work due to her accepted conditions.<sup>11</sup> Medical conclusions unsupported by rationale are of diminished probative value.<sup>12</sup>

In an October 26, 2012 progress report, Dr. Burke discussed appellant's history of a March 27, 2012 work injury, provided examination findings, and diagnosed lumbar radiculopathy, degenerative disc disease, and myalgia. He did not, however, address the issue of disability due to the March 27, 2012 employment injury; consequently, his report is of little probative value.<sup>13</sup>

The Board therefore finds that OWCP met its burden of proof in this matter to terminate appellant's wage-loss compensation and authorization for medical benefits effective November 28, 2012.

On appeal counsel contends that Dr. Burke's opinion is entitled to more weight than Dr. Collis as he is her attending physician. He further notes that the second opinion physician did not attribute the 2012 MRI scan changes to her work injury. As discussed, however, Dr. Collis provided detailed findings on examination and supported his conclusion with medical rationale. His report represents the weight of the evidence regarding the termination of appellant's compensation and medical benefits effective November 28, 2012.<sup>14</sup>

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<sup>9</sup> See *Pamela K. Guesford*, *supra* note 7.

<sup>10</sup> See *C.C.*, Docket No. 16-0318 (issued May 2, 2016).

<sup>11</sup> See *S.C.*, Docket No. 16-0284 (issued June 27, 2016); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>12</sup> See *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

<sup>13</sup> Medical reports that do not address the issue of causation are of little probative value. See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *A.D.*, 58 ECAB 149 (2006).

<sup>14</sup> See *M.K.*, Docket No. 15-1903 (issued May 6, 2016).

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

As OWCP properly terminated appellant's compensation benefits, the burden shifted to her to establish any continuing disability after that date related to her accepted injury.<sup>15</sup> To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.<sup>16</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>17</sup> A 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 compensation benefits.<sup>18</sup>

Section 8123(a) 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.<sup>19</sup> The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and 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.<sup>20</sup>

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.<sup>21</sup>

In situations where OWCP secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.<sup>22</sup>

## **ANALYSIS -- ISSUE 2**

Following OWCP's termination of compensation, appellant submitted a January 20, 2015 report from Dr. Burke, who disagreed with Dr. Collis' opinion that the March 27, 2012 work

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<sup>15</sup> *Manual Gill*, 52 ECAB 282 (2001).

<sup>16</sup> *Id.*

<sup>17</sup> *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>18</sup> *See J.A.*, Docket No. 15-0908 (issued August 6, 2015).

<sup>19</sup> 5 U.S.C. § 8123(a).

<sup>20</sup> 20 C.F.R. § 10.321.

<sup>21</sup> *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

<sup>22</sup> *See B.J.*, Docket No. 15-1961 (issued September 7, 2016).

injury only temporarily aggravated her back condition. He diagnosed degenerative disc disease, lumbar strain, hip strain, and radiculopathy at S1 and attributed these conditions to the March 2012 work injury. In an undated report, Dr. Burke advised that appellant was unable to extensively sit or stand.

OWCP properly determined that a conflict arose between Dr. Burke and Dr. Collis regarding whether appellant had continuing disability due to her accepted employment injury. It referred her to Dr. Grossfeld for an impartial medical examination. In its questions to Dr. Grossfeld, OWCP asked whether the accepted conditions of right medial epicondylitis, an aggravation of right medial epicondylitis, an aggravation of myofascial pain, and an aggravation of carpal tunnel syndrome had resolved. There is no evidence in the record that it accepted these conditions.

When a case is referred to an impartial medical examiner for the purpose of resolving a conflict, the opinion of such specialist, is sufficiently well rationalized and based on a prior factual and medical background, must be given special weight.<sup>23</sup> The Board finds, however, that this case is not in posture for decision regarding continuing disability as the opinion of Dr. Grossfeld is insufficiently rationalized to be accorded the special weight of the evidence.

In her August 26, 2015 report, Dr. Grossfeld found that appellant sustained only a lumbar sprain as a result of her work injury, which she opined should have resolved six weeks after the injury. OWCP, however, accepted the claim for left sciatica, lumbar sprain, and a left shoulder and upper arm sprain. The report of an impartial medical specialist will be accorded special weight provided her opinion is based upon a proper factual background and is sufficiently rationalized.<sup>24</sup> The Board looks at such factors as the opportunity for and thoroughness of the 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 by the physician on the medical issues.<sup>25</sup> Dr. Grossfeld addressed the lumbar strain, however, she failed to address whether appellant had continuing disability due to her accepted conditions of a left shoulder and upper arm sprain and left sciatica. As she failed to address all of the accepted conditions, her opinion is not based upon an accurate history and background and is of limited probative value.<sup>26</sup>

OWCP has the responsibility to obtain from its referral physician an evaluation that will resolve the issue involved in this case.<sup>27</sup> Accordingly, the Board finds that the case must be remanded for further medical development. On remand, OWCP should prepare an accurate and updated statement of accepted facts and obtain a supplemental report from Dr. Grossfeld addressing whether appellant has any continuing employment-related disability or residuals

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<sup>23</sup> See *B.J.*, Docket No. 15-1961 (issued September 7, 2016).

<sup>24</sup> See *A.R.*, Docket No. 12-0443 (issued October 9, 2012); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>25</sup> See *N.K.*, Docket No. 12-1637 (issued April 2, 2013); *Anna M. Delaney*, 53 ECAB 384 (2002).

<sup>26</sup> See *T.H.*, Docket No. 17-0025 (issued July 6, 2017).

<sup>27</sup> See *Richard F. Williams*, 55 ECAB 343 (2004).



attributable to any of her accepted conditions. Following such further development as deemed necessary, it should issue an appropriate merit decision.

**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and authorization for medical benefits effective November 28, 2012 as she had no further disability or need for medical treatment casually related to her March 27, 2012 employment injury. The Board further finds that the case is not in posture for decision regarding whether she has met her burden of proof to establish continuing employment-related disability after November 28, 2012.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 19, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: October 26, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board