



met his burden of proof to establish continuing disability or medical residuals after January 17, 2017 due to his June 29, 2015 employment injury.

### **FACTUAL HISTORY**

On June 24, 2015 appellant, then a 37-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he developed pain and experienced a pop in his lower back while in the performance of his federal employment. He explained that he was pushing a hamper of mail when a wheel fell off. Appellant experienced a jolt and lost his balance. He stopped work on that day. OWCP accepted appellant's claim for lumbar sprain, and paid his wage-loss compensation on the supplemental rolls commencing August 9, 2015.

On July 6, 2015 appellant's attending physician, Dr. Bruce R. Rosenblum, a Board-certified neurosurgeon, noted appellant's history of pushing a hamper on June 24, 2015 and feeling a pop in his low back when the wheel fell off. He performed a physical examination and reported left sciatic notch tenderness, pain on extension of the lumbosacral junction, and positive left straight leg raising at 50 degrees. Dr. Rosenblum also found decreased motor strength in the left extensor digitorum. He recommended a lumbar magnetic resonance imaging (MRI) scan. Appellant underwent the MRI scan on July 29, 2015, which demonstrated L4-5 mild disc degeneration and focal small left posterior lateral disc bulge with minimal left perineural encroachment. On August 25, 2015 Dr. Rosenblum diagnosed left lateralizing L4-5 disc herniation with degenerative disc disease based on the July 29, 2015 MRI scan of the lumbar spine. He recommended physical therapy. In his November 16, 2015 note, Dr. Rosenblum found that following physical therapy appellant's left lumbar radiculopathy with radiation to the posterior aspect of the left thigh was 40 percent improved. He released appellant to return to sedentary work for four hours per day with restrictions and recommended a 10-minute break every hour from sitting. On December 28, 2015 appellant accepted light-duty sedentary work position with periodic walking for four hours a day and returned to work that day.

On February 17, 2016 OWCP requested an additional medical report from Dr. Rosenblum. On April 4, 2016 it received a February 8, 2016 note from him in which he reported that appellant had returned to work and was undergoing additional physical therapy.

On July 21, 2016 OWCP referred appellant, a statement of accepted facts, and a list of questions for a second opinion evaluation with Dr. Stanley Askin, a Board-certified orthopedic surgeon. In his August 19, 2016 report, Dr. Askin reviewed appellant's history of injury and medical treatment. On physical examination he noted that appellant reported three areas of discomfort, but found that appellant could perform straight leg raising to 90 degrees, deep tendon reflexes were symmetrical in the lower extremities, normal muscle testing with coaxing, and that sensation was preserved to light touch throughout his lower extremities. Dr. Askin found that appellant had no objective findings on physical examination and opined that appellant's MRI scan demonstrated age-appropriate disc degenerative changes. He attributed appellant's current condition to degenerative disc disease which resulted in the development of arthritic changes in his facet joint. Dr. Askin opined that the motion of one or more of appellant's arthritic lumbar facet joints explained the popping sensation that appellant experienced on June 24, 2015 and his ongoing discomfort. Therefore, he concluded that appellant did not have residuals of the accepted conditions. Dr. Askin found that appellant did not require further medical treatment as facet joint

arthrosis typically had a spontaneous resolution independent of treatment. He opined that appellant had no disability imposed by his employment injury. Dr. Askin reported that the development of degenerative changes with the passage of time could be associated with less facility in performing physically demanding activities, but that did not mean that there was a permanent change in his body due to the June 24, 2015 injury. Instead he opined that appellant had merely gotten older and his body no longer tolerated physically demanding activities without discomfort. Dr. Askin opined that appellant could return to his date-of-injury position without restrictions, with accommodations to address appellant's aging process and age-related degenerative disc disease.

On November 9, 2016 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It relied on Dr. Askin's findings that appellant's employment-related disability and medical residuals had ceased. OWCP afforded appellant 30 days to submit evidence or argument if he disagreed with the proposal.

In an undated letter, appellant disagreed with the proposed termination of his wage-loss compensation and medical benefits. Dr. Rosenblum examined appellant on December 20, 2016 due to his continued reports of back pain. He found reduced motor strength in appellant's extensor digitorum longus and reversal of the lumbar lordosis. Appellant's reflexes were normal throughout his extremities. Dr. Rosenblum reported 40 degrees of straight leg raising.

By decision dated January 17, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It determined that Dr. Askin's report was entitled to the weight of the medical evidence and established that appellant had no continuing disability or medical residuals due to his accepted employment injury of lumbar strain.

On January 23, 2017 Dr. Rosenblum reported that appellant exhibited reduced motor strength in both the extensor hallucis longus and the extensor digitorum longus on the left. He found that appellant had 40 degrees of straight leg raising. Dr. Rosenblum diagnosed lumbar radiculopathy and recommended that appellant continue working four hours a day repairing damaged mail, with a 10-minute break every hour.

Appellant requested a hearing on February 4, 2017 before an OWCP hearing representative regarding the January 17, 2017 termination decision. He provided an undated narrative statement and asserted that he was following his physician's instructions to work only four hours a day. Appellant further contended that he accepted a permanent light-duty position working four hours a day.

On July 12, 2017 appellant testified during the oral hearing before OWCP's hearing representative. He asserted that he had no previous back injuries and that he played football, basketball, and baseball in school without injury. Appellant testified that he could work his limited-duty position, but could not return to his date-of-injury position as suggested by Dr. Askin.

In a July 20, 2017 note, Dr. Rosenblum disagreed with Dr. Askin's findings. He reported that appellant had no prior back problems before the June 24, 2015 employment injury and noted that after the June 24, 2015 employment injury appellant had experienced pain radiating to the left lower extremity with MRI scan evidence of a left lateralizing L4-5 disc herniation. Dr. Rosenblum

further noted that appellant had evidence of a partial motor deficit in the left lower extremity. He concluded that appellant had post-traumatic lumbar radiculopathy causally related to his June 24, 2015 employment incident and that this condition was a radicular dysfunction rather than a simple lumbar sprain.

By decision dated September 14, 2017, OWCP's hearing representative found that appellant had not provided rationalized medical opinion evidence establishing a herniated disc causally related to the June 24, 2015 employment injury. He found that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits based on Dr. Askin's report.

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

Under FECA, once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.<sup>3</sup> OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>6</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>7</sup>

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

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 17, 2017.

In his August 19, 2016 report, Dr. Askin detailed appellant's factual and medical history and reported findings on physical examination. He found no objective physical findings of an employment-related back condition. Dr. Askin reported that appellant could perform straight leg raising on the left to 90 degrees, that deep tendon reflexes were symmetrical in the lower extremities, that he exhibited normal muscle testing with coaxing, and that sensation was preserved to light touch throughout appellant's lower extremities. He found that appellant's MRI scan demonstrated age-appropriate disc degenerative changes. Dr. Askin attributed appellant's current condition to degenerative disc disease which resulted in the development of arthritic changes in

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<sup>3</sup> See *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>4</sup> See *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>5</sup> See *R.P.*, *supra* note 3; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>6</sup> See *R.P.*, *supra* note 3; *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>7</sup> See *R.P.*, *supra* note 3; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

his facet joint. He found that appellant did not have residuals of the accepted condition. Dr. Askin found that appellant did not require further medical treatment. He further opined that appellant could return to his date-of-injury position without restrictions, and that any accommodations would need to address only appellant's aging process and age-related degenerative disc disease.

The Board finds that Dr. Askin's opinion represents the weight of the medical evidence in this case. Dr. Askin provided a detailed medical report reviewing appellant's medical treatment and the evidence of record. He unequivocally opined that appellant did not have continuing residuals of an employment-related condition and provided a medical explanation supporting his findings. Dr. Askin's opinion was also based on an accurate background.<sup>8</sup>

Dr. Rosenblum continued to support appellant's disability for work and medical residuals due to the June 24, 2015 employment injury. However, he diagnosed additional conditions not accepted by OWCP including herniated disc at L4-5 with radiculopathy into appellant's left lower extremity. Dr. Rosenblum failed to provide a well-rationalized opinion with supporting objective evidence. He reviewed the July 29, 2015 MRI scan and found that it demonstrated a herniated rather than a bulging disc. Dr. Rosenblum did not explain how and why the June 24, 2015 employment injury resulted in a herniated disc in addition or instead of the accepted lumbar strain. As OWCP has not accepted any additional conditions as employment related, appellant has the burden of proof to establish an employment relationship which he has not done.<sup>9</sup>

The Board has long held that medical opinions not containing rationale describing causal relationship are of diminished probative value and are generally insufficient to meet appellant's burden of proof.<sup>10</sup> Dr. Rosenblum also failed to address the issue of appellant's underlying degenerative disc disease. The Board has explained that medical rationale is particularly necessary if appellant has a preexisting condition.<sup>11</sup> For these reasons, Dr. Rosenblum's opinion is insufficiently rationalized to support that appellant has disability or residuals of his accepted lumbar strain or to cause a conflict with Dr. Askin's opinion. The Board finds that the medical evidence of record was sufficient for OWCP to meet its burden of proof in this case. Dr. Askin provided a well-rationalized opinion that represents the weight of the medical evidence.

On appeal counsel contends that a conflict of medical evidence existed between Dr. Rosenblum and Dr. Askin. However, for the reasons set forth above, Dr. Askin's report represents the weight of the medical evidence.

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<sup>8</sup> A.C., Docket No. 16-1670 (issued April 6, 2018).

<sup>9</sup> See A.H., Docket No. 16-1828 (issued August 17, 2017).

<sup>10</sup> *Id.*; Carolyn F. Allen, 47 ECAB 240 (1995).

<sup>11</sup> See R.T., Docket No. 17-1730 (issued May 3, 2018).

## LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates appellant's compensation benefits, the burden shifts to him to establish that he has continuing disability after that date related to his accepted injury.<sup>12</sup> To establish causal relationship between 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 causal relationship.<sup>13</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>14</sup>

## ANALYSIS -- ISSUE 2

The Board further finds that appellant has not established continuing disability or residuals after July 17, 2017 due to his June 29, 2015 employment injury.

In Dr. Rosenblum's January 23 and July 20, 2017 notes, he continued to support appellant's disability for work and need for medical treatment due to the diagnosed conditions of herniated disc and lumbar radiculopathy. He reported that appellant had no prior back problems before the June 24, 2015 employment injury and noted that after the June 24, 2015 employment injury appellant had experienced pain radiating to the left lower extremity with MRI scan evidence of a left lateralizing L4-5 disc herniation. Dr. Rosenblum concluded that appellant had post-traumatic lumbar radiculopathy causally related to his June 24, 2015 employment incident and that this condition was a radicular dysfunction rather than a simple lumbar sprain.

The Board finds that Dr. Rosenblum did not provide medical reasoning to support his opinion that appellant had continuing residuals of the June 29, 2015 employment injury. The Board has held that the mere fact that the employee was asymptomatic before the injury, but symptomatic after the injury is insufficient without supporting rationale to establish causal relationship.<sup>15</sup> Further, while Dr. Rosenblum maintained that appellant had a herniated disc with radiculopathy and required a limited work schedule, the Board notes that OWCP has not accepted appellant's claim for herniated disc or radiculopathy. 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, not OWCP's burden to disprove such relationship.<sup>16</sup> Dr. Rosenblum did not provide medical rationale explaining why these conditions and appellant's work schedule restriction were causally related to the accepted employment injury.

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<sup>12</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>13</sup> *Id.*

<sup>14</sup> *C.W.*, Docket No. 12-1211 (issued November 15, 2012); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>15</sup> *A.C.*, *supra* note 8; *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>16</sup> *F.J.*, Docket No. 17-0147 (issued March 27, 2018).

Thus, the Board finds that his reports are of insufficient probative value to meet appellant's burden of proof.<sup>17</sup>

The Board finds that appellant has not submitted sufficient medical evidence to establish that he has continuing residuals or disability after January 17, 2017 causally related to the accepted injury.<sup>18</sup>

### **CONCLUSION**

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective January 17, 2017, as he no longer had residuals or disability causally related to his accepted employment injury. The Board further finds that he has not met his burden of proof to establish continuing employment-related residuals or disability after January 17, 2017 due to his June 29, 2015 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 27, 2018  
Washington, DC

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

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

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

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<sup>17</sup> *M.R.*, Docket No. 17-0457 (issued April 13, 2018).

<sup>18</sup> *Supra* note 16.