

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**G.T., Appellant** )

**and** )

**U.S. POSTAL SERVICE, MORGAN** )  
**PROCESSING & DISTRIBUTION CENTER,** )  
**New York, NY, Employer** )  
\_\_\_\_\_ )

**Docket No. 17-1959**  
**Issued: June 22, 2018**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 15, 2017 appellant filed a timely appeal from a March 23, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

<sup>1</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. One hundred eighty days from March 23, 2017, the date of OWCP's decision, was Tuesday, September 19, 2017. Since using September 20, 2017, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is September 15, 2017, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 24, 2016; and (2) whether appellant met her burden of proof to establish continuing employment-related residuals or disability after March 24, 2016.

On appeal appellant contends that she submitted medical evidence sufficient to establish causal relationship between her current conditions and the accepted employment injuries.

## **FACTUAL HISTORY**

On February 10, 2014 appellant, then a 50-year-old mail handler equipment operator, filed a traumatic injury claim (Form CA-1) alleging that, on February 9, 2014, she sustained a right elbow strain while loading a trailer at work. She noted that a wire cage was facing backwards in the trailer, and when she moved the cage to face forward, she felt a tinge near her right elbow area. Appellant stopped work on February 10, 2014.

On April 3, 2014 OWCP accepted the claim for right elbow sprain and right forearm sprain. Appellant received wage-loss compensation on the supplemental rolls as of March 29, 2014.

In an April 9, 2014 lumbar spine magnetic resonance imaging (MRI) scan report, Dr. Matthew A. Diament, a Board-certified radiologist, provided an impression of T4-T5 disc bulge results in left neural foramen stenosis with posterior facet hypertrophy and T3-T4 and L5-S1 disc bulges.

In an April 13, 2014 medical report, Dr. Deborah I. Eisen, an attending Board-certified internist specializing in critical care medicine, noted appellant's history of injury and discussed findings on physical examination. She assessed lumbar sprain/strain and displacement of lumbar disc due to the February 9, 2014 employment injury. In a May 1, 2014 report, Dr. Eisen requested that appellant be excused from work through June 9, 2014. She indicated that appellant continued to have elbow and back pain. Dr. Eisen advised that returning to work would exacerbate her symptoms. In a separate report dated May 1, 2014, she advised that appellant's anticipated return to full-duty work would be in three to six months.

On May 23, 2014 OWCP referred appellant to Dr. Arnold Goldman, a Board-certified orthopedic surgeon, for a second opinion to determine whether she continued to have residuals or disability due to her accepted employment-related conditions.

By letter dated June 6, 2014, Dr. Eisen released appellant to return to full-duty work with restrictions on June 9, 2014.

In a June 9, 2014 report, Dr. Goldman reviewed a statement of accepted facts (SOAF) and the medical record. He examined appellant and diagnosed lumbosacral sprain. Dr. Goldman also diagnosed right elbow sprain and lateral epicondylitis related to the accepted February 9, 2014 employment injury. He advised that appellant's prognosis was good. Dr. Goldman recommended light-duty work with physical restrictions through August 1, 2014. He attributed the work restrictions to appellant's February 9, 2014 employment injury. Dr. Goldman recommended

physical therapy to wean her back to full-duty work. He indicated that appellant should be able to return to her regular job on August 1, 2014 following an additional four to six-week period of physical and occupational therapy. Dr. Goldman determined that she would reach maximum medical improvement (MMI) by August 1, 2014.

On June 30, 2014 OWCP expanded the acceptance of the claim to include the conditions of lumbar sprain and right lateral epicondylitis.

On August 4, 2014 Dr. Eisen reported that appellant could return to work with restrictions.

On August 22, 2014 OWCP again referred appellant to Dr. Goldman to review additional medical evidence it had received. In a September 8, 2014 report, Dr. Goldman again reviewed the SOAF and medical record. He discussed findings on physical examination and diagnosed pain in the elbow and lower back. Although Dr. Goldman found that she was totally disabled from work from February 9 to June 18, 2014 he opined that, as of the date of his examination, appellant's work-related lumbosacral and bilateral sprains had resolved and no further treatment was indicated. He advised that she was totally disabled from work from February 9 to June 18, 2014. Dr. Goldman maintained that she could return to full-duty work. He determined that appellant had reached MMI.

Appellant underwent a functional capacity evaluation (FCE) on November 30, 2014 which found that she could return to work as an industrial track operator with restrictions, which was in the medium strength employment category.

On March 19, 2015 OWCP requested that Dr. Goldman review the November 30, 2014 FCE and provide an opinion on appellant's ability to return to work. In a supplemental report dated March 25, 2015, Dr. Goldman reviewed the November 3, 2014 FCE, notes dated December 11, 2014 from Dr. Eisen,<sup>3</sup> and appellant's accepted conditions. He maintained that his conclusions from his September 8, 2014 examination had not changed. Dr. Goldman noted that the rationale was based on his examination and review of records on the day of his examination.

Subsequently, OWCP requested another supplemental report from Dr. Goldman. In a report dated April 15, 2015, Dr. Goldman reviewed additional medical evidence and referenced his June 9, 2014 findings. He advised that his opinion that appellant could perform light-duty work with restrictions through August 1, 2014 remained unchanged.

On June 1, 2015 OWCP determined that there was a conflict in medical opinion between Dr. Eisen and Dr. Goldman as to whether appellant had any continuing residuals or disability due to the accepted employment conditions.

In a June 24, 2015 letter, Dr. Eisen released appellant to return to work with restrictions.

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<sup>3</sup> The Board notes that the case record does not contain notes dated December 11, 2014 from Dr. Deborah Eisner. Rather, it contains a December 11, 2014 letter from Mark Eisner, a chiropractor and Dr. Eisner's husband, who noted the dates on which appellant received physical therapy.

Appellant returned to full-time, limited-duty work on July 13, 2015.<sup>4</sup>

On August 12, 2015 OWCP referred appellant, together with a SOAF, the medical record, and a list of questions, to Dr. Stanley Soren, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a September 8, 2014 report, Dr. Soren noted appellant's history and reviewed the SOAF and medical record. On examination appellant complained of low back pain after standing too long (more than two hours). She reported that her elbow was fine. Appellant's cervical spine was midline. There was no torticollis or spasm. There was also no tenderness. There was full unrestricted range of motion as forward flexion was 50 degrees, extension was 30 degrees, lateral flexion of the right and left was 45 degrees each, and rotation of the right and left was 60 degrees each. Axial loading/disc compression was negative. Grip and pinch strength were normal at 5/5. There was no atrophy of the intrinsic muscles of the hand. Tinel's sign and Phalen's test over the median nerve right and left wrist were negative. The brachioradialis, biceps, and triceps deep tendon reflexes were responsive and symmetrical. Radial pulse was +2 (normal) on both sides. Elbow girths were 11½ inches on the right and 11 3/8 inches on the left. There was no tenderness. There was no deformity. There was no instability on either side. Full extension existed in both elbows to a straight angle and flexion to 150 degrees. Pronation and supination were 90 degrees each bilaterally (all ranges of motion mentioned were normal). Wrist girths were 6 3/8 inches on the right and left. There was no tenderness in the epicondylar area on the left or right and extension of the wrists against resistance produced no lateral epicondylar pain or pain in the extensor wad of Henry (brachioradialis muscle belly and extensor carpi radialis longus and extensor carpi radialis brevis). The low back spine was midline. There was no pelvic obliquity or asymmetry of the heights of iliac crests. There was no scoliosis or spasm or tenderness. Range of motion measurements included 80 degrees of forward flexion, 30 degrees of extension, 25 degrees of lateral flexion each way, and 60 degrees of rotation each way. Supracondylar girths were 19¼ inches on the right, 19½ inches on the left. Calf girths were 18 inches on the right and 18¼ inches on the left. Straight leg raising was negative bilaterally. A Lasegue sign was negative, correspondingly. Ankle and knee jerks were equal, brisk, and responsive. There was good extensor power of the big toes on both feet. There was no sensory loss in the feet, ankles, or toes. The calves were nontender. A Homan sign and a Fabere test were negative.

Dr. Soren diagnosed resolved sprain of the right elbow and forearm, resolved sprain of the lumbosacral/lumbar sprain, and resolved right elbow lateral epicondylitis. He opined that there were no disabling residuals relative to the right elbow and forearm, lumbar area, wrists, or shoulders. Dr. Soren further opined that there was no need for further treatment for the employment-related conditions in the absence of any significant clinical findings. He recommended that placing appellant on a medically supervised weight reduction program, which was not directly causally related to her job injury, would be helpful. Dr. Soren also noted that a formal physical therapy program was not indicated as there were no clinical findings to warrant such treatment. He found that there was no causally-related disability at that time due to the February 9, 2014 employment injury based on the absence of positive clinical findings. There was

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<sup>4</sup> As appellant returned to work on July 13, 2015, she did not receive FECA wage-loss compensation following that date.

also no concurrent nonwork-related disability. Dr. Soren determined that appellant had reached MMI as it related to the February 9, 2014 employment injury and diagnoses. He concluded that she was able to return to her usual occupation on a full-time basis. Any limitations of work would be related to her excessive weight for her height, which would reasonably limit her to lifting only occasional weight up to but not beyond 50 pounds. This limitation was not due to a work-related disability. Dr. Soren advised that this restriction would remain indefinitely pending clear evidence of a reasonable amount of weight reduction, noting that this was likely to take months and should be supervised carefully by appellant's private physician.

On February 5, 2016 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because appellant no longer had residuals or disability causally related to the accepted February 9, 2014 employment injury. It determined that the special weight of the medical evidence rested with the September 8, 2014 impartial medical report of Dr. Soren. Appellant was afforded 30 days to submit additional evidence or argument.

OWCP continued to receive evidence. A December 29, 2015 prescription note which contained an illegible signature indicated that appellant was still complaining of back pain. In a November 17, 2015 prescription, Sofia E. Braylovsky, a physician assistant, noted that appellant was suffering from lower extremity pain due to L5-S1 radiculopathy.

In a February 23, 2016 letter, Dr. Michael Amoashiy, a Board-certified neurologist, related that appellant was treated for a chronic neurological condition. He set forth her physical restrictions. In a February 23, 2016 prescription, Dr. Amoashiy ordered medication.

In a February 26, 2016 report, Dr. Alan J. Dayan, a Board-certified orthopedic surgeon, noted that appellant was seen for a follow-up evaluation of her left leg, lower back, and hip symptomatology. He provided an impression of low back, left hip, and left knee symptomatology with continued pain and stiffness of the left leg. Dr. Dayan recommended continued physical therapy and diagnostic testing. An appointment slip indicated that appellant was scheduled to be evaluated again by Dr. Dayan on March 14, 2016. On March 14, 2016 Dr. Dayan noted a history of the February 9, 2014 employment injuries and examination findings. He provided an impression of lumbosacral disc bulges with continued symptomatology. Dr. Dayan advised that appellant's reported back pain was from her February 9, 2014 employment injury with no previous injuries to the back. He noted that she could continue working full capacity.

By decision dated March 24, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that same date. It accorded special weight to Dr. Soren's September 8, 2014 impartial medical evaluation report.

In letters dated March 14 and April 4, 2016, Dr. Dayan advised that appellant could return to limited/light-duty work. In a separate report dated April 4, 2016, he indicated that she was seen for a follow-up evaluation of her back and right elbow injuries. Dr. Dayan examined appellant and provided an impression of right elbow sprain, improved, and continued low back symptomatology. He ruled out herniated nucleus pulposus. Dr. Dayan recommended a lumbar spine MRI scan. In an April 4, 2016 prescription, he ordered a lumbar spine MRI scan. On May 2, 2016 Dr. Dayan again conducted a follow-up examination and reviewed diagnostic test results. He provided an impression of lumbosacral disc bulges. Dr. Dayan advised that appellant could

continue working with restrictions. In a May 2, 2016 letter, he advised that she could return to limited, light-duty work on May 3, 2016. On July 8, August 12, and September 16, 2016 Dr. Dayan conducted a follow-up examination of appellant's back and right elbow injuries. He discussed examination findings and noted his impression of lumbosacral disc bulges with continued symptomatology and radicular symptoms to the left lower extremity and asymptomatic right elbow. Dr. Dayan again advised that appellant could continue working with restrictions.

In a February 23, 2016 bilateral duplex venous lower extremity study report, John Henry<sup>5</sup> concluded that there was no evidence of deep vein thrombosis or venous obstruction in the left lower extremity.

An April 28, 2016 lumbar spine MRI scan report from Dr. Adam Landskowsky, a Board-certified radiologist, provided an impression of no focal disc herniation or stenosis. He also provided an impression of generalized decreased osseous marrow signal possibly due to anemia. Dr. Landskowsky noted that other considerations existed. He recommended correlation with "CBC."

Treatment notes from a physical therapist addressed the treatment of appellant's back pain that radiated to the left lower extremity from an illegible date in April 2016 through May 27, 2016.

On December 23, 2016 appellant requested reconsideration of the March 24, 2016 termination decision and submitted medical evidence. In a March 31, 2014 report and an August 24, 2016 letter, Dr. Eisen reiterated appellant's history of injury, reviewed diagnostic test results and described findings on physical examination. She also reiterated her prior diagnoses of lumbar disc bulge and lumbar sprain. Dr. Eisen opined that the diagnosed conditions were caused by the accepted work injury. She maintained that appellant was able to perform her job as long as the restrictions set forth in a work capacity evaluation (Form OWCP-5c) were followed. Dr. Eisen advised that continued physical therapy was needed so that she would not reinjure herself and she could eventually return to full-duty work without restrictions. She concluded that appellant's prognosis was very good provided restrictions were met at work.

In a July 19, 2016 report, Dr. Zoltan Fekete, a neurologist, noted the February 9, 2014 employment injuries and a history of appellant's medical, family, and social background. He provided a review of symptoms and listed findings on physical and neurological examination. Dr. Fekete assessed left lumbar radiculopathy. In a July 19, 2016 letter, he noted that appellant was currently under his medical care regarding her February 9, 2014 on-the-job injury. Dr. Fekete reported that her symptoms were persistent since the date of injury. He recommended a second opinion and treatment by Dr. Booker, an interventional pain specialist.

By letter dated September 30, 2016, Dr. Elena Orcher, an anesthesiologist, noted that appellant was seen in her office on that day for severe lower back pain.

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<sup>5</sup> The professional qualifications of Mr. Henry are not contained in the case record.

In a November 29, 2016 report, Dr. Igor Khelemsky, a neurologist, advised that a nerve conduction velocity study revealed evidence of moderate left more than right bilateral L4-5 lumbar radiculopathy.

In reports dated June 7, 2013 through November 18, 2016, Dr. Zurab Abayev, a Board-certified internist, noted appellant's vitals, ordered laboratory tests and performed a procedure.

In an October 31, 2016 letter, Dr. Dayan again noted a history of the February 9, 2014 employment injury and appellant's medical treatment. He discussed examination findings and restated his prior impression of multilevel disc bulge of the lower extremities with subjective symptoms of radiculopathy to the left lower extremity. Dr. Dayan reiterated his opinion that appellant's condition was caused by the February 9, 2014 work-related injury if the information given to him was correct. He advised that she was unable to return to full-capacity work, but she could continue to perform limited-duty work. Dr. Dayan recommended continued intervention with a pain management physician and a neurologist and indicated that appellant would follow up with him on an as-needed basis.

Appellant submitted copies of a mail handler position description and a mail handler equipment operation position description. She also submitted a June 20, 2016 statement from a coworker, who worked in the same area as appellant prior to retiring in 2013. The coworker described appellant's work duties and noted the help she received with the performance of her work duties.

By decision dated March 23, 2017, OWCP denied modification of the March 24, 2016 decision. It found that the medical evidence submitted did not provide a rationalized medical opinion substantiating that appellant continued to have residuals of her accepted employment conditions.

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

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>6</sup> Its 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

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<sup>6</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>7</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

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

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>9</sup>

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>10</sup> Where a case is referred to an impartial medical examiner 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>11</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 24, 2016.

OWCP accepted that appellant sustained right elbow sprain, right forearm sprain, lumbar sprain, and right lateral epicondylitis while in the performance of duty and paid wage-loss compensation benefits and medical benefits. It subsequently determined that a conflict in medical evidence had been created between the opinions of Dr. Eisen, and Dr. Goldman, as to whether appellant had any continuing disability due to the accepted employment injury. OWCP then properly referred him to Dr. Soren, a Board-certified orthopedic surgeon, for an impartial evaluation.

The Board finds that Dr. Soren's impartial medical opinion is entitled to special weight and establishes that appellant no longer had residuals or disability due to the accepted employment injury. In his September 8, 2014 report, Dr. Soren reviewed the SOAF and the medical record and noted essentially normal findings on physical examination. He diagnosed resolved sprain of the right elbow and forearm, resolved sprain of the lumbosacral/lumbar sprain, and resolved right elbow lateral epicondylitis. Dr. Soren opined that appellant had no disabling residuals causally related to the February 9, 2014 employment injury and there was no need for further treatment for the employment-related conditions. He reasoned that there was a lack of any significant clinical findings. Dr. Soren determined that appellant had reached MMI and found that she could return to her usual job on a full-time basis. He noted that the lifting work restriction he set forth was related to her excessive weight.

The Board finds that Dr. Soren provided a comprehensive, well-rationalized opinion in which he clearly found that appellant could return to his preinjury job. Dr. Soren had full knowledge of the relevant facts and the course of appellant's conditions. His opinions were based on proper factual and medical history and on the SOAF. Dr. Soren's report contained a detailed summary of the history of the claim.<sup>12</sup> Additionally, he addressed the medical records, examined

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<sup>9</sup> *Kathryn E. Demarsh, id.; James F. Weikel*, 54 ECAB 660(2003).

<sup>10</sup> 5 U.S.C. § 8123(a); *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414(2006).

<sup>11</sup> *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

<sup>12</sup> *See R.G.*, Docket No. 16-0271 (issued May 18, 2017).



appellant, and reached a reasoned conclusion regarding appellant's conditions.<sup>13</sup> Dr. Soren's opinion is entitled to the special weight accorded an impartial medical examiner and constitutes the weight of the medical evidence.<sup>14</sup> OWCP, therefore, properly terminated appellant's wage-loss compensation benefits on March 24, 2016 based on Dr. Soren's opinion.<sup>15</sup>

The Board further finds that the medical evidence submitted after Dr. Soren's impartial medical evaluation report and prior to OWCP's March 24, 2016 termination decision does not overcome the special weight of his report or create a conflict in medical evidence. Dr. Dayan's March 14, 2016 report noted a history of the February 9, 2014 employment injury, examination findings, and an impression of lumbosacral disc bulges with continued symptomatology. He opined that appellant's condition was due to the accepted employment injuries as she had no previous back injury. The Board has held, however, that a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.<sup>16</sup> Dr. Dayan did not explain how the February 9, 2014 employment injury resulted in the diagnosed condition and thus his opinion is of little probative value.<sup>17</sup> His remaining February 26, 2016 report and March 14, 2016 appointment slip are insufficient to establish that appellant had residuals or disability due to the accepted injuries. This evidence noted that appellant had low back, left hip, and left knee symptomatology with continued pain and stiffness of the left leg, but did not provide a firm diagnosis of a particular medical condition,<sup>18</sup> note a history of injury,<sup>19</sup> or offer a specific opinion as to whether the February 9, 2014 employment injuries caused appellant's conditions.<sup>20</sup>

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<sup>13</sup> *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>14</sup> *See Melvina Jackson*, 38 ECAB 443 (1987).

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

<sup>16</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

<sup>17</sup> *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>18</sup> *See Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

<sup>19</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

<sup>20</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Similarly, Dr. Amoashiy's February 23, 2016 report did not provide a firm diagnosis of a particular medical condition,<sup>21</sup> note a history of injury,<sup>22</sup> or offer a specific opinion as to whether the February 9, 2014 work injuries caused appellant's conditions.<sup>23</sup> He merely noted that she was being treated for a neurological condition for which he set forth physical restrictions and prescribed medication.

The November 17, 2015 prescription from a physician assistant has no probative medical value as physician assistants are not considered physicians as defined under FECA.<sup>24</sup>

The December 29, 2015 prescription note with an illegible signature has no probative value, as it is not established that the author is a physician as defined under FECA.<sup>25</sup>

Therefore, the Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective March 24, 2016.

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

Once OWCP properly terminates appellant's compensation benefits, the burden shifts to appellant to establish that he or she has continuing disability after that date causally related to his or her accepted injury.<sup>26</sup> To establish 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 causal relationship.<sup>27</sup> Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>28</sup>

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

The Board finds that appellant has not established continuing employment-related residuals or disability after March 24, 2016.

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<sup>21</sup> See *supra* note 18.

<sup>22</sup> *Supra* note 19.

<sup>23</sup> *C.B.*, *supra* note 20.

<sup>24</sup> 5 U.S.C. § 8101(2) provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *L.L.*, Docket No. 13-0829 (issued August 20, 2013) (a physician assistant is not a physician under FECA); *D.W.*, Docket No. 15-0836 (issued July 24, 2015); *George H. Clark*, 56 ECAB 162 (2004).

<sup>25</sup> See *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

Following the termination of her wage-loss compensation and medical benefits appellant submitted the March 31, 2014 and August 24, 2016 reports of Dr. Eisen. In these reports, Dr. Eisen provided examination findings and diagnosed lumbar disc bulge and lumbar sprain. She opined that the diagnosed conditions were caused by the accepted February 9, 2014 employment injury. Dr. Eisen further opined that appellant could return to work with restrictions. While the reports of Dr. Eisen are generally supportive of continuing employment-related residuals and disability, they do not provide adequate medical rationale explaining how the diagnosed conditions or resultant disability were caused by the accepted work injury.<sup>29</sup> Moreover, the Board has long held that reports from a physician who was on one side of a medical conflict that an impartial medical specialist resolved, are generally insufficient to overcome the special weight accorded to the report of the impartial medical specialist, or to create a new conflict.<sup>30</sup> The Board finds that as Dr. Eisen was on one side of the conflict resolved by Dr. Soren, Dr. Eisen's additional reports are of insufficient weight to overcome the special weight accorded to Dr. Soren's opinion or to create a new medical conflict.

Appellant submitted additional reports and a prescription dated March 14 through October 31, 2016 from Dr. Dayan. In these reports, Dr. Dayan noted examination findings and provided an impression of lumbosacral disc bulges with continued symptomatology and radicular symptoms to the left lower extremity and asymptomatic right elbow. He advised that appellant could continue working with restrictions. In the October 31, 2016 report, Dr. Dayan opined that appellant's condition was caused by the accepted February 9, 2014 employment injury. However, he failed to provide any medical rationale to support his opinion on causal relationship.<sup>31</sup> Moreover, Dr. Dayan did not offer an opinion on the relevant issue of whether appellant had employment-related residuals or disability due to the accepted work-related conditions in his other reports.<sup>32</sup> For these reasons, the Board finds that his reports are insufficient to establish continuing employment-related residuals or disability.

Likewise, the reports of Drs. Landskowsky, Fekete, Orcher, and Khelemsky, did not provide an opinion addressing whether appellant's diagnosed conditions and any resultant disability were causally related to the accepted work-related conditions.<sup>33</sup> The Board notes that Dr. Orcher's finding, that appellant had lower back pain is a symptom and not a compensable medical diagnosis.<sup>34</sup> For these reasons, the Board finds that these reports are insufficient to establish continuing employment-related residuals or disability.

Dr. Henry's February 23, 2016 report found no evidence of deep vein thrombosis or venous obstruction in the left lower extremity. Dr. Abayev ordered laboratory testing and performed an unidentified procedure. Neither physician diagnosed a medical condition causally related to the

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<sup>29</sup> See *supra* note 17.

<sup>30</sup> *R.B.*, Docket No. 16-1481 (issued May 2, 2017); *I.J.*, 59 ECAB 408 (2008).

<sup>31</sup> See *supra* note 17.

<sup>32</sup> *C.B.*, *supra* note 20.

<sup>33</sup> *Id.*

<sup>34</sup> *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

February 9, 2014 work injuries. The Board finds, therefore, that the reports of Dr. Henry and Dr. Abayev are insufficient to establish that appellant's continued medical condition and disability were caused by the accepted employment injury.

The February 23, 2016 report signed by Mr. Henry has no probative medical value as it is unknown whether a physician signed or authored the document.<sup>35</sup> Similarly appellant's coworker's statement is of no probative value as the underlying issue is medical in nature,<sup>36</sup> and lay persons are not physicians under FECA and, thus, are not competent to render medical opinions.<sup>37</sup>

Appellant has not provided a probative medical opinion sufficient to establish that she had residuals and disability due to her accepted employment-related injuries. The Board, therefore, finds that appellant has failed to meet her burden of proof to establish continuing disability after March 24, 2016.<sup>38</sup>

On appeal appellant contends that she submitted medical evidence sufficient to establish causal relationship between her current conditions and the accepted employment injuries. The Board finds that the weight of the medical evidence is insufficient to establish that appellant has continuing residuals or disability causally related to her accepted February 9, 2014 employment injury.

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 March 24, 2016. The Board further finds that appellant has not met her burden of proof to establish continuing employment-related residuals or disability after March 24, 2016.

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<sup>35</sup> See *supra* note 25.

<sup>36</sup> See S.S., Docket No. 09-2365 (issued June 29, 2010).

<sup>37</sup> See *T.M.*, Docket No. 17-0915 (issued August 29, 2017); *James A. Long*, 40 ECAB 538 (1989).

<sup>38</sup> See *G.G.*, Docket No. 15-0985 (issued August 21, 2015); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Dorothy Sidwell*, 41 ECAB 857 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2018  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board