

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

G.H., Appellant	)	
	)	
and	)	<b>Docket No. 18-0414</b>
	)	<b>Issued: November 14, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Bristol, PA, Employer	)	
	)	

*Appearances:*  
Kevin Card, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On December 7, 2017 appellant, through his representative, filed a timely appeal from a September 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the claim.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

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

<sup>3</sup> The Board notes that appellant submitted additional evidence on appeal. However, with regard to the submission of additional evidence, section 501.2(c)(1) of the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

## **ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 23, 2014; and (2) whether appellant has met his burden of proof to establish continuing residuals or disability after September 23, 2014 causally related to his June 14, 2013 employment injury.

## **FACTUAL HISTORY**

On June 14, 2013 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his back while lifting a heavy broken truck door in the performance of duty.<sup>4</sup> He stopped work on June 14, 2013 and has not returned. OWCP accepted the claim for lumbar sprain and subsequently expanded acceptance of the claim to include aggravation of degenerative disc disease lumbosacral intervertebral disc. It paid appellant wage-loss compensation and medical benefits on the supplemental rolls from July 31 through December 27, 2013, and on the periodic compensation rolls as of December 28, 2013.

In reports dated December 4, 2013 and January 23 and March 4, 2014, Dr. Ashokkumar Thanki, a Board-certified neurosurgeon, provided impressions of chronic and intractable low back pain, right more than left; lumbar strain; lumbar disc bulge; degenerative disc disease and spondylosis with bilateral facet joint hypertrophy, L4-5; small central herniated thoracic disc, T9-10; and mild disc bulge and degenerative disc disease, T9-10, T10-11, and T11-12. He opined that the residuals related to appellant's accepted conditions required L5-S1 decompression and fusion surgery and that appellant was disabled from work as a result of the accepted conditions.

On January 10, 2014 OWCP referred appellant to Dr. Robert F. Draper, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Draper was asked to evaluate whether appellant had residuals of the accepted conditions and whether appellant had any other medical conditions that were causally related to his accepted employment injury. He was also asked to address whether appellant required further treatment (surgery) and whether he remained disabled.

In a January 31, 2014 report, Dr. Draper reviewed the statement of accepted facts (SOAF) and the medical record and conducted a physical examination. He found no evidence of L5-S1 lumbar radiculopathy. Dr. Draper related that appellant did not require surgery and that surgery would worsen appellant's overall condition. He concluded that the residuals of appellant's accepted conditions had ceased and that he was no longer disabled from work as a result of the accepted conditions.

On May 2, 2014 an OWCP medical adviser reviewed appellant's claim. He opined that an impartial medical examination was necessary to determine if there was objective evidence to support the need for surgery.

On May 22, 2014 OWCP referred appellant, together with a SOAF, the medical record, and a list of questions, to Dr. Richard Schmidt, a Board-certified orthopedic surgeon, for an

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<sup>4</sup> OWCP previously accepted that appellant sustained a lumbar strain on June 29, 2004 under OWCP File No. xxxxxx649. In 2008, appellant underwent a bilateral laminectomy foraminotomy. OWCP also accepted that he sustained a lumbar strain on October 24, 2012 under OWCP File No. xxxxxx335.

impartial medical examination to resolve the conflict in opinion between Dr. Thanki and Dr. Draper as to the nature and extent of residuals from appellant's accepted June 14, 2013 employment injury. In a June 23, 2014 report, Dr. Schmidt noted appellant's accepted conditions and set forth examination findings. He reviewed the magnetic resonance imaging (MRI) scan studies of November 27, 2013 and July 13, 2014 and indicated that they did not show any significant pathology of the L5-S1 discs, but rather showed postoperative changes with no evidence of disc herniation or neural compromise. Dr. Schmidt indicated that his review of appellant's November 26, 2013 x-rays showed chronic facet arthritis at L5-S1. He also noted that the November 26, 2013 x-ray report indicated some degenerative disc disease at L5-S1 with facet joint hypertrophy at L5-S1.

Dr. Schmidt opined that appellant had recovered from the accepted conditions as there was no evidence of ongoing lumbar strain or ongoing aggravation of intravertebral disc disease. He concluded that there was no indication, need, or benefit for surgical intervention. In a June 23, 2014 work capacity evaluation (Form OWCP-5c), Dr. Schmidt opined that appellant could resume his date-of-injury position without restrictions.

In an August 11, 2014 letter, appellant informed OWCP that he disagreed with Dr. Schmidt's conclusions and set forth the bases for his disagreement.

On August 20, 2014 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as he no longer had residuals or disability due to his accepted June 14, 2013 injuries. It found that the weight of the medical opinion evidence rested with Dr. Schmidt's June 23, 2014 opinion that appellant no longer had residuals or disability due to his work-related conditions. Appellant was afforded 30 days to respond with additional evidence or argument in opposition to the proposed termination of benefits.

In support of his claim appellant submitted May 7, June 10, July 10, and August 8, 2014 reports from Dr. Thanki. In his July 10 and August 8, 2014 reports, Dr. Thanki disagreed with Dr. Schmidt's assessment. He advised that appellant should consider bilateral laminectomy, foraminotomy, discectomy and excision of epidural scar tissue, L5-S1; posterior lumbar interbody fusion, L5-S1 with interbody cages and autograft, and also posterior-lateral fusion at the L5-S1 level with the use of autograft and/or allograft. The recommendation was based on the abnormalities on two different MRI scan studies of the lumbar spine and appellant's failure to improve despite conservative treatment.

In an August 22, 2014 report, Dr. Nirav Shah, an internist, noted that appellant's June 14, 2013 work injury occurred due to heavy lifting. He provided an assessment of low back pain, lumbar region sprain, and lumbar/thoracic radiculopathy/radiculitis. Dr. Shah opined that appellant had significant low back pain with radiculopathy aggravated by the June 14, 2013 employment incident. He related that appellant had prior back treatment, but was doing well before the June 14, 2013 incident, following which he had significant back pain and radiculopathy. Dr. Shah agreed that the recommended decompression and fusion was reasonable.

By decision dated September 23, 2014, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits. It determined that the weight of the medical opinion evidence rested with Dr. Schmidt's June 23, 2014 opinion that appellant no longer had residuals or disability due to his accepted June 14, 2013 employment injury.

On January 8, 2015 appellant requested reconsideration. In a letter dated November 19, 2014, appellant took issue with Dr. Schmidt's findings. Appellant noted that Dr. Schmidt only performed a limited number of tests and failed to indicate in his report that he had lumbar radiculopathy, degenerative disc disease, and mild bulging at the thoracic spine levels.

Progress reports from Dr. Thanki dated October 9, November 10 and 25, and December 4, 2014 were received.

In his November 10, 2014 report, Dr. Thanki related that appellant had severe diffuse tenderness over the lower lumbar midline and bilateral paravertebral muscles. Appellant also had significant muscle spasm in the lumbar region bilaterally. Range of motion testing revealed severe limitation for all the movements of the lumbar spine with low back pain. Straight leg raising was positive on the right and left at 30 degrees with ipsilateral sciatica. Motor examination revealed weakness in the right lower extremity and decreased touch and pinprick sensations. Appellant limped while walking and had difficulty getting up from the sitting position. Dr. Thanki reviewed an October 27, 2014 MRI scan of appellant's lumbar spine and noted that there were extensive changes and progression of the lumbar disc bulge at the L5-S1 level; degenerative disc disease, epidural scar tissue, and spondylosis with bilateral facet hypertrophy at L5-S1; as well as changes involving the L4-5 level. He related an impression of lumbar disc bulge; degenerative disc disease; and spondylosis and epidural scar tissue, L5-S1; MRI scan evidence of extension of the disc bulge into the left and right neural foramen at the L5-S1 level; broad-based lumbar disc bulge with left-sided foraminal disc bulge or protrusion, L4-5; lumbar spondylosis with bilateral facet joint hypertrophy and neural foraminal encroachment, L4-5; bilateral lumbosacral radiculopathy; small central herniated thoracic disc, T9-10; degenerative disc disease and marked disc bulging at T9-10 through T11-12; and progressive worsening of symptoms, including pain in the low back and both lower extremities with numbness and tingling and decreased strength in both lower extremities. Dr. Thanki recommended an electromyography and a nerve conduction velocity (EMG/NCV) study and advised appellant of his surgical opinions.

On November 19, 2014 appellant underwent EMG/NCV studies which indicated a mild S1 radiculopathy with no evidence of neuropathy.

In his November 25, 2014 report, Dr. Thanki noted that there were no new neurological findings. He indicated that appellant had a positive EMG/NCV and that the November 19, 2014 study was consistent with a mild S1 radiculopathy with no evidence of neuropathy. Dr. Thanki reiterated his prior surgical options.

In his December 4, 2014 report, Dr. Thanki noted appellant's complaints of severe pain and repeated appellant's surgical options.

By decision dated April 8, 2015, OWCP denied modification of its September 23, 2014 termination decision. It found that Dr. Thanki's reports did not contain a well-reasoned opinion as to whether appellant continued to suffer from residuals of the accepted injury.

On January 26, 2016 appellant requested reconsideration. He presented several arguments in a January 20, 2016 letter. Appellant alleged that he had a consequential injury due to his prescribed narcotic medication and that Dr. Schmidt failed to address the effects of the medication on his ability to work. He also argued that selection of Dr. Schmidt as the impartial medical

specialist was improper because he was not a neurologist. Appellant further alleged that he was not notified in the scheduling letter that he could challenge the selection of the impartial medical specialist and that he could have a physician designated and paid by him present during his impartial examination. He also contended that Dr. Thanki's reports contained a detailed statement establishing causal relationship.

By decision dated April 7, 2016, OWCP denied modification of its prior decision. It indicated that there was no evidence of record that appellant had filed a claim for a consequential injury. OWCP also found that his remaining arguments had no validity or bearing on the claim.

On July 5, 2016 appellant requested reconsideration.

In a December 14, 2015 report, Dr. Thanki provided a detailed medical history and indicated that appellant underwent lumbar surgery on December 11, 2014. He indicated that appellant continued to be prescribed narcotic medication for pain in his back. Dr. Thanki diagnosed aggravated degeneration of lumbar disc L5-S1, bilateral lumbosacral radiculopathy, and broad-based disc bulge and spondylosis at L4-5. He opined that appellant suffered a serious injury as a result of the June 14, 2013 work incident and, while surgery helped, appellant was not completely pain free from the injury and he would continue to suffer residuals. Dr. Thanki opined that the delay in surgery aggravated and accelerated appellant's condition. He indicated that, during the time he was treating appellant, appellant required strong narcotic analgesics and muscle relaxants to treat the ongoing complaints of pain and muscle spasm in the back. Sedation was a common side effect of those medications and, as a result, appellant was not able to return to work. Since the lumbar spine surgery, appellant's low back pain had decreased and he was able to reduce the use of pain medications. He was only taking Percocet and Flexeril as needed.

By decision dated September 30, 2016, OWCP denied modification of its prior decision.

On May 25, 2017 appellant's representative requested that the claim be expanded to include the condition of bilateral S1 radiculopathy.

A February 6, 2017 EMG/NCV study revealed bilateral S1 radiculopathies, but no evidence of neuropathy.

In an April 18, 2017 duty status report (Form CA-17), Dr. Thanki opined that appellant was unable to work in any capacity.

In a May 8, 2017 report, Dr. Thanki noted that Dr. Schmidt examined appellant on June 23, 2014. He indicated his disagreement with Dr. Schmidt's physical evaluation findings by including references from his July 10, 2014 office notes to support that appellant had muscle spasm in his lumbar region, and motor and sensory deficits. Dr. Thanki also indicated that the November 19, 2014 EMG/NCV study was positive for bilateral S1 radiculopathy. He opined that, as result of the June 14, 2014 work injury, appellant had bilateral S1 radiculopathy and pain in the low back and both lower extremities. Dr. Thanki again opined that appellant suffered from aggravation of lumbar degenerative disc disease, L5-S1, and lumbar disc bulge and spondylosis, L5-S1 as a result of the June 14, 2013 work injury. He explained that appellant was completely asymptomatic prior to the June 14, 2013 work injury even though he had lumbar degenerative disc disease and spondylosis at L5-S1. Dr. Thanki noted that appellant also had a "physiologic" disc bulge at L5-S1, but he was completely asymptomatic. Thus, the injury of June 14, 2013 made

appellant symptomatic -- the conditions of lumbar degenerative disc disease, lumbar spondylosis, and lumbar disc bulge at L5-S1 became symptomatic and he also developed bilateral S1 radiculopathy. Dr. Thanki further indicated that, despite nonsurgical treatment and the subsequent lumbar spine surgery, appellant continued to suffer from ongoing symptoms and that the new EMG/NCV study revealed persistent bilateral S1 radiculopathy.

On June 7, 2017 appellant requested reconsideration of OWCP's September 30, 2016 decision.

By decision dated September 5, 2017, OWCP denied modification of its prior decision. It found that the evidence presented was insufficient to outweigh the findings of Dr. Schmidt, which were entitled to the weight of the medical evidence.

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

Once OWCP accepts a claim, it has the burden of proof to justify 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>5</sup> Its 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>

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 examiner (IME) 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>

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<sup>5</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>6</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (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).

<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).

## **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 September 23, 2014.

OWCP determined that a conflict in medical opinion had been created between Dr. Thanki, appellant's treating physician, and Dr. Draper, an OWCP second opinion physician. Dr. Thanki had opined that appellant had residuals and disability from his accepted employment-related conditions and required L5-S1 decompression and fusion surgery. Alternatively, Dr. Draper found that appellant no longer suffered residuals or disability due to the accepted conditions and that he did not require surgical intervention as there was no evidence of radiculopathy at the L5-S1 level. Pursuant to 5 U.S.C. § 8123(a), OWCP properly found the existence of a conflict and referred appellant to Dr. Schmidt for an impartial medical examination to resolve the conflict in opinion between Dr. Thanki and Dr. Draper.

In his June 23, 2014 report, Dr. Schmidt reviewed the SOAF and evaluated the course of appellant's employment-related conditions. He addressed the medical record, noting accepted conditions under appellant's prior OWCP claims and appellant's prior back surgery. Dr. Schmidt made his own examination findings and fully explained his conclusions. He reviewed the MRI scan studies of November 27, 2013 and July 13, 2014 and indicated that they did not show any significant pathology of the L5-S1 discs, but rather showed postoperative changes with no evidence of disc herniation or neural compromise. Dr. Schmidt indicated that appellant's November 26, 2013 x-rays showed chronic facet arthritis at L5-S1 and that the November 26, 2013 x-ray report had indicated some degenerative disc disease most pronounced at L5-S1 with facet joint hypertrophy at L5-S1. He opined that appellant had recovered from the accepted conditions as there was no evidence of an ongoing lumbar strain or ongoing aggravation of appellant's intravertebral disc disease. Dr. Schmidt concluded that there was no indication, need, or benefit for additional surgical intervention, which included lumbar laminectomy, foraminotomy, and discectomy. He also opined that there was no need for a lumbar interbody fusion as there was no evidence of instability in appellant's spine and there is no indication for discectomy or facet removal. In a June 23, 2014 work capacity evaluation (Form OWCP-5c), Dr. Schmidt opined that appellant could resume his date-of-injury position with no restrictions. The Board finds that Dr. Schmidt provided a comprehensive, well-rationalized opinion in which he clearly explained that accepted conditions had resolved and that appellant could return to his regular position. Dr. Schmidt's opinion therefore constitutes the special weight accorded an IME with regard to appellant's accepted orthopedic conditions.<sup>11</sup>

Subsequent to the notice proposing to terminate appellant's benefits, OWCP received progress reports from Dr. Thanki, who continued to advise that appellant had residuals and disability related to his accepted lumbar conditions and that surgery was recommended. The Board notes that Dr. Thanki had been on one side of the conflict in the medical opinion that Dr. Schmidt,

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<sup>11</sup> See *H.A.*, Docket No. 16-1184 (issued April 20, 2017).

the impartial specialist resolved, and his reports are insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.<sup>12</sup>

OWCP also received a report from Dr. Shah dated August 22, 2014. Dr. Shah opined that appellant had significant low back pain with radiculopathy as a result of aggravation from the June 14, 2013 work accident. He also indicated that the recommended decompression and fusion by appellant's surgeon was reasonable. However, Dr. Shah's opinion that appellant's low back pain with radiculopathy was caused by the employment injury because he was not symptomatic prior to the injury lacks probative value. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support causal relationship.<sup>13</sup>

The Board therefore concludes that Dr. Schmidt's opinion that appellant no longer had residuals from the accepted conditions and was no longer disabled is entitled to the special weight accorded an IME.<sup>14</sup> The additional medical evidence submitted was insufficient to overcome the weight accorded Dr. Schmidt as an impartial medical specialist regarding whether appellant had residuals and disability of his accepted conditions. OWCP therefore properly terminated appellant's wage-loss compensation and medical benefits on September 23, 2014.<sup>15</sup>

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

As OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on September 23, 2014, the burden then shifted to appellant to establish that he had continuing disability or residuals causally related to the accepted conditions.<sup>16</sup> Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>17</sup>

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

The Board finds that appellant has not met his burden of proof to establish continuing residuals or disability after September 23, 2014, causally related to his June 14, 2013 employment injury.

After the termination of compensation benefits, appellant took issue with Dr. Schmidt's findings alluding that a comprehensive examination was not performed. However, there is no

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<sup>12</sup> *Nancy Keenan*, 56 ECAB 687 (2005); *Alice J. Tysinger*, 51 ECAB 638 (2000); *Barbara J. Warren*, 51 ECAB 413 (2000).

<sup>13</sup> See *P.L.*, Docket No. 17-0082 (issued April 13, 2017).

<sup>14</sup> See *Sharyn D. Bannick*, 54 ECAB 537 (2003).

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

<sup>16</sup> See *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

<sup>17</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

evidence to support that Dr. Schmidt failed to conduct a proper examination or base his decision on a complete factual and medical background. Appellant also challenged Dr. Schmidt's report asserting that he did not address appellant's ability to work, given his prescribed medications. However, Dr. Schmidt completed a work capacity evaluation (Form OWCP-5c), which OWCP had enclosed, and opined that appellant could resume his date-of-injury position with no restrictions.

Appellant argued that he should have been referred to a neurologist for the impartial medical examination. Section 8123 provides that, if a conflict of medical opinion occurs, the claimant shall be referred to a Board-certified specialist in the appropriate field of medicine for an impartial medical examination.<sup>18</sup> The accepted conditions in this case were lumbar sprain and aggravation of degenerative disc disease lumbosacral intervertebral disc, which were orthopedic in nature. The objective testing of record failed to reveal neurologic evidence of disc herniation or neural compromise or radiculopathy. Thus, referral to a Board-certified neurologist was unnecessary.<sup>19</sup>

Appellant also alleged that he should have been allowed to participate in the selection of the IME. As he expressed no objection to Dr. Schmidt's selection at the time of his appointment, and did not object to the appointment until after the examination, his objection is untimely.<sup>20</sup>

Appellant also argued that he was not provided proper notice that he could have a physician designated and paid by him present during the IME examination with Dr. Schmidt. Section 10.321(b) of OWCP's regulations specifically provides that the employee is not entitled to have anyone present at the examination unless OWCP decides that exceptional circumstances exist.<sup>21</sup> Appellant has not established exceptional circumstances, therefore he was not entitled to have anyone present during the IME examination with Dr. Schmidt.

The Board finds that the medical evidence submitted following the September 23, 2014 termination is also insufficient to establish that appellant continued to have residuals or disability of the June 14, 2013 injury.

After the termination of compensation, appellant submitted November 19, 2014 and February 6, 2017 EMG/NCV studies. The Board has held that reports of diagnostic tests are of limited probative value as they do not provide an opinion on the causal relationship between his employment duties and the diagnosed conditions.<sup>22</sup>

Dr. Thanki continued to submit reports reiterating his diagnoses and opining that appellant's aggravation of lumbar degenerative disc disease, L5-S1 and lumbar disc bulge and spondylosis, L5-S1, were employment related and that appellant remained disabled. However, he

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<sup>18</sup> 5 U.S.C. § 8123.

<sup>19</sup> See *H.C.*, Docket No. 13-1333 (issued February 18, 2014).

<sup>20</sup> *J.S.*, Docket No. 16-1097 (issued December 5, 2016).

<sup>21</sup> 20 C.F.R. § 10.321 (b); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations, Referee Examinations*, Chapter 3.500.4 (e) (July 2011).

<sup>22</sup> See *R.T.*, Docket No. 17-2019 (issued August 24, 2018).

had been on one side of the conflict in medical evidence which was resolved by Dr. Schmidt.<sup>23</sup> An analysis of Dr. Thanki's findings show that his subjective findings upon physical evaluation differ from Dr. Schmidt's. Additionally, there exist different interpretations of the EMG/NCV studies. Dr. Thanki rationalized, in his May 8, 2017 report, that even though appellant had lumbar degenerative disc disease and spondylosis at L5-S1 and had a "physiologic" disc bulge at L5-S1, he was asymptomatic prior to the June 14, 2013 work injury. Thus, he concluded that the June 14, 2013 work injury made appellant symptomatic and therefore the June 14, 2013 employment injury caused appellant's bilateral S1 radiculopathy. However, Dr. Thanki's opinion that appellant's diagnosed conditions were caused by the employment injury because he was not symptomatic prior to the injury lacks probative value as he failed to offer any supporting rationale to support causal relationship.<sup>24</sup>

As there is no rationalized medical evidence of record that appellant had continuing residuals or disability due to the June 14, 2013 work injury, he has not met his burden of proof.<sup>25</sup>

On appeal, appellant's representative argues that the weight of the medical evidence should be given to Dr. Thanki's May 8, 2017 report as it presents contemporaneous medical evidence based on more recent physical examination and diagnostic testing. However, as discussed above, Dr. Thanki's reports submitted after the termination of benefits, including his May 8, 2017 report, are of insufficient rationale to establish that appellant continued to have residuals or disability causally related to the June 14, 2013 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 properly terminated appellant's wage-loss compensation and medical benefits effective September 23, 2014. The Board also finds that appellant has not established continuing residuals or disability after September 23, 2014 causally related to his June 14, 2013 employment injury.

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<sup>23</sup> *I.J.*, 59 ECAB 408 (2008).

<sup>24</sup> *See supra* note 13.

<sup>25</sup> *G.H.*, Docket No. 16-0432 (issued October 12, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 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