

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

A.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Punta Gorda, FL, Employer**

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**Docket No. 17-1192
Issued: September 19, 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 May 9, 2017 appellant filed a timely appeal from a January 30, 2017 merit decision and a March 27, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation benefits, effective March 1, 2016; (2) whether appellant has established continuing disability after March 1, 2016; and (3) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 14, 2015 appellant, then a 54-year-old modified rural carrier, filed a recurrence of disability claim (Form CA-2a) under OWCP File No. xxxxxx516.² She alleged that pain from her January 3, 2006 work-related injury worsened over time, to the point where she was having difficulty walking and nerve damage was making it difficult to perform her job. Appellant advised that magnetic resonance imaging (MRI) scans from 2015 showed bulging discs in two areas of her spine. She reported that her recurrence commenced on December 16, 2014, when she was working as a full-time, permanent modified rural carrier.³ Appellant claimed that she stopped work on March 30, 2015 due to the recurrence of disability and did not return. As new work factors were indicated, OWCP converted the recurrence claim to a new occupational disease claim (Form CA-2), which is the present claim assigned OWCP File No. xxxxxx705.

OWCP initially denied the present claim on July 10, 2015. It found that the medical evidence from Dr. Muhammed Y. Memon, a neurologist, did not sufficiently establish a relationship between appellant's current degenerative disc disease and her modified rural carrier duties. OWCP noted that in an undated letter, received on June 9, 2015, Dr. Memon had premised his opinion that appellant's medical conditions worsened on her unrestricted-duty position as a letter carrier, rather than her modified restricted-duty position as indicated in the December 17, 2010 job offer.

On August 21, 2015 appellant requested reconsideration. In support of her request, she submitted a June 30, 2015 report, wherein Dr. Memon indicated that a lumbar spine MRI scan showed foraminal narrowing at the level of L4-5 bilaterally and right-sided L5-S1 also with a degenerative disc. Dr. Memon stated that appellant was unable to walk on her heels/toes; that she had severe limitation of motion of the lumbar spine, especially with extension; and that she had lost strength in her lower extremities and had decreased sensation. He stated that, due to the above conditions, she walked with a cane. Dr. Memon also noted that appellant continued to be treated regularly by him. He opined that her position with the employing establishment had accelerated and aggravated her symptoms due to required repetitive movements of lifting, twisting, turning, and bending, while standing and walking on the hard surfaces for long periods of time. Dr. Memon further opined that appellant's modified position, which had restrictions of no lifting more than 15 pounds or pushing more than 45 pounds, to which she had returned and worked, had caused her

² Under OWCP File No. xxxxxx516, OWCP accepted cervical disc displacement at C5-6 and left shoulder strain due to a January 3, 2006 traumatic (Form CA-1) work injury. Appellant underwent a cervical discectomy and fusion on March 15, 2006. OWCP subsequently expanded acceptance of the claim to include right shoulder bursitis. Appellant returned to modified work following surgery. She also has other claims before OWCP: under OWCP File No. xxxxxx481, OWCP accepted a June 25, 2002 traumatic injury for lumbar disc herniation at L4-5; under OWCP File No. xxxxxx736, OWCP accepted a thoracic strain and cervical disc herniation at C5-6 from an August 22, 2005 work injury; under OWCP File No. xxxxxx191, OWCP accepted an occupational disease claim (Form CA-2) for right ulnar nerve compression.

³ Under OWCP File No. xxxxxx191, appellant underwent OWCP-approved surgery in September 2010. She returned to modified work in October 2010 and accepted a full-time, permanent modified rural carrier position on December 17, 2010. Appellant's permanent modified carrier duties included casing and carrying route 67 with assistance provided when needed. The physical requirements of the modified position did not require pushing or pulling over 45 pounds or lifting over 16 pounds. A hydraulic cart to maneuver mail a parking space was assigned to assist appellant in loading her vehicle.

symptoms to flare up and had aggravated her conditions to the point where she was unable to perform any of her duties at her work.

By decision dated November 9, 2015, OWCP vacated its July 10, 2015 decision and accepted an aggravation of lumbar degenerative disc disease based on Dr. Memon's June 30, 2015 report. It paid appellant wage-loss compensation and medical benefits commencing April 7, 2015.

In an October 15, 2015 note, Dr. Memon reported that appellant was disabled from work. On November 19, 2015 he opined that she remained disabled from work as she was awaiting an MRI scan and surgery.

A November 30, 2015 MRI scan of the lumbar spine indicated no change from prior study. It showed a small central bulge at L5-S1 grossly unchanged with question of minimal radial tear. No neural foraminal narrowing was noted. November 30, 2015 x-rays of the lumbar spine, in comparison to May 13, 2013, indicated modest increase narrowing at L4-5 and L5-S1.

On November 19, 2015 OWCP assigned appellant a field nurse to facilitate treatment and a return to work in a modified work capacity.

In a December 2, 2015 CA-110 note, the employing establishment confirmed that it could accommodate appellant to return to work modified duty.

On a December 22, 2015 work capacity evaluation form (Form OWCP-5c), Dr. Memon indicated that appellant could return to her regular modified duties with respect to her lumbar back strain.

In a December 31, 2015 report, Dr. Memon reported that appellant claimed that she continued to have low back and leg pain bilaterally, and that her only comfortable position was lying down. He concluded that she was capable of working with restrictions and that she had reached maximum medical improvement. However, in a December 31, 2015 work capacity form (Form OWCP-5c), Dr. Memon opined that appellant was unable to work due to right disc protrusion at L4-5 and annual tear at L5-S1.

In a December 31, 2015 letter, the field nurse requested that Dr. Memon clarify the change in appellant's work status from December 22, 2015, when she was released to regular modified duty, to December 31, 2015, when she was found to be disabled from work.

In a January 6, 2016 letter, the field nurse reported to OWCP that Dr. Memon responded that there was no new injury; however, he felt that she could only sit for one hour intermittently, walk and stand no more than 10 to 15 minutes intermittently, and could drive depending on the use of medication. The nurse noted that she was scheduled to meet with Dr. Memon on January 7,

2016 to discuss appellant's status and to determine the reason for the change in her work status. A copy of Dr. Memon's December 31, 2015 OWCP-5c form, which noted the changed restrictions, was provided.⁴

In a January 14, 2016 OWCP-5c form, Dr. Memon opined that appellant could return to work full-time in her previous modified rural carrier position, and that she had reached maximum medical improvement. A copy of the December 17, 2010 modified rural carrier assignment was attached.

On January 20, 2016 the employing establishment confirmed that appellant had not returned to her full-time modified rural carrier position.

On January 22, 2016 OWCP proposed to terminate appellant's wage-loss compensation. It found that the weight of the medical evidence rested with Dr. Memon, appellant's attending physician, who found that appellant was no longer disabled from her modified rural carrier duties due to her accepted back condition, which was an aggravation. OWCP provided appellant 30 days to submit additional evidence or argument.

In response to the notice of proposed termination, OWCP received additional evidence, including that appellant submitted a duplicate copy of Dr. Memon's January 14, 2016 Form OWCP-5c, which noted that she could return to work in her previous modified rural carrier position.

In a January 21, 2016 report, Dr. Memon stated that appellant could return to work with restrictions of "no prolonged standing, sitting or walking." In a February 11, 2016 addendum, he opined that appellant's present disabilities were the direct result of her work-related injuries.

In a February 11, 2016 duty status report (Form CA-17), Dr. Memon indicated that appellant had restrictions of no prolonged standing, sitting or walking and added no frequent twisting or bending.

In a February 25, 2016 unsigned note, Dr. Memon indicated that the December 31, 2016 OWCP-5c form, which indicated that appellant was unable to perform any work, was completed by mistake. He indicated that she was told that she could return to her original modified duties.

By decision dated February 29, 2016, OWCP terminated appellant's wage-loss compensation, effective March 1, 2016. It found that the weight of the medical evidence established that she was no longer disabled from work due to the December 16, 2014 work injury. OWCP noted that appellant's medical benefits remained open.

On March 23, 2016 appellant requested a telephonic hearing before an OWCP hearing representative. In a March 23, 2016 letter, she indicated that OWCP should reinstate her wage-

⁴ A field nurse report dated February 15, 2016 summarized a January 2016 meeting with Dr. Memon regarding appellant's work status. During that meeting Dr. Memon informed the field nurse that he did not complete the December 31, 2015 OWCP-5c form, and that he may have inadvertently signed it without reading it. He reviewed appellant's regular modified job description and determined that she could return to work in that capacity. A new OWCP-5 form dated January 14, 2016 was provided.

loss compensation and expand the acceptance of her claim to include conditions of her upper and lower extremities so that she may receive treatment for those conditions as well. Appellant acknowledged that Dr. Memon had released her to her usual modified rural carrier assignment with regard to her accepted low back claim of December 16, 2014. She argued, however, that she was incapable of performing those job duties.

A telephonic hearing was held on November 16, 2016. During the hearing, appellant testified that the modified assignment she had returned to for three days was her full-duty assignment with accommodations. She asserted that the field nurse had threatened Dr. Memon so that he would release her back to work. Appellant noted that she now used a cane, was receiving social security disability benefits, and had applied for disability retirement.

Copies of evidence previously of record were resubmitted. In a December 7, 2016 letter, B.M., an employing establishment Health and Resource Management Specialist, indicated that Dr. Memon had released appellant to the duties of her modified rural carrier assignment on January 14, 2016. This release to modified work was accomplished after Dr. Memon had discussed the modified assignment in detail with the field nurse. B.M. indicated that the employing establishment had provided modified work within the limitations of the treating physician and that this work remained available.

On May 3, 2016 Dr. Memon reported that appellant underwent a functional capacity evaluation (FCE), which demonstrated that she could not continue with her preinjury work. In a May 16, 2016 report, he opined that she could return to work with restrictions of no prolonged standing, sitting or walking. Dr. Memon indicated that appellant's present disabilities were direct results from her work-related injuries. He also stated that her FCE indicated that she did not demonstrate the abilities to continue with her preinjury work duties. In a May 25, 2016 brief prescription note, Dr. Memon stated that appellant was "unable to return to her prior position with the employing establishment."

A May 26, 2016 letter from the Social Security Administration indicated that appellant had met the medical requirements for disability benefits as of July 7, 2015.

In a June 8, 2016 Form OWCP-5c, Dr. Memon indicated that appellant could only work one third of the workday sitting, walking, standing and reaching, one-half to two-thirds of the workday reaching with no more than half of the workday reaching above shoulder. He also maintained that there were weight restrictions for pushing, pulling and lifting. Dr. Memon stated that the restrictions were permanent.

By decision dated January 30, 2017, an OWCP hearing representative affirmed OWCP's termination of appellant's wage-loss compensation, effective March 1, 2016. He found that the weight of the medical evidence established that she was capable of returning to her modified work which she had performed prior to her December 16, 2014 work injury.

On March 17, 2017 appellant requested reconsideration. She asserted that the modified position she performed since 2010 was not within her current restrictions and physical capacity.

Duplicate copies of Dr. Memon's work excuse notes dated May 25 and June 8, 2016 Form OWCP-5c were submitted.

In a March 7, 2017 note, Dr. Memon stated that, since 2010, appellant had been unable to perform the duties of her regular rural carrier position. As such, appellant was placed in a modified rural carrier position. As of December 16, 2014, she was unable to perform her modified carrier duties due to the recurrence of prior work injury symptoms. On March 1, 2016 appellant was released to return to her modified rural carrier position. Dr. Memon indicated that this was not within her permanent activity restrictions and appellant was placed on disability at that time. He stated that the employing establishment had no positions compatible with her permanent restrictions and that appellant was now receiving social security disability benefits.

On March 14, 2017 the employing establishment indicated that appellant's modified job offer remained available to her.

By decision dated March 27, 2017, OWCP denied appellant's request for reconsideration. It indicated that the evidence submitted in support of the request was either repetitious, immaterial or of "negligible probative value" to warrant review of the January 30, 2017 decision.

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.⁵ After it has determined that an employee has disability causally related to her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁶ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective March 1, 2016, based on the opinions of Dr. Memon, appellant's treating physician.

OWCP accepted that on December 16, 2014 appellant sustained an aggravation of lumbar degenerative disc disease. It terminated her wage-loss compensation, effective March 1, 2016, as it found that the medical evidence from her attending physician indicated that she was capable of performing the duties of a modified rural carrier, a position she had been performing since December 17, 2010.

The record reflects that Dr. Memon was familiar with appellant's work history and her various medical conditions. Dr. Memon indicated that she continued to be treated regularly in his office. In a January 14, 2016 work capacity form, he released appellant to work the duties of her previous modified rural carrier position after reviewing a copy of the December 17, 2010 modified assignment. Dr. Memon additionally indicated that she had reached maximum medical

⁵ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁷ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

improvement. On January 21, 2016 he indicated that appellant could return to work with restrictions of no prolonged standing, sitting or walking and, on February 11, 2016, added an additional restriction of no frequent twisting or bending. Dr. Memon noted that these restrictions, however, do not prevent her from performing the modified rural carrier position, as the activities of sitting, standing, twisting, and bending are only intermittent. On February 25, 2016 he again indicated that appellant could work per her December 17, 2010 modified rural carrier position.

The Board has held that the weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.⁸

Dr. Memon's reports were based on a complete factual and medical history. He performed comprehensive evaluations and found that appellant's accepted back conditions were no longer disabling and that she had reached maximum medical improvement. Dr. Memon also reviewed the December 17, 2010 modified rural carrier position in reaching his opinion that she could return to her previous modified rural carrier position. His opinion is the only medical opinion which addresses work capacity. Accordingly, Dr. Memon's opinions carry the weight of the medical evidence and establish that appellant was capable of performing the duties of her modified rural carrier position as of March 1, 2016, a modified position which she had performed since December 2010.⁹

Accordingly, OWCP properly terminated appellant's wage-loss compensation, benefits effective March 1, 2016.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates appellant's compensation benefits, the burden shifts to the claimant to establish that he or she has continuing disability after that date related to the accepted injury.¹⁰ To establish causal relationship between an accepted condition and any attendant disability claimed, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.¹¹ Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹²

⁸ *J.J.*, Docket No. 15-0475 (issued September 28, 2016).

⁹ *L.M.*, Docket No. 10-1172 (issued February 2, 2011).

¹⁰ *Manuel Gill*, 52 ECAB 282 (2001).

¹¹ *R.D.*, Docket No. 16-0982 (issued December 20, 2016).

¹² *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

ANALYSIS -- ISSUE 2

Given the Board's finding that OWCP properly terminated appellant's wage-loss compensation benefits, effective March 1, 2016, the burden shifted to appellant to establish that she remained entitled to compensation after that date.¹³

The Board finds that appellant has not established any continuing disability on or after March 1, 2016, the effective date of the termination of her wage-loss compensation, causally related to the accepted December 16, 2014 employment injury.

The evidence received subsequent to OWCP's termination of appellant's wage-loss compensation included a May 25, 2016 prescription note, in which Dr. Memon changed his assessment of the working capabilities of appellant. Dr. Memon's note stated that he now believed appellant was unable to return to her prior position with the employing establishment. However, he offered no reasoning for his changed opinion. In a June 8, 2016 Form OWCP-5c, Dr. Memon again changed his opinion relative to appellant's working capabilities finding that appellant could work with more stringent restrictions. However, he offered no reasoned opinion, with objective evidence, which explained how or why appellant was disabled from working her modified rural carrier position due to her accepted back condition.¹⁴

A May 26, 2016 letter from the Social Security Administration indicated that appellant met the medical requirements for disability benefits as of July 7, 2015. However, the Board has noted that findings of other government agencies are not dispositive with regard to questions arising under FECA.¹⁵

Thus, the Board finds that appellant has not established continuing residuals or disability after March 1, 2016.

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.

LEGAL PRECEDENT -- ISSUE 3

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁶ Section 10.608(b) of OWCP's regulations

¹³ *J.P.*, Docket No. 16-1103 (issued November 25, 2016).

¹⁴ *K.S.*, Docket No. 16-0401 (issued July 12, 2016).

¹⁵ *Ernest J. Malagrida*, 51 ECAB 287, 291 (2000).

¹⁶ 20 C.F.R. § 10.606(b)(3); *J.T.*, Docket No. 18-0087 (issued February 14, 2018); *D.K.*, 59 ECAB 141 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁷

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On March 17, 2017 appellant requested reconsideration of OWCP's January 30, 2017 decision, in which an OWCP hearing representative affirmed the termination of wage-loss compensation, effective March 1, 2016.

Appellant asserted in her request for reconsideration that the modified rural carrier position she had performed since 2010 was not within her current restrictions and physical capacity. However, she did not identify any specific duty or duties of the job which exceeded her work capacity. Furthermore, appellant's opinion that her job exceeded her work capacity is not relevant as it is primarily a medical determination.¹⁸ She, therefore, did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP.¹⁹ As such, appellant was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).²⁰

A claimant may also be entitled to a merit review by submitting relevant and pertinent new evidence. Appellant submitted duplicative copies of Dr. Memon's work excuse notes dated May 25, 2016, a June 8, 2016 Form OWCP-5c, and a June 30, 2015 treatment note which were all previously of record. The Board has held that the submission of evidence which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.²¹

Appellant submitted a new report dated March 7, 2017 from Dr. Memon. Dr. Memon noted that since 2010 appellant had been unable to perform the duties of her regular rural carrier position and that she was placed in a modified carrier position. He noted the December 16, 2014 work injury and indicated, on March 1, 2016, that she was released back to her modified rural carrier position. Dr. Memon opined that this was not within appellant's permanent activity restrictions and that she was placed on back on disability. However, he did not explain why appellant was unable to perform the duties of the modified rural carrier position either on March 1, 2016 or currently due to her accepted back condition.²² Dr. Memon's note, therefore, does not

¹⁷ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

¹⁸ *See T.M.*, Docket No. 16-0065 (issued April 4, 2016); *Kathy E. Murray*, 55 ECAB 288, 290 (2001).

¹⁹ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

²⁰ *M.P.*, Docket No. 17-0653 (issued July 20, 2017); *D'Wayne Avila*, 57 ECAB 642 (2006).

²¹ *R.H.*, Docket No. 17-0876 (issued November 21, 2017); *Richard A. Neidert*, 57 ECAB 474 (2006).

²² *K.S.*, *supra* note 14.

address the particular issue involved and therefore does not constitute a basis for reopening a case.²³

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective March 1, 2016. The Board further finds that appellant has not met her burden of proof to establish any continuing residuals or disability on or after March 1, 2016 causally related to the accepted December 16, 2014 employment injury. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 27 and January 30, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 19, 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

²³ *Supra* note 20.