



## **ISSUE**

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 9, 2019, as she no longer had residuals or disability causally related to her accepted April 4, 2018 employment injury.

## **FACTUAL HISTORY**

On April 19, 2018 appellant, then a 37-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 4, 2018 she strained her right lower back and felt extreme pain in her back, right leg, and right arm when lifting a relay bag while in the performance of duty. She stopped work on April 7, 2018 and received continuation of pay (COP). On June 4, 2018 OWCP accepted appellant's claim for lumbar and cervical sprain. It paid wage-loss compensation for temporary total disability from May 24, 2018 to March 29, 2019 on the supplemental rolls.

In a narrative report dated October 10, 2018, Dr. Marina Neystat, Board-certified in internal medicine, noted that appellant had a previous diagnosis of arthritis. She related that appellant's current condition was caused by a job-related event when she reinjured her back lifting a heavy weight. Dr. Neystat diagnosed lumbar radiculopathy, lumbar polyneuropathy, lumbar and cervical sprain. In a form progress report dated October 21, 2018, she diagnosed lumbar radiculopathy and polyneuropathy. In a narrative report dated November 28, 2018, Dr. Neystat diagnosed lumbar sprain preexistent and exacerbated, lumbar radiculopathy, and cervical sprain. In a November 28, 2018 work capacity evaluation (Form OWCP-5c), she checked a box marked "yes" in response to a question as to whether appellant was able to work with restrictions. Dr. Neystat noted that appellant was able to work an eight-hour shift, with frequent breaks and no lifting or carrying over 10 pounds.

On December 27, 2018 OWCP referred appellant, along with a statement of accepted facts and a copy of the record, to Dr. Andrew Farber, an osteopathic physician Board-certified in orthopedic surgery, for a second-opinion evaluation regarding the status of her work-related injury and work capacity.

In a January 15, 2019 report, Dr. Farber reviewed appellant's history of injury, which included a previous back injury in 2016, and appellant's accepted claim for lumbar and cervical strain. He examined appellant and provided findings, which included that she was nontender to palpation, had strength in the lower extremity of 5/5, and no focal neurovascular deficits noted. Dr. Farber also provided goniometric measurements for range of motion. He concluded that the accepted conditions of cervical and lumbar sprains were no longer active, nor were they causing objective symptoms. Dr. Farber indicated that appellant was able to return to work with a lifting restriction of 20 pounds.

In a letter dated February 5, 2019, OWCP requested that Dr. Farber explain why there was a need for physical restrictions since he had indicated that the accepted conditions had resolved without objective symptoms.

In a February 14, 2019 addendum, clarifying his original report, Dr. Farber related that appellant's accepted conditions had resolved and she could return to work without restrictions. He

explained that appellant no longer had tenderness in her cervical or lumbar spine and she had full range of motion and strength. Dr. Farber concluded that appellant had no lifting restrictions and no need for further treatment.

On March 18, 2019 OWCP proposed to terminate appellant's medical benefits and wage-loss compensation because she no longer had residuals or disability due to her accepted April 4, 2018 employment injury. It found that the weight of the medical evidence rested with the January 15 and February 14, 2019 reports of Dr. Farber, who found that appellant's lumbar and cervical sprains had resolved, that she was no longer disabled from work, and that there was no need for further treatment. OWCP afforded appellant 30 days to submit additional evidence or argument in writing, if she disagreed with the proposed termination.

By decision dated May 8, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective May 9, 2019. It found that the weight of the medical evidence rested with Dr. Farber, OWCP's second-opinion examiner.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.<sup>3</sup> It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment injury.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>6</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>7</sup>

### **ANALYSIS**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 9, 2019, as she no longer had residuals or disability causally related to her accepted April 4, 2018 employment injury.

OWCP referred appellant to Dr. Farber for a second-opinion evaluation to determine the status of her accepted conditions and her work capacity. In his January 15, 2019 report and February 14, 2019 addendum, Dr. Farber described appellant's April 4, 2018 employment injury

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<sup>3</sup> See *M.H.*, Docket No. 19-0782 (issued September 9, 2019); *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>4</sup> *A.G.*, *id.*; see *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>5</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>6</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>7</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

and noted that her claim was accepted for lumbar and cervical strain. He indicated that appellant's physical examination revealed no objective findings of the accepted conditions. Dr. Farber found that appellant had no tenderness of her cervical or lumbar spine, and full range of motion and strength. He opined in his addendum report that the accepted conditions had resolved, that appellant could return to work without restrictions, and there was no need for further medical treatment.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Farber. Dr. Farber based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. He provided a well-rationalized opinion based on medical evidence regarding the accepted conditions causally related to appellant's April 4, 2018 employment injury. Accordingly, OWCP properly relied on Dr. Farber's second-opinion report in terminating appellant's wage-loss compensation and medical benefits.<sup>8</sup>

The Board notes that appellant's treating physician, Dr. Neystat, reported on October 10, 2018 that appellant had a preexisting diagnosis of arthritis and that she had reinjured her back lifting a heavy weight at work. Dr. Neystat diagnosed lumbar radiculopathy, lumbar polyneuropathy, lumbar and cervical sprain. In a progress report dated October 21, 2018, she only noted diagnoses of lumbar radiculopathy and polyneuropathy. In her November 28, 2018 narrative report, Dr. Neystat diagnosed lumbar sprain preexistent and exacerbated, lumbar radiculopathy, and cervical sprain. In her November 28, 2018 work capacity evaluation, she related that appellant could work an eight-hour shift, with frequent breaks and a 10-pound lifting restriction. However, in this report, Dr. Neystat did not provide an opinion as to whether appellant's restrictions were due to the accepted employment injury. Therefore, his opinion is insufficient to overcome the weight of the medical evidence accorded to Dr. Farber.<sup>9</sup>

The Board thus finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective May 9, 2019.

### **CONCLUSION**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 9, 2019, as she no longer had residuals or disability causally related to her accepted April 4, 2018 employment injury.

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<sup>8</sup> See *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

<sup>9</sup> See *E.O.*, Docket No. 19-0472 (issued August 15, 2019); *J.P.*, Docket No. 16-1103 (issued November 25, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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