

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

_____	)	
<b>K.O., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0425</b>
	)	<b>Issued: November 12, 2021</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Camas, WA, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On December 16, 2019 appellant filed a timely appeal from two October 16, 2019 merit decisions 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>3</sup>

---

<sup>1</sup> Appellant also appealed a purported November 21, 2019 decision of OWCP. The record contains a document dated November 21, 2019 concerning a claim for compensation due to lost time for attending a medical appointment, but this is an informational letter that does not constitute a final decision of OWCP. As the Board's jurisdiction is limited to the review of final adverse OWCP decisions, the Board does not have jurisdiction over the subject matter of the November 21, 2019 informational letter. *See* 5 U.S.C. § 8149; 20 C.F.R. §§ 501.2(c) and 501.3(a).

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

<sup>3</sup> The Board notes that, following the October 16, 2019 decision, appellant submitted additional evidence to OWCP. However, 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 additional evidence for the first time on appeal. *Id.*

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include thoracic outlet syndrome as causally related to the accepted November 30, 2017 employment injury; and (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective June 4, 2019, as she ceased to have disability causally related to the accepted November 30, 2017 employment injury.

## **FACTUAL HISTORY**

On December 1, 2017 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 30, 2017 she sustained a back injury when she slipped and fell on wet, moldy, and mossy wooded stairs while in the performance of duty. She stopped work on December 4, 2017. OWCP accepted appellant's claim for sprain of ligaments of the lumbar spine, contusion of the left back wall of the thorax, strain of muscle, fascia, and tendon of the lower back, muscle spasm of the back, strain of muscle and tendon of the back wall of the thorax, and strain of unspecified muscle and tendon at the ankle and foot levels.<sup>4</sup> Appellant returned to full-duty work on May 3, 2018 and stopped work on June 1, 2018.

On June 18, 2018 appellant filed a claim for compensation (Form CA-7) claiming disability from work for the period June 1 through 8, 2018 due to her accepted November 30, 2017 employment injury. She later filed Form CA-7 claims for compensation alleging work-related disability for the period June 9, 2018 and continuing.

Appellant submitted medical evidence in support of her recurrence of disability claim, including a May 14, 2018 report from Dr. Matthew McGehee, a Board-certified orthopedic surgeon, who administered a steroid injection at the C6 level. In May 29 and June 4, 2018 reports, Dr. Wael Musleh, a Board-certified neurosurgeon, indicated that she continued to have axial neck pain, which radiated to the proximal scapular upper region.<sup>5</sup>

By decision dated July 30, 2018, OWCP denied appellant's claim, finding that she had not submitted sufficient medical evidence to establish a recurrence of disability on or after June 1, 2018 causally related to her accepted November 30, 2017 employment injury. It concluded, "[Y]our claim for recurrence is denied because you have not established that you are disabled/further disabled due to a material change/worsening of your accepted work[-]related conditions."

On August 30, 2018 appellant, through her then-counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a January 11, 2019 statement, then-counsel requested that the accepted conditions be expanded to include thoracic outlet syndrome as causally related to the November 30, 2017 employment injury. Appellant submitted a January 9, 2019 report from Dr. Jaime Nicacio, a Board-certified physical medicine and rehabilitation physician, who noted that he had evaluated her on September 17, 2018 for

---

<sup>4</sup> OWCP paid appellant wage-loss compensation for disability from work on the supplemental rolls commencing January 13, 2018.

<sup>5</sup> Appellant also submitted reports from her periodic chiropractic and deep tissue therapy sessions.

complaints of neck and back pain.<sup>6</sup> Dr. Nicacio advised that she had reported a fall on November 30, 2017. He noted that he assessed appellant's thoracic outlet syndrome using Adson's maneuver, and advised that the maneuver was objectively positive due to the fact that her radial pulse dropped when it was conducted. Dr. Nicacio noted that "[t]his test and [appellant's] mechanism of injury and presenting symptoms after injury and her ongoing symptoms and the lack of treatment for this condition" had led him to believe that the previously undiagnosed and untreated condition of thoracic outlet syndrome should be treated. With respect to the mechanism of injury, he indicated that "any type of strain to head/neck and or upper extremities can predispose or even cause this type of syndrome to occur. It is my opinion that [appellant's] injury of [November 30, 2017] caused this thoracic outlet syndrome...."

During the hearing held on January 15, 2019 appellant testified regarding her symptoms and the medical treatment she received for her November 30, 2017 employment injury. After the hearing, she submitted a January 17, 2019 report from Dr. Nicacio, who discussed her factual and medical history, including the nature of the November 30, 2017 employment injury.<sup>7</sup> Dr. Nicacio noted that, during a September 17, 2018 examination, appellant had positive findings of thoracic outlet syndrome based upon Adson's maneuver results<sup>8</sup> and that subjectively she had numbness and tingling in her left upper extremity. He advised that he diagnosed thoracic outlet syndrome at the time, as well as other conditions including whiplash syndrome and cervical, thoracic, scapula, and myofascial pain. Dr. Nicacio indicated that thoracic outlet syndrome was used to describe a group of disorders due to compression or injury/irritation of the thoracic outlet, which included nerves and vasculature in the neck and upper chest area. He noted that appellant had fallen down stairs on November 30, 2017 and initially felt pain in the low back, but subsequently experienced pain, which extended through the spine. Dr. Nicacio opined that the November 30, 2017 injury caused thoracic outlet syndrome and maintained that this condition rendered appellant unable to perform her work activities, which included repetitive lifting on a regular basis.

By decision dated March 25, 2019, OWCP's hearing representative set aside the July 30, 2018 decision and remanded the case to OWCP for further development of the medical evidence. The hearing representative found that Dr. Nicacio's reports were of sufficient probative value to require further development of appellant's request for the accepted conditions to be expanded to include thoracic outlet syndrome as causally related to the November 30, 2017 employment injury. She determined that, prior to making a determination regarding appellant's recurrence of disability claim, appellant should be referred to a specialist in the appropriate field of medicine for a second opinion examination and opinion regarding her expansion claim. The hearing representative directed OWCP, after carrying out any development deemed necessary on remand, to issue a *de novo* decision regarding appellant's recurrence of disability and expansion claims.

---

<sup>6</sup> In support of her recurrence of disability claim, appellant also continued to submit reports from attending physicians, as well as reports detailing her periodic chiropractic and deep tissue therapy sessions.

<sup>7</sup> Dr. Nicacio noted that a March 18, 2018 noncontrast magnetic resonance imaging (MRI) scan of appellant's cervical spine showed no evidence of disc herniation. The case record does not contain a copy of a March 18, 2018 MRI scan, but it does contain a January 24, 2018 MRI scan, which includes an impression of disc herniation on background of spondylosis at C5-6.

<sup>8</sup> Dr. Nicacio indicated that the Adson's maneuver was positive on the left side, but negative on the right side.

On remand, OWCP referred appellant in May 2019 for a second opinion examination with Dr. Weichin Chen, a Board-certified orthopedic surgeon. It provided him with a copy of the case record, including a statement of accepted facts (SOAF) and a series of questions. OWCP requested that Dr. Chen evaluate whether the acceptance of appellant's claim should be expanded to include thoracic outlet syndrome as causally related to the accepted November 30, 2017 employment injury, and whether she had residuals/disability causally related to the conditions already accepted in connection with the November 30, 2017 employment injury.

In a report dated June 3, 2019, Dr. Chen detailed appellant's factual and medical history and discussed the nature of the November 30, 2017 fall at work. He noted that she presented with chief complaints of lower back, neck, and right shoulder pain, and reported the findings of his physical examination. Dr. Chen indicated that appellant exhibited positive right paraspinal tenderness to palpation of the lumbar spine and that she reported having radicular pain symptoms in the lower extremities. He noted that she reported during the examination that her cervical condition had improved by 80 percent. Dr. Chen indicated that the sensory examination of appellant's extremities was intact. He indicated that her accepted lumbar and right shoulder conditions had resolved.<sup>9</sup> Dr. Chen discussed appellant's recent diagnostic tests for the cervical and lumbar spine and noted that, on a more probable than not basis, they showed "preexisting degenerative changes," which were not "industrially related." He indicated that she denied any subjective complaints related to her foot/ankle strain and noted that therefore "the question is whether this diagnosis is correct based on the [SOAF]." Dr. Chen indicated that he was unable to evaluate appellant's claimed thoracic outlet syndrome as this condition was outside of his area of expertise. He advised that, with respect to her cervical strain, thoracic contusion, lumbar strain, and right shoulder strain, appellant could return to her regular-duty job without restrictions. Dr. Chen noted that official disabilities guidelines provided that 35 days was the average time for heavy manual laborers to return to work after suffering a severe lower back strain and noted that appellant was "beyond that time frame for return to duty for her accepted conditions." He also cited a medical article, which indicated that, with respect to a strain or any strain, the time frame for "remodeling of a muscle/tendon unit injury" was 3 to 60 days. Dr. Chen noted, "Thus, at this time, for [appellant's] orthopedic[-]related accepted conditions, the strains are expected to have resolved by 60 days." Dr. Chen noted, however, that appellant's nonindustrial cervical spondylosis/stenosis, degenerative cervical disc disease, degenerative lumbar spondylosis, and degenerative lumbar disease could also affect her ability to work on a non-industrial basis. He recommended that appellant work in a light-duty capacity.

In a June 2, 2019 work capacity evaluation form (Form OWCP-5c), Dr. Chen indicated that appellant was able to perform her usual job for eight hours per day, and noted, "This is only for resolved cervical strain, lumbar strain, right shoulder strain, and thoracic contusion. Not thoracic outlet syndrome."

As Dr. Chen did not evaluate appellant for thoracic outlet syndrome as requested, OWCP then referred appellant in July 2019 for a second opinion examination with Dr. Karleen Swarztrauber, a Board-certified neurologist. It provided Dr. Swarztrauber with a copy of the case record, including an SOAF. OWCP requested that she provide an opinion regarding whether the

---

<sup>9</sup> Dr. Chen indicated that appellant's had a cervical strain "industrially related" to the November 30, 2017 employment injury which had resolved. It is noted that OWCP has not accepted an employment-related cervical condition.

acceptance of appellant's claim should be expanded to include thoracic outlet syndrome as causally related to the accepted November 30, 2017 employment injury, and whether appellant had residuals/disability causally related to the conditions already accepted in connection with the November 30, 2017 employment injury.

In a report dated July 26, 2019, Dr. Swarztrauber discussed appellant's factual and medical history, including the nature of the November 30, 2017 employment injury, and she reported the findings of the physical examination she conducted on July 26, 2019. She indicated that appellant's examination was unremarkable except for a flattened lumbar spine and noted that sensory testing showed no evidence of numbness to light touch in the upper extremities or lower extremities. Dr. Swarztrauber opined that, during the July 26, 2019 examination, there was no evidence for thoracic outlet syndrome. She indicated that appellant did not have numbness in an ulnar distribution and did not have weakness in the median hand distribution. Dr. Swarztrauber advised that thoracic outlet syndrome typically would cause numbness in the fourth and fifth fingers in addition to thenar atrophy and she noted that neither of the conditions exist on appellant's examination. She further indicated that a patient with thoracic outlet syndrome would have some sort of pain, usually radiating from the underarm area, but that appellant did not exhibit such symptoms during the examination. Dr. Swarztrauber reported that Dr. Nicacio had indicated in his January 17, 2019 report that a March 2018 MRI scan of the cervical spine showed no evidence of disc herniation. She asserted that the report of the MRI scan indicated that there was evidence of a C5-6 disc herniation. Dr. Swarztrauber also noted that Dr. Nicacio had reported that appellant had subjective numbness and tingling in appellant's left upper extremity and that Adson's maneuver was positive at the time on the left, but negative on the right. She indicated that Adson's maneuver was used by Dr. Nicacio to diagnose thoracic outlet syndrome as the maneuver was considered to be objectively positive due to the fact that appellant's radial pulse dropped when she raised her arm.

Dr. Swarztrauber maintained, with respect to Dr. Nicacio's opinion, that it was very common for providers to not specify whether they were discussing vascular thoracic outlet syndrome versus neurogenic thoracic outlet syndrome. She indicated that the Adson's maneuver "would be positive for vascular thoracic outlet syndrome." Dr. Swarztrauber further noted, "[v]ascular thoracic outlet syndrome does not necessarily imply that appellant would have the classic neurologic findings. At the current time, the claimant is not symptomatic from vascular thoracic outlet syndrome." She further maintained that, in general, the trauma required for vascular thoracic outlet syndrome was fairly significant. Such trauma was associated with a motor vehicle accident, perhaps the strap of the seat belt or being struck by an object within the car, which caused damage to the sub clavicular area and resulted in hematoma or other focal damage that would cause interference with the vascular output. Dr. Swarztrauber indicated that she could not see how appellant's injury of falling down stairs would cause thoracic outlet syndrome, particularly as appellant had no complaints of upper extremity pain. She indicated that vascular thoracic outlet syndrome could also be due to congenital structural issues. Dr. Swarztrauber noted, "In this case, if in fact at that time appellant had those symptoms, then perhaps it was due to another condition such as a congenital condition."

Dr. Swarztrauber further indicated that, at the time of Dr. Chen's June 3, 2019 examination, appellant reported that her cervical spine condition was 80 percent better, but appellant continued to have lumbar symptoms. She noted that, at that time, it was felt that appellant was at baseline with regard to appellant's industrially-related injuries, but that appellant was also

receiving treatment for her preexisting conditions. Dr. Swarztrauber indicated that, presently, it was “impossible to determine if [appellant’s] total disability ceased at that time.” She advised that Dr. Musleh indicated in his June 4, 2018 report that appellant was not ready to go back to work, and he opined that disability was definitely present that date. Dr. Swarztrauber noted, “As best I can tell, because records are inconsistent, [appellant’s] disability resolved on June 3, 2019 at the time of that independent medical evaluation.” She indicated that an employment-related aggravation of appellant’s cervical condition “may be indicated” and noted that, “if aggravation occurred for the cervical spine,” it was temporary and ceased by June 3, 2019.<sup>10</sup> Dr. Swarztrauber opined that appellant was ready to return to her regular work on a full-time basis, but should do so slowly in order to prevent reinjury.

In a July 26, 2019 Form OWCP-5c, Dr. Swarztrauber indicated that appellant could perform her regular job for six hours per day, and noted, “It is beneficial to return to full duty slowly to prevent reinjury, but this is not because she has residual [sic]. It is to prevent reinjury.”

By decision dated October 16, 2019, OWCP terminated appellant’s wage-loss compensation, effective June 4, 2019, finding that appellant’s employment-related disability had ceased as of June 3, 2019.<sup>11</sup>

By separate decision dated October 16, 2019, OWCP denied expansion of the acceptance of appellant’s claim to include thoracic outlet syndrome as causally related to the accepted November 30, 2017 employment injury. It found that the weight of the medical opinion with respect to this matter rested with the July 26, 2019 report of Dr. Swarztrauber.

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

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>12</sup> The medical evidence required to establish causal relationship between a specific condition, and the employment injury, is rationalized medical opinion evidence. 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>13</sup> The Board has held that when the

---

<sup>10</sup> Dr. Swarztrauber indicated that appellant complained of very mild residual neck tightness/soreness. She advised that appellant had full range of neck movement examination and noted, “This residual is currently subjective. There is no objective residual.”

<sup>11</sup> OWCP accepted that appellant sustained a recurrence of disability on June 1, 2018 causally related to her accepted November 30, 2017 employment injury. It advised that this acceptance was based on Dr. Swarztrauber’s July 26, 2019 report.

<sup>12</sup> *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>13</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.<sup>14</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>15</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>16</sup>

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

The Board finds that this case is not in posture for decision with regard to expansion of the acceptance of appellant’s claim.

There is a conflict in the medical evidence between Dr. Nicacio, the attending physician, and Dr. Swarztrauber, OWCP’s referral physician, regarding whether the acceptance of appellant’s claim should be expanded to include thoracic outlet syndrome as causally related to the accepted November 30, 2017 employment injury.

In a January 9, 2019 report, Dr. Nicacio noted that he assessed appellant’s thoracic outlet syndrome on September 17, 2018 with a maneuver called Adson’s maneuver and advised that the maneuver was objectively positive due to the fact that her radial pulse dropped when it was conducted. He reported that “[t]his test and her mechanism of injury and presenting symptoms after injury and her ongoing symptoms and the lack of treatment for this condition” had led him to believe that the previously undiagnosed and untreated condition of thoracic outlet syndrome should be treated. With respect to the mechanism of injury, Dr. Nicacio indicated that “any type of strain to head/neck and or upper extremities can predispose or even cause this type of syndrome to occur. It is my opinion that [appellant’s] injury of [November 30, 2017] caused this thoracic outlet syndrome....” In a January 17, 2019 report, he noted that, during the September 17, 2018 examination, appellant had positive findings of thoracic outlet syndrome based upon the use of Adson’s maneuver and advised that he diagnosed thoracic outlet syndrome at that time.<sup>17</sup> Dr. Nicacio indicated that thoracic outlet syndrome was used to describe a group of disorders due to compression or injury/irritation of the thoracic outlet, which included nerves and vasculature in the neck and upper chest area. He noted that appellant had fallen down stairs on November 30, 2017 and initially felt pain in the low back, but subsequently experienced pain, which extended

---

<sup>14</sup> *C.H.*, Docket No. 17-0488 (issued September 12, 2017).

<sup>15</sup> 5 U.S.C. § 8123(a).

<sup>16</sup> *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>17</sup> Dr. Nicacio indicated that the Adson’s maneuver was positive on the left side, but negative on the right side. He also noted that subjectively appellant had numbness and tingling in her left upper extremity.

through the spine. Dr. Nicacio opined that the November 30, 2017 injury caused thoracic outlet syndrome.

In contrast, Dr. Swarztrauber determined in a July 26, 2019 report that appellant did not have thoracic outlet syndrome, or at least did not have a type of thoracic outlet syndrome, which would be related to the accepted November 30, 2017 employment injury. In her report, she indicated that, during the July 26, 2019 physical examination, appellant did not have symptoms indicative of thoracic outlet syndrome such as numbness in an ulnar distribution or weakness in the median hand distribution. Dr. Swarztrauber further indicated that a patient with thoracic outlet syndrome would have some sort of pain, usually radiating from the underarm area, but that appellant did not have such symptoms during the examination. She discussed Dr. Nicacio's interpretation of a cervical spine MRI scan and his use of Adson's maneuver as a diagnostic tool and noted, with respect to Dr. Nicacio's opinion, that it was very common for providers to not specify whether they were discussing vascular thoracic outlet syndrome versus neurogenic thoracic outlet syndrome. Dr. Swarztrauber indicated that the Adson's maneuver "would be positive for vascular thoracic outlet syndrome." She further noted, "Vascular thoracic outlet syndrome does not necessarily imply that appellant would have the classic neurologic findings. At the current time, the claimant is not symptomatic from vascular thoracic outlet syndrome." Dr. Swarztrauber discussed the types of trauma that would cause thoracic outlet syndrome and opined that she could not see how appellant's injury of falling down stairs would cause thoracic outlet syndrome, particularly as appellant had no complaints of upper extremity pain.<sup>18</sup>

Consequently, the case must be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence between Dr. Nicacio and Dr. Swarztrauber regarding whether the acceptance of appellant's claim should be expanded to include thoracic outlet syndrome as causally related to the accepted November 30, 2017 employment injury. On remand, OWCP shall refer appellant, along with the case file and a current SOAF, to a specialist in the appropriate field of medicine for an impartial medical evaluation and report including a rationalized opinion on this issue. After this and other such further development, OWCP shall issue a *de novo* decision regarding the expansion of the acceptance of appellant's claim.

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

Once OWCP accepts a claim and pays disability, it has the burden of justifying termination or modification of an employee's benefits. It may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.<sup>19</sup> The fact that OWCP accepts a claim for a specified period of disability does not shift the burden of proof to the claimant to show that he or she is still disabled.<sup>20</sup> The burden is on OWCP to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation

---

<sup>18</sup> Dr. Swarztrauber further indicated that vascular thoracic outlet syndrome could also be due to congenital structural issues. She noted, "In this case, if in fact at that time appellant had those symptoms, then perhaps it was due to another condition such as a congenital condition."

<sup>19</sup> *R.B.*, Docket No. 19-1501 (issued February 23, 2021); *D.R.*, Docket No. 14-1688 (issued April 8, 2015); *J.P.*, Docket No. 13-1049 (issued August 16, 2013).

<sup>20</sup> *S.O.*, Docket No. 14-1303 (issued April 29, 2015).



is terminated or modified.<sup>21</sup> OWCP's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>22</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation, effective June 4, 2019.

OWCP has the burden of proof to justify its termination action because, as noted above, the fact that OWCP accepts a claim for a specified period of disability does not shift the burden of proof to the claimant to show that he or she is still disabled.<sup>23</sup>

In her July 26, 2019 report, Dr. Swarztrauber found that, effective June 4, 2019, appellant ceased to have disability due to the conditions accepted in connection with her November 30, 2017 employment injury. In making this determination, she referenced the June 3, 2019 report of Dr. Chen, a prior OWCP referral physician. However, Dr. Swarztrauber's opinion is of limited probative value regarding employment-related disability because she did not provide adequate medical rationale in support of her opinion that appellant did not have employment-related disability after June 3, 2019. She did not explain the medical process through which the conditions accepted in connection with the November 30, 2017 employment injury had resolved. Furthermore, Dr. Swarztrauber noted, "As best I can tell, because records are inconsistent, her disability resolved on June 3, 2019...." However, she did not provide any explanation of her stated inconsistency of the records. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.<sup>24</sup>

The Board further finds that the June 3, 2019 report of Dr. Chen, which was referenced by Dr. Swarztrauber also is of limited probative value regarding employment-related disability because he did not provide adequate medical rationale in support of his opinion that appellant did not have employment-related disability after June 3, 2019.<sup>25</sup> Although Dr. Chen suggested that appellant's continuing problems were due to nonwork-related degenerative disease, he did not adequately support this opinion or otherwise sufficiently explain why she would not have at least some residuals of her November 30, 2017 employment injury after June 3, 2019. He cited a medical article, which indicated that, with respect to a strain or any strain, the time frame for "remodeling of a muscle/tendon unit injury" was 3 to 60 days. Dr. Chen noted, "Thus, at this time, for [appellant's] orthopedic[-]related accepted conditions, the strains are expected to have resolved

---

<sup>21</sup> *J.S.*, Docket No. 13-1678 (issued April 3, 2014); *G.Q.*, Docket No. 12-1459 (issued November 27, 2012).

<sup>22</sup> *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Mary Lou Barragy*, 46 ECAB 781, 787 (1995). Moreover, OWCP's procedures address cases when the medical evidence supports that a condition being accepted at the time of adjudication has already resolved. In such a case, OWCP claims examiner cannot state that the work-related condition has resolved without citing evidence demonstrating that the condition has resolved. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Acceptances*, Chapter 2.806.5 (June 2011).

<sup>23</sup> *See supra* note 19.

<sup>24</sup> *See T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>25</sup> *See supra* note 19.

by 60 days.” However, he did not explain how the specifics of appellant’s condition supported his conclusion. The Board has held that medical texts and excerpts from publications are of no evidentiary value with respect to a given medical matter because such materials are of general application.<sup>26</sup>

As the medical evidence of record is insufficient to justify the termination of appellant’s wage-loss compensation, the Board finds that OWCP did not meet its burden of proof.

**CONCLUSION**

The Board finds that the case is not in posture for decision with respect to the expansion of acceptance of appellant’s claim to include thoracic outlet syndrome as causally related to the accepted November 30, 2017 employment injury. The Board further finds that OWCP has not met its burden of proof to terminate her wage-loss compensation, effective June 4, 2019.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 16, 2019 decision of the Office of Workers’ Compensation Programs denying expansion of the acceptance of appellant’s claim is set aside, and the case is remanded to OWCP for proceedings consistent with this decision of the Board. The separate October 16, 2019 decision of OWCP terminating appellant’s wage-loss compensation, effective June 4, 2019, is reversed.

Issued: November 12, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees’ Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees’ Compensation Appeals Board

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

---

<sup>26</sup> L.C., Docket No. 17-1811 (issued March 23, 2018).