United States Department of Labor
Employees' Compensation Appeals Board

C.F., Appellant	)	
and	)	**Docket No. 20-0479**
	)	**Issued: August 2, 2022**
U.S. POSTAL SERVICE, BROOMFIELD POST OFFICE, Broomfield, CO Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On December 30, 2019 appellant, through counsel, filed a timely appeal from a November 4, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] 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.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the November 4, 2019 decision OWCP received additional evidence. 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.*

ISSUE

The issue is whether OWCP properly rescinded its acceptance of appellant's claim for cervical radiculopathy.

FACTUAL HISTORY

On December 6, 2012 appellant, then a 41-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2012 she fell down concrete steps injuring both knees, her right hand and wrist, as well as her left hand, arm, shoulder, and neck while in the performance of duty. She stopped work that day. On December 26, 2012 OWCP accepted appellant's claim for sprain of the right knee, bilateral shoulder sprain, and bilateral wrist sprain. On April 1, 2013 it expanded the acceptance of her claim to include right anterior cruciate ligament tear, and tear of the posterior horn of the right medial meniscus. On June 13, 2013 OWCP further expanded acceptance of appellant's claim to include bilateral trigger finger, bilateral radial styloid tenosynovitis, and left bucket handle tear of the left medial meniscus.

In a note dated December 31, 2012, appellant's attending physician, Dr. John T. Sacha, a Board-certified physiatrist, examined appellant due to her December 4, 2012 employment injury and found a negative Spurling's test of the neck and no pain with extension or extension rotation of the cervical spine. On February 11, 2013 he found that she had no evidence of cervical radiculopathy. Dr. Sacha noted that appellant had a long complex history of preexisting neck facet syndrome, but that this condition was not related to her employment injury and was not exacerbated by the December 4, 2012 employment injury. He concluded that no further care was indicated for her neck.

In notes dated March 7 and 28, 2013, Dr. Robert R. Nystrom, an osteopath, reported that appellant continued to experience neck pain. Cervical x-rays demonstrated straightening suggestive of paraspinous muscle spasm with normal disc space and vertebral body heights.

On April 8, 2013 Dr. Michael Hewitt, a Board-certified orthopedic surgeon, noted appellant's employment injury on December 4, 2012 and examined appellant due to her right knee. He reported that she denied head or neck injury. Dr. Hewitt diagnosed cervicalgia.

In an April 11, 2013 note, Dr. Sacha diagnosed cervicalgia as well as knee and shoulder conditions. On May 3, 2013 appellant underwent an upper extremity electromyogram (EMG) which was read as normal with no evidence of radiculopathy. On June 11, 2013 Dr. Nystrom found increased muscle tightness and tenderness to palpation of the posterior cervical muscle with decreased range of motion (ROM) of the cervical spine.

In a note dated June 9, 2014, Dr. Sacha reviewed appellant's medical history and noted her recent left knee surgery and planned right knee surgery. He recounted her expansion of symptoms including right wrist pain radiating up to her neck and left wrist pain radiating to the triceps area as well as back pain. Dr. Sacha noted that appellant had pain in multiple other areas which appeared to be expanding with time. He opined that it was unlikely the neck and radicular symptoms she was experiencing on both sides, the low back pain, and "all the other areas that she is complaining of" are work related. Dr. Sacha concluded that these conditions were more likely related to appellant's morbid obesity.

On July 1, 2014 Dr. Samuel Chan, a Board-certified physiatrist, completed a treatment note noting appellant's history of injury on December 4, 2012 and her subsequent medical treatment. He reported that it was unclear what was causing her expanding symptom complex and recommended repeated electrodiagnostic studies to rule out a frank neuropathic lesion.

In July 11 and 29, 2014 notes, Dr. Chan described appellant's history of injury and medical history. He listed symptoms of pain in the right arm, paresthesia and numbness in the neck, upper back, shoulder, upper arm, and forearm to the thumb on the right, and in the left arm from the elbow to the thumb level with paresthesia and numbness. On physical examination appellant demonstrated tenderness to palpation about the cervical paraspinal musculature, upper trapezius, and levator scapula bilaterally. Her sensory examination was intact to light touch in the bilateral upper extremities and manual muscle testing demonstrated normal strength. Dr. Chan found that appellant's clinical history and examination were suggestive of myofascial pain. He found that her July 11, 2014 bilateral upper extremities electrodiagnostic studies were normal with no electrophysiological evidence of median, ulnar, radial, or medial neuropathy and no evidence of cervical radiculopathy, brachial plexopathy, or neurogenic thoracic outlet syndrome. Dr. Chan noted that there were no abnormalities appreciated on electrodiagnostic studies to explain appellant's upper extremity symptomatology. In an August 19, 2014 note, he again noted that her electrodiagnostic testing of the upper extremities was normal and that she did not have a frank neuropathic lesion. On October 22 and 30, 2014 Dr. Chan indicated that appellant was intact neurologically, but continued to express multiple diffuse pain complaints from the cervical and lumbar spines. He opined that it was unclear exactly what was generating her pain.

On March 3, 2015 Dr. Chan recommended repeating appellant's electrodiagnostic studies as her pain was worsening. He opined that a repeat EMG would be helpful in determining whether there was an underlying frank neuropathic lesion. On April 14, 2015 Dr. Chan reviewed appellant's April 14, 2015 electrodiagnostic studies and again found no evidence of cervical radiculopathy, brachial plexopathy, or neurogenic thoracic outlet syndrome.

In a January 19, 2016 report, Dr. Chan noted appellant's significant bilateral upper extremity pain and numbness. He recommended a repeated cervical spine magnetic resonance imaging (MRI) scan to address discogenic versus neurogenic lesions. Dr. Chan also noted that her most recent EMG was in April 2015 and found that if her pain worsened that a repeat EMG would be appropriate. On January 22, 2016 appellant underwent a cervical spine MRI scan which demonstrated central C5-6 disc herniation, bulging discs at C3-4 and C4-5. In a February 23, 2016 note, Dr. Chan reviewed the cervical MRI scan and found a central disc protrusion that indented the thecal sac at C5-6. He also noted that there was no other canal or foraminal stenosis. Dr. Chan was unable to determine if the disc herniation was the source of appellant's upper extremity pain and recommended a diagnostic epidural steroid injection (ESI). On April 8, June 3, and August 26, 2016 Dr. Sacha performed ESIs. In an April 19, 2016 note, Dr. Chan recommended additional electrodiagnostic studies. On April 29, 2016 appellant underwent a repeat cervical EMG which was within normal limits. In a June 21, 2016 note, Dr. Chan found that cervical surgical evaluation was appropriate.

Dr. David Wong, a Board-certified orthopedic surgeon, examined appellant on July 27, 2016 due to cervical pain, as well as bilateral arm and hand pain with tingling and weakness. He noted that she denied significant previous spine conditions and attributed her present symptoms to her December 4, 2012 employment injury. Dr. Wong recounted that appellant had always had

some neck and right upper extremity symptoms following the fall, but that these had been "pushed to the background" due to her more dominant shoulder and knee problems. He diagnosed cervicalgia. Dr. Wong found that appellant had multifactorial symptoms including an element of mechanical neck pain secondary to multilevel degenerative changes, facet pain generator, myofascial elements, possible fibromyalgia, and some minor radicular irritation from her minor stenosis at C5-6 as well as an element of thoracic outlet syndrome. He advised that she did not have instability, significant stenosis, and radiculopathy which would lead to a surgical option.

In an August 2, 2016 note, Dr. Chan reported that Dr. Wong, and found that surgery was not appropriate due to appellant's cervical disc herniation. He noted that she still had some cervical spine issue, but that there was no surgical lesion, and no underlying neuropathic lesion. Dr. Chan determined that there was no further treatment that could offer significant benefits and that appellant had reached maximum medical improvement. On August 3, 2016 Dr. Nystrom reported that she continued to experience numbness and tingling in her upper extremities and hands.

In an August 17, 2016 report, Dr. Anton V. Zaryanov, an osteopath and a Board-certified orthopedic surgeon, noted appellant's history of injury in December 2012. He reported her constant neck pain as well as pain radiating down her right upper extremity. Dr. Zaryanov performed a physical examination and found diffuse tenderness of the cervical paraspinal musculature as well as loss of range of motion of the neck due to pain and stiffness. He reviewed appellant's MRI scan and diagnosed neck pain, cervical spondylosis, right lower extremity radiculopathy, and cervical degenerative disc disease. Dr. Zaryanov found that she had C6 radiculopathy which correlated with her MRI scan findings. He recommended an additional MRI scan.

On September 9, 2016 Dr. Zaryanov examined appellant and found diffuse tenderness to palpation over her cervical paraspinal musculature. He noted that her cervical MRI scan demonstrated mild-to-moderate foraminal stenosis on the right at C5-6 due to disc protrusion with no neural compression. Dr. Zaryanov diagnosed neck pain, bilateral upper extremity radiculopathy, and cervical degenerative disc disease. He noted that not all of appellant's upper extremity complaints correlated with foraminal stenosis at C5-6. Dr. Zaryanov recommended additional EMG testing prior to scheduling cervical surgery.

In an October 3, 2016 report, Dr. Sacha opined that appellant was at maximum medical improvement. He opined that her complaints regarding her wrists, thumbs, and neck were not work related.

On January 23, 2017 Dr. Gregory Reichhardt, a Board-certified physiatrist, examined appellant and performed an additional EMG which demonstrated mild right median neuropathy at the wrist, but was negative for cervical radiculopathy or brachial plexopathy. He reviewed her cervical MRI and found C3-4 and C4-5 disc bulges without stenosis and C5-6 central disc herniation without stenosis. Dr. Reichhardt described appellant's mechanism of injury as the work-related fall on December 4, 2012 when she tripped and fell five feet down from a porch while workings as mail carrier.[4] On September 11, 2017 he reviewed her August 30, 2017 cervical MRI scan which demonstrated C3-5 shallow central protrusions, C5-6 posterior disc osteophyte complex, mild central stenosis, facet hypertrophy, and mild right foraminal stenosis with a trivial

[4] Appellant underwent bariatric surgery in 2017.

disc bulge at C6-7 with an impression of cervical spondylosis. Dr. Reichhardt noted that the etiology of appellant's upper extremity numbness was unclear and that she could have right carpal tunnel syndrome.

Dr. Zaryanov completed a treatment note on September 6, 2017 and diagnosed neck pain, cervical spondylosis with right upper extremity radiculopathy, and bilateral carpal tunnel syndrome. He opined that appellant's right upper extremity radiculopathy correlated to her foraminal narrowing and disc protrusion. Dr. Zaryanov attributed these conditions to her employment-related fall given the lack of preexisting symptoms until the date of the incident. He recommended an additional ESI.

On September 13, 2017 January 16 and April 17, 2018 Dr. Timothy R. Kuklo, a Board-certified orthopedic surgeon, examined appellant due to right C6 radiculopathy. He performed a physical examination and diagnosed cervical radiculopathy, cervical herniated disc, and spinal stenosis of the lumbar region. Dr. Kuklo determined that appellant's December 4, 2012 fall was equivalent to falling from a ladder and recommended an anterior cervical discectomy and fusion at C5-6. He requested authorization for this surgery from OWCP on April 20, 2018.

In a development letter dated April 24, 2018, OWCP denied appellant's request for cervical surgery and listed her accepted conditions as including radiculopathy cervical region.[5] It requested additional medical evidence supporting that her requested cervical spine surgery was causally related to her December 4, 2012 employment injury. OWCP afforded 30 days for a response.

In a May 9, 2018 report, Dr. Kuklo diagnosed cervical radiculopathy and again recommended an anterior cervical discectomy and fusion. He found that appellant had failed conservative measures. On May 9, 2018 Abby E. Leishman, a physician assistant, performed a preoperative examination.

On June 4, 2018 OWCP referred appellant, a 2013 statement of accepted facts (SOAF) and a series of questions for a second opinion evaluation with Dr. Douglas Porter, an orthopedic surgeon. In his June 20, 2018 report, Dr. Porter reviewed the SOAF and appellant's history of medical treatment. He performed a physical examination and noted that she was able to move her neck more than what she had demonstrated with active range of motion testing. Dr. Porter found no evidence of cervical myelopathy and normal motor strength. He diagnosed preexisting multilevel cervical spondylosis with disc herniation at C5-6. Dr. Porter opined that there was no objective evidence of precipitation, acceleration, or aggravation of appellant's cervical spine due to her December 4, 2012 employment injury. He further opined that she had significant nonemployment-related cervical spine conditions, and that while she might elect to proceed with cervical spine surgery, it was not a work-related injury. Dr. Porter noted that appellant's cervical spine MRI scan demonstrated findings most consistent with a degenerative process and not acute trauma.

In a letter dated June 28, 2018, OWCP informed appellant that her requested cervical spine surgery was denied. It requested additional medical evidence in support of her requested medical

[5] As of March 26, 2015 OWCP had not included cervical radiculopathy as an accepted condition.

treatment. OWCP indicated that appellant's claim had been accepted for radiculopathy, cervical region.

On July 26, 2018 Dr. Nystrom disagreed with Dr. Porter and opined that appellant's cervical condition was related to her accepted employment injury. He found that it was very easy to see how an injury involving bilateral shoulder dislocations would cause some cervical injury as well. Dr. Nystrom also noted that her neck pain was not a new complaint as she had reported this for several years.

In an August 1, 2018 note, Dr. Kuklo disagreed with Dr. Porter's findings. He noted that on his initial examination on September 13, 2017 appellant had reported neck pain and bilateral arm pain, present since the December 4, 2012 employment injury. Dr. Kuklo opined that all claimants had some preexisting or radiographic evidence of age-related changes. He asserted that appellant did not have any complaints of neck pain or arm pain of any significance prior to the employment injury. Dr. Kuklo concluded that any radiographic evidence of spondylosis was incidental and that appellant's complaints of arm pain and numbness resulting from radiculopathy were secondary to her fall.

On August 29, 2019 OWCP informed appellant of a conflict of medical opinion between Drs. Kuklo and Porter, and referred her, an August 15, 2018 SOAF, which included within the accepted conditions cervical radiculopathy, and a list of questions to Dr. Jeffrey J. Sabin, a Board-certified orthopedic surgeon, for an impartial medical examination.

In his September 17 2018 report, Dr. Sabin noted that appellant reported that her neck condition with bilateral radiculopathy had been present since the December 4, 2012 employment injury. He reviewed the SOAF and her medical history. Dr. Sabin noted that appellant had four EMG's which did not demonstrate cervical radiculopathy and that she had a history of preexisting neck facet syndrome based on Dr. Sacha's reports. He found that during the first three or four months of medical treatment following the December 4, 2012 employment injury, there were no medical records documenting cervical radicular issues. Dr. Sabin found that the weight of the medical records established that appellant's neck condition, if any, was not related to her accepted employment injury. He concluded that strong surgical indications were not present for these reasons and that, if surgery were to be performed, it would not, within a reasonable degree of medical probability, be related to her work injury.

On November 26, 2018 Dr. Reichhardt examined appellant due to neck and shoulder pain as well as numbness down both arms. He listed the mechanism of injury as the work-related fall on December 4, 2012 when she tripped and fell down five feet from a porch while working. Dr. Reichhardt noted that appellant's 2018 EMGs were normal and that the etiology of her pain was unclear.

By decision dated December 11, 2018, OWCP denied appellant's request for cervical fusion. On December 28, 2018 she requested reconsideration.

In a January 15, 2019 letter, Dr. Kuklo opined that appellant had experienced cervical radiculopathy since her December 4, 2012 employment injury.

On February 25, 2019 OWCP issued a notice of proposed rescission regarding the acceptance of radiculopathy, cervical region, as listed in the August 15, 2018 SOAF. It relied upon

Dr. Sacha's January 11, 2013 note, Dr. Nystrom's March 28, 2013 note, and additional treatment notes from Drs. Sacha and Chan, as well as Dr. Sabin's September 17, 2018 report. It found that it had accepted this condition in error and determined that Dr. Sabin's report was entitled to the special weight of the medical opinion evidence. OWCP afforded appellant 30 days for response.

By decision dated March 6, 2019, OWCP denied modification of the December 11, 2018 decision denying cervical surgery.

Appellant resubmitted Dr. Kuklo's May 9, and August 1, 2018 and January 15, 2019 notes. On February 4, 2019 appellant underwent C5-6 anterior cervical discectomy and bilateral foraminotomy as well as anterior cervical fusion.

On March 11, 2019 Dr. Reichhardt noted that appellant underwent a cervical fusion on February 4, 2019 and that she felt that her neck pain was improved. He further noted that she disagreed with the denial of her request for cervical surgery by OWCP. Dr. Reichhardt attributed appellant's neck and bilateral upper extremity pain and numbness to her December 4, 2012 fall.

On March 22, 2019 Dr. Kuklo disagreed with Dr. Sabin's September 17, 2018 report and referenced his January 15, 2019 note.

On April 15, 2019 appellant, through counsel, requested reconsideration of the March 6, 2019 decision denying her requested cervical surgery. He resubmitted the February 4, 2019 operative note, Dr. Kuklo's May 9, and August 1, 2018 reports and his January 15, 2019 note.

By decision dated May 1, 2019, OWCP rescinded its acceptance of cervical radiculopathy effective that date. It found that the weight of the medical evidence rested with Dr. Sabin, who determined that appellant's cervical conditions were not causally related to her December 4, 2012 employment injury. OWCP found that Dr. Sabin provided a definitive medical opinion that invalidated the original acceptance. It determined that his report was based on a complete, accurate, and consistent history covering both the factual and medical aspects of appellant's claim. On May 9, 2019 appellant, through counsel, requested an oral hearing from an OWCP hearing representative.[6]

By decision dated May 30, 2019, OWCP denied appellant's request for reconsideration of her cervical surgery claim. It reviewed the medical evidence submitted and found it was cumulative and substantially similar to evidence previously considered on the issue of whether surgery was medically necessary due to her accepted employment injuries of December 4, 2012.

On July 8, 2019 Dr. Reichhardt examined appellant and found that her neck pain was improving.

In July 12 and August 16, 2019 notes, Dr. Paula Pook, a Board-certified internist, reported that appellant had done well after her anterior fusion.

On August 9, 2019 Dr. Kuklo reported that appellant's original claim included a diagnosis of cervical radiculopathy following her employment injury. He found that she had no difficulty

[6] On May 7, 2019 appellant underwent right knee replacement surgery.

performing her duties prior to the injury, but had difficulty following the December 4, 2012 employment injury. Dr. Kuklo opined that the employment injury materially aggravated appellant's condition regardless of any age-related or prior radiographic findings.

An oral hearing was held on August 19, 2019.

On October 11, 2019 Dr. Pook repeated her findings that appellant had done well after her anterior fusion.

In a noted dated October 7, 2019, Dr. Reichhardt reported that appellant continued to have pain in her shoulders bilaterally, as well as her low back, bilateral lower extremities, and numbness in the fingers of both hands.

By decision dated November 4, 2019, OWCP's hearing representative found that OWCP had met its burden of proof to rescind accepted of the claim for the specific medical condition of cervical radiculopathy. He found that Dr. Sabin's report was entitled to the special weight of the medical evidence and provided a clear explanation of OWCP's rationale for rescission.

LEGAL PRECEDENT

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application.[7] The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under section 8128 of FECA and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.[8] The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.[9]

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud. Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[10] This also holds true where OWCP later decides that it erroneously accepted a claim.[11]

OWCP bears the burden of proof to justify rescission of acceptance on the basis of new evidence, legal argument, and/or rationale.[12] Probative and substantial positive evidence or

[7] 5 U.S.C. § 8128.

[8] *L.M.*, Docket No. 19-0705 (issued September 11, 2019); *John W. Graves*, 52 ECAB 160, 161 (2000). *See also* 20 C.F.R. § 10.610.

[9] *D.W.*, Docket No. 17-1535 (issued February 12, 2018).

[10] *Thomas Meyers*, 35 ECAB 381, 386 (1983).

[11] *V.R.*, Docket No. 18-1179 (issued June 11, 2019); *Curtis Hall*, 45 ECAB 316 (1994).

[12] *L.G.*, Docket No. 17-0124 (issued May 1, 2018); *Katherine A. Kirtos*, 42 ECAB 160, 165 (1990).

sufficient legal argument must establish that the original determination was erroneous. OWCP must also provide a clear explanation of the rationale for rescission.[13]

ANALYSIS

The Board finds that OWCP properly rescinded its acceptance of appellant's claim for cervical radiculopathy.

OWCP accepted that the December 4, 2012 employment injury resulted in cervical radiculopathy through the April 24, 2018 development letter and the August 15, 2018 SOAF.

Appellant's attending physicians, Drs. Sacha, Chan, Hewitt, and Reichhardt, in reports dated 2014 through January 23, 2017 negated any findings of cervical radiculopathy based on her electrodiagnostic studies. Beginning in August 2016, Dr. Zaryanov diagnosed cervical radiculopathy based on appellant's symptoms. Appellant began treatment with Dr. Kuklo on September 13, 2017 and he diagnosed cervical radiculopathy, cervical herniated disc, and spinal stenosis of the lumbar region. Dr. Kuklo determined that her December 4, 2012 fall was equivalent to falling from a ladder and recommended an anterior cervical discectomy and fusion at C5-6.

On June 20, 2018 Dr. Porter, an OWCP referral physician, found no evidence of cervical myelopathy and normal motor strength. He diagnosed preexisting multilevel cervical spondylosis with disc herniation at C5-6. Dr. Porter opined that there was no objective evidence of precipitation, acceleration, or aggravation of appellant's cervical spine due to her December 4, 2012 employment injury. He further found that she had significant nonemployment-related cervical spine conditions, and that while she might elect to proceed with cervical spine surgery, but it was not a work-related injury. Dr. Porter noted that appellant's cervical spine MRI scan demonstrated findings most consistent with a degenerative process and not acute trauma.

OWCP determined that a conflict arose between Dr. Kuklo and Dr. Porter regarding appellant's cervical conditions and the need for surgery. It properly referred her to Dr. Sabin for an impartial medical examination. Based on his report, OWCP rescinded its acceptance of employment-related cervical radiculopathy.

The Board finds that OWCP provided sufficient rationale to justify the rescission of acceptance of appellant's claim for cervical radiculopathy.[14] Where there exists a conflict of medical opinion 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, is entitled to special weight.[15]

In his September 28, 2018 report, Dr. Sabin reviewed the SOAF and appellant's medical history. He noted that she had four EMGs which did not demonstrate cervical radiculopathy and that she had a history of preexisting neck facet syndrome based on Dr. Sacha's reports. Dr. Sabin further found that during the first three or four months of medical treatment following the

[13] *W.H.*, Docket No. 17-1390 (issued April 23, 2018).

[14] *J.F.*, Docket No. 17-0288 (issued May 23, 2017).

[15] *Id.*; *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

December 4, 2012 employment injury, there were no medical records documentation cervical radicular issues. Dr. Sabin found that the weight of the medical records established that appellant's neck condition was not related to her accepted employment injury. The Board finds that Dr. Sabin accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's condition which comported with his findings.[16] His opinion, which is well-rationalized and based upon a proper factual and medical background, is entitled to the special weight of the evidence and establishes that she does not have cervical radiculopathy due to her accepted work injury.[17]

After OWCP received Dr. Sabin's report, appellant submitted additional reports from Dr. Kuklo dated March 22 and August 9, 2019 continuing to support that her diagnosed cervical radiculopathy was causally related to her December 4, 2012 employment injury. As Dr. Kuklo was on one side of the conflict that Dr. Sabin resolved, the additional reports from Dr. Kuklo are insufficient to overcome the weight accorded Dr. Sabin's report as the impartial medical specialist or to create a new conflict with it.[18]

The Board further notes that Dr. Pook's July 12, August 16 and October 11, 2019 notes did not address the central issue of whether appellant's cervical condition was causally related to her December 4, 2012 employment injury. These notes are therefore of limited probative value and insufficient to overcome the weight afforded Dr. Sabin's report.[19]

The issue of whether appellant sustained cervical radiculopathy causally related to her federal employment is primarily medical in nature. Based on the special weight of the medical evidence, the Board finds that OWCP properly reopened appellant's claim and rescinded acceptance of her claim for employment-related cervical radiculopathy.[20]

CONCLUSION

The Board finds that OWCP properly rescinded its acceptance of appellant's claim for cervical radiculopathy.

[16] *J.F., supra* note 14; *Manuel Gill*, 52 ECAB 282 (2001).

[17] *R.H.*, Docket No. 08-1961 (issued April 17, 2009).

[18] *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

[19] *R.B.*, Docket No. 19-1527 (issued July 26, 2020); *Laura H. Hoexter*, 44 ECAB 987 (1993).

[20] *Noah Ooten*, 50 ECAB 283 (1999).

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board