



## ISSUES

The issues are: (1) whether OWCP has met its burden of proof to rescind the acceptance of appellant's claim for nondisplaced articular closed fracture of the head of the left femur; (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 6, 2020, as he no longer had disability or residuals causally related to his accepted September 5, 2018 employment injury; and (3) whether appellant has met his burden of proof to establish continuing disability or residuals causally related to his accepted September 5, 2018 employment injury on or after December 6, 2020.

## FACTUAL HISTORY

On September 5, 2018 appellant, then a 56-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained an injury to his left hip and buttocks when using a manual hand jack to move a pallet onto a lift while in the performance of duty. He worked intermittently thereafter.<sup>4</sup>

On September 11, 2018 Dr. Christopher Casscells, a Board-certified orthopedic surgeon, treated appellant for left hip pain he attributed to a September 5, 2018 work injury when he was manually jacking up a large rack of magazines and felt a "pop" and groin pain on the left side. Appellant's history was significant for arthritis in both hips and the right knee. Dr. Casscells' findings on examination revealed irritability in the left hip and limited range of motion. He noted that an x-ray of the left hip revealed distortion of the femoral head, what appeared to be flattening of the femoral head or an articular surface fracture. Dr. Casscells diagnosed unilateral primary osteoarthritis of the left hip, closed articular fracture of the head of the left femur, and overexertion from strenuous movement or load. He recommended a left total hip replacement. An accompanying x-ray of the left hip revealed degenerative changes and moderate spurring from the periphery of the femoral head, which increased from a prior x-ray of March 24, 2017.<sup>5</sup>

In a development letter dated October 18, 2018, OWCP advised appellant of the deficiencies of his claim. It advised him of the additional evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

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<sup>4</sup> In an undated separate statement, appellant explained that he was using a manual hand jack to load a bundle sorter onto the main lift, and he felt a "pop" in his left hip and experienced progressive pain.

<sup>5</sup> In a September 5, 2018 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical treatment. In Part B of the Form CA-16, attending physician's report dated September 14, 2018, Dr. Casscells reported that appellant had a history of osteoarthritis of the left hip. He checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. Dr. Casscells recommended a total left hip replacement. He opined that appellant was totally disabled from work from September 6, 2018 through January 1, 2019. The Board notes that a completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

In response to the development letter, on October 25, 2018, appellant reported using a manual hand jack to move a pallet when he pumped the handle four or five times to lift the pallet and felt a “pop” in his left hip and immediate pain.

An x-ray of the left hip dated November 16, 2018 revealed stable early degenerative change with right acetabular roof spurring and a gentle levoscoliosis of the lumbar spine.

On December 4, 2018 OWCP accepted appellant’s claim for nondisplaced articular closed fracture of the head of the left femur.

On December 31, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF) dated December 4, 2018, a copy of the case record, and a series of questions, to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of his employment-related conditions. In a January 16, 2019 report, Dr. Hanley reviewed appellant’s history of injury and noted physical examination findings of discomfort with internal and external rotation and minor Trendelenburg-type limp. He diagnosed sprain/strain of the left hip with temporary aggravation of low-grade underlying degenerative arthritis. Dr. Hanley noted that there was no evidence to support the accepted nondisplaced articular fracture of the femoral head, which he believed was a misdiagnosis, rather, there was preexisting degenerative disease in the hip, which was temporarily aggravated. He opined that appellant no longer had residuals of his September 5, 2018 employment injury, but had discomfort due to the underlying degenerative arthritis of the left hip. Dr. Hanley advised that appellant could delay hip surgery because he was not showing signs of ambulatory dysfunction. He further advised that the procedure would not be indicated as a consequence of the September 5, 2018 employment injury. Dr. Hanley indicated that appellant was fit for work activities as he was prior to the September 5, 2018 employment injury. In a work capacity evaluation form (Form OWCP-5c) of even date, he indicated that appellant could return to his regular job without restrictions.

On February 6, 2019 OWCP proposed to terminate appellant’s wage-loss compensation and medical benefits because he no longer had disability or residuals causally related to his accepted September 5, 2018 employment injury. It found that the weight of medical evidence rested with the January 16, 2019 medical report of Dr. Hanley, OWCP’s second opinion physician, who found that appellant no longer had any disability or residuals causally related to his accepted September 5, 2018 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination.

OWCP received additional evidence. In reports dated July 24, 2015 and March 24, 2017, Dr. Casscells diagnosed bilateral osteoarthritis of the hips and right knee and opined that appellant would eventually require hip replacements. In a November 20, 2018 report, he diagnosed long-standing and preexisting primary unilateral osteoarthritis of the left hip, which became unmasked and disabling following an injury at work where he lost a significant portion of articular cartilage. On March 19, 2019 Dr. Casscells noted hip irritability with possible tear of either the articular cartilage, the labrum, or both. He reviewed a magnetic resonance imaging (MRI) scan, which confirmed the presence of cam-type impingement of the femoral neck and acetabulum. Dr. Casscells advised that appellant had not recovered from his work-related left hip injury. He opined to a reasonable degree of medical probability that appellant’s employment injury was a significant triggering event leading to his disabling condition. In a work restriction form of even date, Dr. Casscells diagnosed arthritis, labral tear, and articular tear of the left hip. He noted that

appellant was disabled from work due to his left hip injury and arthritis and required a left hip replacement.

An MRI scan of the left hip dated February 21, 2019 revealed suspected small focal vertical tear at the superior labrum of the left hip and cam-type impingement predisposing morphology of the femoral head due to small marginal osteophytes.

On March 20, 2019 OWCP provided Dr. Hanley with the February 21, 2019 MRI scan of the left hip and requested that he review the diagnostic study and state whether this study would change his findings from his January 16, 2019 report.

In a supplemental report dated March 29, 2019, Dr. Hanley reviewed the MRI scan of the left hip and advised that the articular surface fracture proposed by Dr. Casscells was completely ruled out by the MRI scan. He noted the MRI scan revealed a small focal vertical tear of the labrum. Dr. Hanley noted the existence of preexisting low-grade degenerative arthritis of the hip joint. He opined that there was no indication that the proposed left total hip replacement was the consequence of industrial exposure.

On April 8, 2019 Dr. Casscells noted that after the employment injury appellant had a great deal of irritability in the left hip indicating an accumulation of acute pressure inside the hip capsule. He opined that appellant's hip condition did not resolve, which was an indication of discontinuity or fracture in the articular cartilage. Dr. Casscells opined that appellant's work injury changed the trajectory of his hip condition resulting in a hip replacement. He disagreed with Dr. Hanley's opinion that appellant returned to his preinjury baseline and did not require further treatment.

On April 9, 2019 OWCP found that a conflict in medical evidence existed between Dr. Casscells, appellant's treating physician, and Dr. Hanley, an OWCP second opinion examiner, with regard to the status of appellant's accepted condition and his ability to return to work. It referred appellant to Dr. John F. Perry, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict of medical evidence.

OWCP received additional evidence. It received an x-ray of the hips dated July 7, 2015 that revealed mild degenerative osteoarthritis of the left hip. An x-ray of the left hip dated March 24, 2017 revealed stable degenerative change.

In a May 13, 2019 report, Dr. Perry noted his review of the SOAF, as well as the medical evidence of record. He acknowledged that the SOAF was binding for purposes of the examination and that all of his responses would adhere to that stricture. Upon examination of appellant's left hip, his quality of motion was diminished consistent with degenerative arthritis, tenderness of palpation of the left hip capsule, and slight Trendelenburg lurch. Dr. Perry diagnosed primary osteoarthritis of the left hip, not work related. He disagreed with Dr. Casscell's March 19, 2019 report, and noted that he was unable to establish a joint surface fracture, a fracture of the femoral head, a fracture of an osteophyte, a fracture of the acetabulum, or an articular cartilage fracture. Dr. Perry opined that appellant did not have residuals of the accepted September 5, 2018 employment injury and noted that the accepted employment injury was not established by MRI scan testing. He noted that the left hip replacement was medically necessary, but not causally related to the accepted September 5, 2018 employment injury.

By decision dated June 18, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective June 17, 2019. It found that the special weight of medical evidence rested with the May 13, 2019 report of Dr. Perry, the impartial medical examiner (IME).

On June 24, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a statement dated July 29, 2019, counsel asserted that Dr. Hanley did not use the SOAF as the framework in forming his opinion and therefore his opinion was of diminished value.

By decision dated August 9, 2019, an OWCP hearing representative, after a preliminary review, reversed the decision dated June 18, 2019. The hearing representative found that OWCP did not meet its burden of proof to terminate wage-loss compensation and medical benefits effective June 17, 2019, as neither the second opinion physician, Dr. Hanley, or the IME, Dr. Perry, relied on the SOAF as the basis for their opinion. Therefore, Dr. Hanley and Dr. Perry's reports were of diminished probative value, and not competent to constitute the weight of the evidence or to create a conflict in medical opinion.

On August 26, 2019 OWCP referred appellant, along with a SOAF and a series of questions, to Dr. Willie E. Thompson, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated September 17, 2019, Dr. Thompson described appellant's employment injury and reviewed his medical history. Examination of the left hip revealed limited flexion, pain with positioning of the hip, and tenderness over the left groin. Dr. Thompson diagnosed sprain of the left hip as it related to the September 5, 2018 employment injury with an MRI scan suspicious for a tear of the labrum. He advised that the SOAF noted a diagnosis of closed fracture of the left femoral head; however, this diagnosis was not supported by the medical records. Dr. Thompson advised that multiple imaging studies performed showed no evidence of a fracture of the femoral head. He indicated that appellant did not have residuals of the sprain to the hip incurred on September 5, 2018, rather, his present residuals related to preexisting degenerative arthritis of the left hip. Dr. Thompson further noted that the proposed surgical procedure was not in any way related to the accepted September 5, 2018 employment injury. In a Form OWCP-5c of even date, he noted that appellant reached maximum medical improvement (MMI) and could return to work without restrictions.

On October 7, 2019 Dr. Drew A. Brady, a Board-certified orthopedist, evaluated appellant for chronic left hip pain commencing after a September 5, 2018 employment injury. He diagnosed tear of the left acetabular labrum and primary osteoarthritis of the left hip and recommended left hip replacement surgery.

On October 8, 2019 OWCP requested an addendum report from Dr. Thompson referencing the SOAF that noted the claim was accepted for nondisplaced articular closed fracture of the head of the femur. It requested that he use the SOAF as the basis for his opinion and address the questions posed. On October 11, 2019 Dr. Thompson referenced x-rays of the left hip dated September 11 and November 16, 2018, which revealed degenerative joint disease of the left hip, but no evidence of a fracture. He noted that he was unable to comment on an alleged diagnosis, which did not exist and could not be supported by the medical records. Dr. Thompson noted the degenerative changes were age related and not due to trauma. He advised that the work-related injury resulted in nothing more than a sprain of the left hip and did not aggravate the arthritic

condition. On November 1, 2019 OWCP sought further clarification from Dr. Thompson and requested that he address whether there were examination findings that support the presence of a labral tear, and if so, if the labral tear occurred as a result of the employment injury. In a November 18, 2019 report, Dr. Thompson reviewed the MRI scan of the left hip and indicated that it was not clear why the MRI scan of the left hip was performed as it did not relate to the accepted condition. He opined that this was an incidental finding that did not indicate a pathologic state as it related to the September 5, 2018 employment injury.

On December 13, 2019 OWCP requested Dr. Brady review the reports from Dr. Thompson and indicate whether he agreed or disagreed with his opinion and provide medical rationale for the opinion expressed. No response was received.

On January 22, 2020 OWCP notified appellant of its proposed rescission of the acceptance of his claim for nondisplaced articular closed fracture of the head of the left femur based on its error. It advised that Dr. Thompson's reports represented the weight of the evidence. OWCP indicated that the objective evidence of record, specifically the x-ray findings, do not support Dr. Casscell's diagnosis of nondisplaced articular closed fracture of the head of the left femur and there was no objective basis to support this diagnosis as having been caused by the accepted September 5, 2018 employment injury. It afforded appellant 30 days to submit evidence and argument challenging the proposed rescission action.

OWCP received additional evidence. In a Form OWCP-5c dated January 30, 2020, Dr. Brady noted that appellant was not capable of performing his usual job without restriction due to severe osteoarthritis of the left hip. He noted that appellant was pending surgery approval. In an attending physician's report (Form CA-20) of even date, Dr. Brady diagnosed severe osteoarthritis and tear of the acetabular labrum and checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity. He indicated that appellant could not perform his job functions until after left hip replacement.

On February 3, 2020 appellant through counsel responded to the proposed rescission and asserted that there was a conflict of medical opinion between Dr. Thompson and Dr. Casscells warranting further development in the form of an impartial medical examination.

On March 6, 2020 OWCP found that a conflict in medical evidence existed between Dr. Casscells, appellant's treating physician, and Dr. Thompson, an OWCP second opinion examiner, with regard to the status of appellant's accepted condition and his ability to return to work. As such, on April 17, 2020, it referred appellant to Dr. Joseph Jelen, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict of medical evidence.

OWCP received additional evidence. In a follow-up visit dated January 21, 2020, Dr. Brady diagnosed primary osteoarthritis of the left hip, which was aggravated by a work injury. He recommended a total left hip replacement and indicated that appellant was totally disabled.

In a June 16, 2020 report, Dr. Jelen noted his review of the SOAF dated August 20, 2019, as well as the medical evidence of record. Upon examination appellant walked with a subtle limp, there was subtle weakness of the left calf muscle, discomfort with internal rotation of the left hip, and limited range of motion of the left hip. With regard to whether the nondisplaced articular

closed fracture of the head of the left femur resolved, Dr. Jelen noted that based on x-rays and an MRI scan there was never a fracture, there was no accompanying bone marrow edema, and no evidence of avascular necrosis. He indicated that appellant did not have residuals of the accepted September 5, 2018 employment injury and advised that his symptoms were from preexisting degenerative arthritis of the hip. Dr. Jelen further noted that appellant did not have any aggravation of preexisting osteoarthritis of the left hip. He opined that the proposed total left hip replacement was not causally related to the accepted September 5, 2018 employment injury, but was recommended to treat his preexisting osteoarthritis of the left hip. Dr. Jelen indicated that no further treatment was warranted related to appellant's work-related injury. He noted that the MRI scan of the left hip dated February 21, 2019 provided findings of a "suspected tear" and "subtle, thin, vertically oriented linear signal at the superior aspect of the left acetabular labrum," which he interpreted as not worrisome. Dr. Jelen advised that appellant had no restrictions as a result of the accepted September 5, 2018 employment injury.

On August 6, 2020 OWCP requested an addendum report from Dr. Jelen clarifying what specific medical conditions resulted from the accepted September 5, 2018 employment injury and requested he provide objective evidence in support of his opinion and objective evidence that the September 5, 2018 employment injury had resolved. In an addendum report dated August 14, 2020, Dr. Jelen noted that there was no significant injury to cause appellant's symptoms. He referenced Dr. Casscells' report, which described an "unmasking" not an injury and Dr. Thompson's statement that appellant sustained a sprain of the left hip. Dr. Jelen indicated that neither physician documented a significant injury. He noted that the pain appellant experienced was consistent with arthritis and not a specific work injury. Dr. Jelen opined that appellant developed discomfort in the left hip when he leaned forward and applied weight to his leg, there was no evidence that he used the lower extremity to actively pump the jack. He indicated that this finding was consistent with arthritis. Dr. Jelen noted that the September 5, 2018 incident served as an "unmasking" of arthritis or a "sprain" that resolved. He noted the diagnostic studies did not reveal an injury.

By decision dated September 16, 2020, OWCP rescinded its acceptance of appellant's claim for nondisplaced articular closed fracture of the head of the left femur. It found that the opinion of Dr. Jelen constituted the special weight of the evidence. OWCP further indicated that the case was modified to reflect acceptance of sprain of the left hip, "only."

On September 22, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on January 15, 2021.

On September 30, 2020 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because his September 5, 2018 employment injury had resolved. It found that the special weight of medical evidence rested with the June 16 and August 14, 2020 medical reports of Dr. Jelen, OWCP's IME, who found that appellant no longer had any disability or residuals causally related to his accepted September 5, 2018 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination.

By decision dated November 10, 2020, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective December 6, 2020. It found that the

special weight of medical evidence rested with Dr. Jelen, the IME, who had determined in reports dated June 16 and August 14, 2020 that appellant did not have disability or residuals due to a work-related sprain of the left hip.

OWCP received additional medical evidence. On October 26, 2020 Dr. Brady reevaluated appellant and diagnosed significant osteoarthritis of the left hip and recommended a left hip replacement. In a Form CA-20 dated November 4, 2020, he diagnosed primary osteoarthritis of the left hip and checked a box marked “Yes” indicating that appellant’s condition had been caused or aggravated by an employment activity. Dr. Brady indicated that appellant would benefit from a hip replacement and could return to light-duty work on October 26, 2020.

On November 16, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. The hearing was held on March 10, 2021.

On February 10, 2021 Dr. Brady reported treating appellant for preexisting osteoarthritis of the left hip. Appellant reported that on September 5, 2018 he was manually jacking up a rack of magazines at work and felt a jerking maneuver to the left hip and had immediate groin pain. Dr. Brady noted that appellant’s left hip was irritable since this time and has not responded to conservative treatment. He explained that the “up and down jacking and jerking motion caused an injury to the left hip.” Dr. Brady noted that because of the underlying osteoarthritis, appellant had raw bone surfaces uncovered by normal articular cartilage, which became aggravated by repeated jacking maneuvers while using the manual lifts. He opined that with a reasonable degree of medical certainty, but for the jacking incident at work, appellant would not need a left hip replacement.

By decision dated March 31, 2021, an OWCP hearing representative affirmed the September 16, 2020 rescission decision.

By decision dated May 7, 2021, an OWCP hearing representative affirmed the November 10, 2020 termination decision.

### **LEGAL PRECEDENT -- ISSUES 1 & 2**

Section 8128 of FECA<sup>6</sup> provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.<sup>7</sup> 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.<sup>8</sup> The Board has noted, however, that the power to annul an award is not an arbitrary

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> 5 U.S.C. § 8128.

<sup>8</sup> *D.R.*, Docket No. 16-0189 (issued September 2, 2016).



one, and that an award for compensation can only be set aside in the manner provided by the compensation statute.<sup>9</sup>

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.<sup>10</sup> It is well established that, once OWCP accepts a claim, it has the burden of proof justifying termination or modification of compensation benefits. Its burden of proof justifying termination or modification of compensation holds true where it later decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of the rationale for rescission.<sup>11</sup> Moreover, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>12</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>13</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>14</sup> To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.<sup>15</sup>

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.<sup>16</sup> This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>17</sup> When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an IME 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>18</sup>

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<sup>9</sup> See 20 C.F.R. § 10.610.

<sup>10</sup> See *D.V.*, Docket No. 16-0849 (issued March 6, 2017); *L.C.*, 58 ECAB 493 (2007).

<sup>11</sup> *L.G.*, Docket No. 17-0124 (issued May 1, 2018); *W.H.*, Docket No. 17-1390 (issued April 23, 2018).

<sup>12</sup> *A.G.*, Docket No. 18-0749 (issued November 7, 2018); see also *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>13</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>14</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>15</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

<sup>16</sup> 5 U.S.C. § 8123(a); see *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>17</sup> 20 C.F.R. § 10.321.

<sup>18</sup> *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

## ANALYSIS -- ISSUES 1 & 2

The Board finds that OWCP has not met its burden of proof to rescind the acceptance of appellant's claim for nondisplaced articular closed fracture of the head of the left femur. The Board further finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits for the accepted left hip sprain, effective December 6, 2020.

OWCP determined that a conflict in medical opinion arose between OWCP's referral physician, Dr. Thompson, and appellant's attending physician, Dr. Casscells. It properly referred appellant to Dr. Jelen for an impartial medical evaluation, pursuant to 5 U.S.C. § 8123(a). Based upon his report, OWCP rescinded its acceptance of employment-related nondisplaced articular closed fracture of the head of the left femur and terminated his wage-loss compensation and medical benefits, effective December 6, 2020 for the accepted left hip sprain.

The Board finds, however, that the impartial medical opinion of Dr. Jelen is insufficient to meet OWCP's burden of proof because he provided no rationalized opinion in support of OWCP's decision to rescind its acceptance of nondisplaced articular closed fracture of the head of the left femur, and to terminate appellant's wage-loss compensation and medical benefits, effective December 6, 2020.<sup>19</sup>

In his June 16, 2020 report, Dr. Jelen indicated, in response to OWCP's question regarding whether appellant continued to have residuals of the accepted nondisplaced articular closed fracture of the head of the left femur, that based on x-rays and an MRI scan, there was never a fracture. He noted that appellant's symptoms were completely from the preexisting degenerative arthritis of the hip, but he provided no specific rationale to support this opinion. When asked whether appellant had an aggravation of his preexisting osteoarthritis, Dr. Jelen responded that appellant did not have any aggravation of osteoarthritis and any potential injuries had subsided. In another portion of his report, he inferred that there was an employment-related aggravation of left hip osteoarthritis noting, "the potential aggravation has ceased now. There is no longer any residual of the work-related injury." These portions render his opinion equivocal with respect to whether appellant actually suffered the accepted employment condition. The Board has held that an opinion which is equivocal regarding a given medical matter, is of limited probative value regarding that matter.<sup>20</sup>

Similarly, in an addendum report dated August 14, 2020, Dr. Jelen noted that there was no significant injury to cause appellant's symptoms. He opined that the pain appellant experienced was consistent with arthritis, and not a specific employment injury. Dr. Jelen did not provide adequate medical rationale to explain the basis for his conclusion that appellant's accepted employment duties did not cause or aggravate appellant's left hip condition. He simply noted that appellant's left hip condition was due to arthritis as opposed to the accepted employment factors, as related in the SOAF. Dr. Jelen did not explain how appellant's osteoarthritic left hip condition

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<sup>19</sup> See *C.H.*, Docket No. 20-0194 (issued August 26, 2021); *D.C.*, Docket No. 10-2052 (issued August 16, 2011); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>20</sup> See *E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O Keefe*, 14 ECAB 42, 48 (1962).

was solely due to nonoccupational factors.<sup>21</sup> The Board has held that any contribution to appellant's condition by the accepted employment factors would render his condition compensable.<sup>22</sup>

For these reasons, Dr. Jelen's opinion is not entitled to special weight as an IME. The Board finds, therefore, that OWCP has not met its burden of proof to rescind the acceptance of appellant's claim for nondisplaced articular closed fracture of the head of the left femur, or to terminate appellant's wage-loss compensation and medical benefits, effective December 6, 2020.

### CONCLUSION

The Board finds that OWCP has not met its burden of proof to rescind acceptance of appellant's claim for nondisplaced articular closed fracture of the head of the left femur. The Board further finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 6, 2020.

### ORDER

**IT IS HEREBY ORDERED THAT** the March 31 and May 7, 2021 decisions of the Office of Workers' Compensation Programs are reversed.<sup>23</sup>

Issued: July 20, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>21</sup> See *R.B.*, Docket No. 20-0109 (issued June 25, 2020); *F.K.*, Docket No. 19-1804 (issued April 27, 2020); *J.T.*, Docket No. 15-1923 (issued December 16, 2015).

<sup>22</sup> See *F.K.*, *id.*; *J.B.*, Docket No. 17-2021 (issued August 8, 2018); *G.G.*, Docket No. 17-0504 (issued August 8, 2017); *Beth C. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship).

<sup>23</sup> In light of the Board's disposition of Issue 2, Issue 3 is rendered moot.