



## ISSUE

The issue is whether appellant has met his burden of proof to establish continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 8, 2004 appellant, then a 34-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a right-sided lower back injury when he used a manual jack to remove heavy boxes from a small parcel and bundle sorter while in the performance of duty. He did not stop work, but he began working in a limited-duty position as a full-time modified mail handler. OWCP accepted appellant's claim for lumbosacral sprain/strain. Appellant intermittently stopped work thereafter and OWCP paid him wage-loss compensation for disability from work on the supplemental rolls, effective March 25, 2004, and on the periodic rolls, effective June 13, 2004.

Commencing in early-2004, appellant came under the care of Dr. Juluru P. Rao, a Board-certified orthopedic surgeon. In a March 9, 2004 report, Dr. Rao indicated that appellant complained of lower back pain, which radiated into both buttocks, and noted that recent x-rays showed asymmetry at L5 with apparent pars defect, but no fractures or dislocations. He diagnosed lumbosacral sprain rule out herniated lumbar disc.

A report of a June 15, 2006 magnetic resonance imaging (MRI) scan of appellant's lumbosacral spine revealed loss of signal and disc height at L4-5 consistent with desiccation, and contained an impression of central disc herniation at L4-5.

Appellant continued to receive periodic care for his back condition from Dr. Rao. In a January 6, 2020 report, Dr. Rao indicated that when he examined appellant on October 18, 2019 he was in severe distress and complained of back pain with radiation into the right lower extremity. He diagnosed herniated nucleus pulposus at L4-5 and L5-S1 and opined that appellant's condition was a direct result of the February 8, 2004 employment injury. In a January 7, 2020 attending physician's report (Form CA-20), Dr. Rao diagnosed herniated nuclei pulposus at L4-5 and L5-S1 due to the reported employment activity and indicated that appellant was totally disabled from work from February 8, 2004 to "lifetime."

On April 2, 2021 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF) and a series of questions, to Dr. Frank Corrigan, a Board-certified orthopedic surgeon, for a second opinion examination regarding whether appellant had continuing work-related disability/residuals.

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<sup>3</sup> Docket No. 22-0165 (issued August 11, 2022).

In an April 29, 2021 report, Dr. Corrigan discussed appellant's factual and medical history and reported the findings of the physical examination he conducted on that date. He noted that appellant was observed ambulating normally in the examination room and that examination of the thoracolumbar spine demonstrated no tenderness to palpation. There was no pain on range of motion testing of the back and sensation was intact to light and coarse touch in the bilateral lower extremities. Dr. Corrigan opined that appellant had fully recovered from the February 8, 2004 employment injury and had no residuals of the accepted lumbosacral sprain. He noted that the disc pathology seen on appellant's diagnostic testing was exceedingly prevalent in his generational population. Dr. Corrigan indicated, "[b]ased upon review of the medical records provided, history and today's physical examination, it is my opinion from an orthopedic standpoint that [appellant] has completely recovered from the incident on February 8, 2004.... I feel no further treatment is necessary." He opined that appellant continued to suffer from symptoms not related to the February 8, 2004 soft-tissue injury of sprain in that he suffered from a degenerative disc pathology, which was unrelated to the February 8, 2004 employment injury. Dr. Corrigan noted that appellant could continue to participate in all his current activities of daily living, but from a work standpoint, given his physical examination findings, he would be best suited for light-duty capacity work and could not perform his date-of-injury job. In an April 29, 2021 work capacity evaluation (Form OWCP-5c), he advised that appellant could work on a full-time basis with restrictions of lifting/pushing/pulling no more than 20 pounds.

OWCP requested that Dr. Corrigan provide a supplemental report clarifying the cause of appellant's need for work restrictions.

In a June 24, 2021 supplemental report, he indicated that the work restrictions he provided on April 29, 2021 were necessitated by appellant's chronic and degenerative pathology, and were not necessitated by the accepted condition of lumbosacral sprain.

In a July 23, 2021 notice, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits because he no longer had disability or residuals causally related to his accepted February 8, 2004 employment injury. It found that the weight of the medical opinion evidence regarding work-related disability and residuals rested with the well-rationalized opinion of Dr. Corrigan, OWCP's referral physician. OWCP afforded appellant 30 days to submit additional evidence or argument challenging the proposed termination action.

Appellant submitted an August 21, 2021 report from Dr. Rao who noted that, during an August 3, 2021 physical examination, he exhibited tenderness from L3 through S1 and bilateral sciatic notch tenderness. He indicated that range of motion of appellant's back was severely restricted and painful. Atrophy of the right quadriceps muscle was noted, and it was observed that appellant had difficulty standing on his toes and heels. Dr. Rao maintained that appellant was unable to lift, push, or pull, and had some difficulty with prolonged standing and sitting. He diagnosed herniated nucleus pulposus at L4-5 and L5-S1 and opined that appellant's medical condition was a direct result of the February 8, 2004 employment injury. Dr. Rao found that appellant was totally disabled and would benefit from surgical intervention.

By decision dated September 13, 2021, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective that date, as he no longer

had disability or residuals causally related to his accepted February 8, 2004 employment injury. It based its decision on the opinion of Dr. Corrigan.

On September 28, 2021 appellant requested reconsideration and resubmitted a copy of Dr. Rao's August 21, 2021 report.

By decision dated October 19, 2021, OWCP denied modification of its September 13, 2021 decision. It found that the termination action was proper, and that appellant thereafter failed to submit sufficient medical evidence to establish that he had continuing disability and residuals on or after September 13, 2021 causally related to the accepted February 8, 2004 employment injury.

Appellant appealed to the Board. By decision dated August 11, 2022,<sup>4</sup> the Board affirmed OWCP's October 19, 2021 decision, finding that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective September 13, 2021, and that appellant did not meet his burden of proof to establish continuing disability or residuals on or after September 13, 2021 causally related to his accepted February 8, 2004 employment injury.

On November 17, 2022 appellant, through counsel, requested reconsideration of his claim.

Appellant submitted an October 22, 2022 report wherein Dr. Rao discussed appellant's factual and medical history, including a history of the circumstances of the February 8, 2004 employment injury, which occurred when appellant was attempting to use a hand jack to lift a box weighing approximately 200 pounds. Dr. Rao reported appellant's symptoms and the medical treatment he received for his back condition since February 8, 2004. He advised that when he examined appellant on October 5, 2022 he continued to experience severe pain and had subjective complaints of pain radiating from his back to both lower extremities, left more than right. The examination revealed tenderness from L3 through S1 and severe paravertebral muscle spasm. Dr. Rao noted that, during the examination on October 5, 2022, appellant exhibited lower extremity weakness, including bilateral plantar and dorsiflexion strength of 4/5, and bilateral extensor hallucis longus strength of 3/5 bilaterally. He discussed Dr. Corrigan's April 29, 2021 examination findings and delineated how they differed from his own examination findings.

Dr. Rao indicated that the MRI scans of record showed that appellant had a herniated nucleus pulposus at the L5-S1 level, and a herniated nucleus pulposus at the L4-L5 level, and opined that these conditions were secondary to the severe trauma he suffered on February 4, 2004 when a defective hand jack broke while he was lifting a box weighing approximately 200 pounds. He indicated, "These were not age[-]related changes seen in this young man who was 34 years old at the time of the accident." Dr. Rao noted that appellant was severely disabled<sup>5</sup> and diagnosed herniated nucleus pulposus at the L5-S1 level, and herniated nucleus pulposus at the L4-L5 level. He opined that appellant's injuries were causally related to the February 8, 2004 employment injury. Dr. Rao indicated that appellant was a healthy individual prior to February 8, 2004, with

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<sup>4</sup> *Id.*

<sup>5</sup> Dr. Rao indicated that appellant reported having difficulty with activities of daily living, including standing, bending, and stooping. Appellant also reported he could not lift objects weighing more than five pounds, could not sit for more than 30 minutes at a time, and could not stand more than 15 minutes at a time.

no preexisting back problems and maintained that all symptoms of the lower back and lower extremities started after February 8, 2004. He asserted that appellant would continue to experience debilitating low back pain radiating down both lower extremities, with accompanying weakness in both lower extremities. Dr. Rao noted, “[b]ased on the reasonable degree of medical probability, the above injuries are permanent and directly related to the accident the patient sustained on February 8, 2004.”

By decision dated February 7, 2023, OWCP found that appellant did not meet his burden of proof to establish continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury.

### **LEGAL PRECEDENT**

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.<sup>6</sup> To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of the October 19, 2021 decision because the Board considered that evidence in its August 11, 2022 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA<sup>8</sup>

Appellant subsequently submitted an October 22, 2022 report wherein Dr. Rao discussed his factual and medical history, including a history of the circumstances of the February 8, 2004 employment incident. He delineated appellant’s symptoms and the medical treatment he received for his back condition since February 8, 2004. Dr. Rao advised that when he examined appellant on October 5, 2022 he continued to experience severe pain and had subjective complaints of pain radiating from the back to both lower extremities, left more than right. He discussed Dr. Corrigan’s April 29, 2021 physical examination findings and delineated how they differed from his own examination findings. Dr. Rao indicated that the MRI scans of record showed that appellant had a herniated nucleus pulposus at the L5-S1 level, and a herniated nucleus pulposus at

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<sup>6</sup> See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>7</sup> *Id.*

<sup>8</sup> *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1988).

the L4-L5 level, and opined that these conditions were secondary to the severe trauma he suffered on February 4, 2004 when a defective hand jack broke while he was lifting a box weighing approximately 200 pounds. He indicated, “These were not age[-]related changes seen in this young man who was 34 years old at the time of the accident.” Dr. Rao noted that appellant was severely disabled and diagnosed herniated nucleus pulposus at the L5-S1 level, and herniated nucleus pulposus at the L4-L5 level. He opined that appellant’s injuries were causally related to the February 8, 2004 employment incident. Dr. Rao asserted that appellant was a healthy individual prior to February 8, 2004, with no preexisting back problems, and maintained that all symptoms of the lower back and lower extremities started after February 8, 2004.

The Board finds, however, that Dr. Rao’s opinion is of limited probative value as he has not provided sufficient medical rationale in support of his opinion that appellant has continuing disability or residuals on or after September 13, 2021 causally related to his accepted February 8, 2004 lumbosacral sprain. 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>9</sup> For this reason, Dr. Rao’s October 22, 2022 report is insufficient to establish appellant’s claim.

As the medical evidence of record is insufficient to establish continuing employment-related disability or residuals on or after September 13, 2021 causally related to the accepted February 8, 2004 employment injury, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after September 13, 2021, causally related to his accepted February 8, 2004 employment injury.

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<sup>9</sup> See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 7, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 27, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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