



## **ISSUE**

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 10, 2025, as she no longer had disability or residuals causally related to her accepted October 30, 2009 employment injury.

## **FACTUAL HISTORY**

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

On November 2, 2009 appellant, then a 31-year-old border patrol agent trainee, filed a traumatic injury claim (Form CA-1) alleging that on October 30, 2009 she injured her head, neck, and back, while in the performance of duty. She stopped work on November 23, 2009, returned to a limited-duty position on November 25, 2009, and then subsequently stopped work again on April 23, 2010. OWCP accepted the claim for a sprain of the right shoulder and upper arm, sprain of the lumbosacral joint and sprain of the neck. It paid appellant wage-loss compensation on the supplemental rolls commencing April 24, 2010, and on the periodic rolls commencing June 6, 2010. Appellant briefly returned to work on July 25, 2011 and sustained a recurrence of total disability on August 1, 2011. OWCP resumed payment of wage-loss compensation on the periodic rolls on October 23, 2011.

By decision dated July 24, 2019, OWCP denied the expansion of the acceptance of appellant's claim to include additional conditions of headaches, cervical disc disorder at C5-6 with radiculopathy, cervical arthropathy, cervical bulging discs, lumbar bulging discs, lumbar radiculopathy, bilateral shoulder sprains, and bilateral carpal tunnel syndrome as causally related to the October 30, 2009 employment injury.

By decision dated September 3, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits effective September 2, 2019.

Following requests for reconsideration, by decisions dated November 2, 2020, August 18, 2021, May 13, 2022, and January 23, 2023, OWCP denied modification of the September 3, 2019 decision.

Appellant appealed to the Board. By decision dated October 11, 2023,<sup>4</sup> the Board found that OWCP had met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 3, 2019. The Board further found that there was a conflict of medical opinion evidence between Dr. Stanley Askin, a Board-certified orthopedic surgeon and the second opinion physician, and appellant's treating physician Dr. Emad F. Soliman, a Board-certified neurologist, and remanded for referral to an impartial medical examiner (IME) to

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<sup>3</sup> Docket No. 23-0652 (issued October 11, 2023).

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

determine if appellant experienced continuing disability or residuals on or after September 3, 2019, causally related to the accepted October 30, 2009 employment injury.

On November 29, 2023 OWCP referred appellant, together with a statement of accepted facts (SOAF), medical record, and a series of questions, to Dr. Joseph E. Rojas, a Board-certified orthopedic surgeon serving as the IME, to resolve the conflict in the medical opinion evidence.

In a February 12, 2024 report, Dr. Rojas found that the additional conditions of headaches, cervical disc disorder with radiculopathy, bilateral shoulder sprains, bilateral carpal tunnel syndrome, and lumbar disc disorder with radiculitis were causally related to the October 30, 2009 employment injury. He determined that appellant could not return to her date-of-injury position. Dr. Rojas recommended additional treatment for the accepted cervical disc disorder with radiculopathy, headaches, dizziness, bilateral shoulder impingement syndrome, and lumbar disc disorder.

On March 7, 2024 OWCP expanded acceptance of the claim to include aggravation of cervical disc disorder with radiculopathy, aggravation of lumbar disc disorders with radiculopathy, bilateral shoulder impingement syndrome, and bilateral carpal tunnel syndrome. It resumed payment of wage-loss compensation on the periodic rolls effective September 2, 2019.

On September 4, 2024 OWCP referred appellant, together with an August 15, 2024 SOAF, the medical record, and a series of questions, to Dr. Gerard M. Gerling, a Board-certified neurologist, for a second opinion evaluation.

In a September 24, 2024 report, Dr. Gerling discussed appellant's factual and medical history describing the October 30, 2009 employment injury. He reported physical examination findings noting no cervical or lumbar spasms, no focal weakness, tremors, ataxia, or dystonia. Dr. Gerling reviewed diagnostic studies and diagnosed age-related degenerative changes, but no injury. He related, "it is my opinion that there's no evidence that the training exercise produced any neurological, spinal, or joint injury." Dr. Gerling opined that the "diagnoses of post-traumatic injuries are related to her report of unimproved subjective symptoms but without objective evidence of a neurological spinal injury resulting from trauma during the training exercise of October 30, 2009." He further opined that, in relation to the October 30, 2009 employment injury, appellant could participate in all occupational duties on a full-time basis without restrictions. In a September 25, 2024 work capacity evaluation (Form OWCP-5c), Dr. Gerling indicated that appellant could perform her usual job without restrictions.

On November 1, 2024 OWCP requested a supplemental report from Dr. Gerling regarding appellant's work capacity and nature and extent of any employment-related disability provided on September 4, 2024. In a November 15, 2024 supplemental report, Dr. Gerling related that the subjective reported symptoms were not related to any objective injury or residual of injury. He found that there was no evidence of any neurological or spinal injury. Dr. Gerling determined that appellant's subjective complaints were not related to any evidence of any objective injury that would limit her occupational duties. He resubmitted the September 25, 2024 Form OWCP-5c.

On December 3, 2024 OWCP requested an additional report from Dr. Gerling addressing whether the provided diagnostic reports demonstrated objective findings that were consistent with

the subjective complaints. In a January 23, 2025 report, Dr. Gerling reviewed the diagnostic studies dated from November 6, 2008 through April 7, 2017 and determined that there was no evidence of neurological or spinal injury resulting from the October 30, 2019 employment injury. He opined that the results of the diagnostic studies demonstrated age-related, normal non-traumatic conditions.

In a January 14, 2025 report, James Bailey, MSN, provided findings on examination. On January 27, 2025 appellant underwent a cervical magnetic resonance imaging (MRI) scan which demonstrated spondylotic changes with mild right foraminal stenosis at C7-T1 secondary to uncovertebral joint disease and mild canal stenosis at C5-6 secondary to disc osteophyte complex.

On March 7, 2025 Wanda F. Storn, an advanced practice registered nurse (APRN), completed an attending physician's report (Form CA-20), indicating that appellant was partially disabled and was able to work with restrictions.

In a notice dated September 15, 2025, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Gerling's January 23, 2025 report finding that the accepted employment-related conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In a September 24, 2025 report, Dr. Gualberto Oquendo-Roman, a Board-certified physiatrist, related appellant's history of injury with neck pain radiating down both arms, numbness in her hands, and low back pain. On physical examination he found palpation tenderness in the cervical midline, bilateral upper trapezius, marked tenderness in the upper thoracic region and paraspinals, and discomfort in the lumbar midline and paraspinals. Dr. Oquendo-Roman diagnosed cervicalgia, cervical disc displacement at C6-7, myalgia of the head and neck, intervertebral disc displacement of the thoracic and lumbar regions.

A September 26, 2025 thoracic spine MRI scan demonstrated minimal to mild degenerative changes and no distinct post-traumatic changes. The report related, "Indeterminate whether any contribution from or any accentuation/amplification of underlying degenerative changes by injury."

In an October 24, 2025 report, Dr. Oquendo-Roman examined appellant due to neck pain radiating down both arms and lower back pain. Following a physical examination, he diagnosed lumbar, thoracic, and cervical disc displacement, cervicalgia, myalgia of auxiliary muscles of the head and neck. Dr. Oquendo-Roman also diagnosed L4 radiculopathy as demonstrated by MRI scan.

On November 10, 2025 Dr. Oquendo-Roman examined appellant due to bilateral hand pain, numbness, and weakness. He found loss of grip strength and diagnosed bilateral carpal tunnel syndrome, and cervical disc displacement at C6-7. Dr. Oquendo-Roman recommended further electrodiagnostic studies.

By decision dated December 10, 2025, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that Dr. Gerling's opinion

constituted the weight of the medical opinion evidence that appellant no longer had residuals or disability causally related to the accepted October 30, 2009 employment injury.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of compensation benefits.<sup>5</sup> It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>6</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>8</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>9</sup>

### **ANALYSIS**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 10, 2025.

In his reports dated September 24 and November 15, 2024, and January 23, 2025 Dr. Gerling, OWCP's second opinion physician, opined that appellant's work-related conditions had resolved, and there was no need for further medical treatment. In support of his opinion, he stated, "it is my opinion that there's no evidence that the training exercise produced any neurological, spinal, or joint injury." Dr. Gerling opined that the "diagnoses of post-traumatic injuries are related to his report of unimproved subjective symptoms but without objective evidence of a neurological spinal injury resulting from trauma during the training exercise of October 30, 2009."

In his reports, Dr. Gerling provided an opinion on continuing residuals/disability that was not fully in keeping with the SOAF that OWCP provided him to use as a frame of reference in forming his opinion. The SOAF made it clear that OWCP had accepted appellant's claim for accepted conditions bilateral carpal tunnel syndrome, cervical and lumbar disc disorders with radiculopathy, bilateral shoulder impingement syndrome, right shoulder and upper arm sprains and cervical and lumbar sprains. In his September 24 and November 15, 2024 and January 23, 2025 reports, Dr. Gerling disagreed that the accepted employment injury resulted in the accepted

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<sup>5</sup> *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>6</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>7</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>8</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>9</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

cervical and lumbar conditions and failed to address the accepted bilateral shoulder and carpal tunnel syndrome conditions.

The Board has held that the findings of an OWCP referral physician must be based on the factual underpinnings of the claim, as set forth in the SOAF.<sup>10</sup> OWCP's procedures dictate that when an OWCP medical adviser, second opinion specialist, or IME renders a medical opinion that does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>11</sup>

Given his failure to acknowledge and adequately address all the accepted employment conditions, Dr. Gerling's opinion on whether appellant continued to have disability/residuals on or after December 10, 2025, causally related to her accepted work-related conditions is of limited probative value.<sup>12</sup> He did not provide a well-rationalized medical opinion explaining how she ceased to have residuals and disability related to all of her accepted employment conditions, *i.e.*, the bilateral shoulder and carpal tunnel syndrome conditions.

The Board finds that the opinion of Dr. Gerling does not have sufficient probative value to establish whether or not appellant continued to have disability or residuals causally related to her accepted October 30, 2009 employment injury. Therefore, the Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 10, 2025.

### **CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 10, 2025.

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<sup>10</sup> See *K.Y.*, Docket No. 26-0070 (issued February 24, 2026); *A.D.*, Docket No. 20-0553 (issued April 19, 2021).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3a(10) (October 1990). See *K.Y.*, *id.*; *B.B.*, Docket No. 25-0607 (issued August 28, 2025); *C.M.*, Docket No. 24-0581 (issued October 8, 2024); *C.B.*, Docket No. 24-0597 (issued October 8, 2024); *U.R.*, Docket No. 23-0614 (issued September 26, 2024); *V.L.*, Docket No. 24-0739 (issued August 26, 2024); *S.T.*, Docket No. 18-1144 (issued August 9, 2019).

<sup>12</sup> See *supra* notes 10 and 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 10, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 6, 2026  
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