United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Jersey City, NJ, Employer**	)	**Docket No. 15-0914** **Issued: October 16, 2015**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 18, 2015 appellant, through counsel, filed a timely appeal from the January 14, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation benefits effective May 22, 2013; and (2) whether appellant met his burden of proof to establish that he had any condition or disability after May 22, 2013 causally related to the October 21, 2010 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 21, 2010 appellant, then a 46-year-old mail handler, injured his back when the tow motor he was driving hit a pothole.[2] He stopped work on October 22, 2010. On December 17, 2010 OWCP accepted the claim for lumbar strain and paid appellant compensation for injury-related disability.

In an October 22, 2010 report, Dr. David Chen, Board-certified in family medicine, diagnosed lumbar radiculopathy and lumbar strain. Dr. Warren Buck, a Board-certified internist, placed appellant off work on October 22, 2010. A November 17, 2010 MRI scan read by Dr. Charles Saniewski, a Board-certified diagnostic radiologist, revealed diffuse degenerative findings, including several disc herniations; central to right-sided disc herniation with impingement on the exiting nerve root at L4-5; and no spinal canal stenosis.

On January 11, 2012 Dr. Joseph Lombardi, a Board-certified orthopedic surgeon, noted seeing appellant for low back pain with radiation and numbness that began with a work injury on October 21, 2010. He diagnosed lumbar herniated nucleus pulposus (HNP) at L4-5 and L5-S1 and noted that surgery was recommended. A January 18, 2012 lumbar spine MRI scan read by Dr. Gabriel Pivawer, a Board-certified diagnostic radiologist, revealed a decrease in size of the disc herniations since a prior study for the herniations at L3-4 and L4-5. It also showed stable right paracentral foraminal and left foraminal disc herniations at L5-S1 with no new herniation or nerve root impingement identified. On October 3, 2012 Dr. Lombardi advised that appellant could not work and diagnosed lumbar HNP and displacement of lumbar intervertebral disc without myelopathy.

OWCP referred the request for surgery to an OWCP medical adviser. On September 17, 2012 the medical adviser explained that there were no significant changes in the discs due to the minor injury that occurred. He recommended a second opinion examination.

On October 11, 2012 OWCP referred appellant for a second opinion, along with a statement of accepted facts (SOAF), a set of questions, and the medical record to Dr. Kenneth Heist, an osteopath and a Board-certified orthopedic surgeon. In a November 21, 2012 report, Dr. Heist noted appellant's history of injury and treatment. He noted that appellant had an MRI scan in 2003 that showed a ruptured disc at L5-S1 and that he was treated for a back condition since 2006. Dr. Heist examined appellant and diagnosed lumbar sprain and aggravation of preexisting degenerative spinal disease. He found restriction of motion of the lumbar spine and attributed it to appellant's preexisting degenerative spinal disease. Dr. Heist opined that the condition was not aggravated or affected by the accident of October 21, 2010. He explained that MRI scan studies performed prior to the employment injury, as far back as 2003, and those performed after October 21, 2010 documented no change. Dr. Heist opined that it was his "medical opinion that the suffered sprains in the accident that have since resolved." He further advised that he believed the "disc pathology reported in the MRI scan studies are related to the

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[2] The record reflects that appellant had a low back condition for which he was receiving treatment since 2006. An August 26, 2008 report from Dr. David Idank, a Board-certified physiatrist, noted treating appellant for chronic low back pain and recurrent left sciatica. An August 26, 2008 magnetic resonance imaging (MRI) scan of the lumbar spine revealed disc herniation/extrusion at L3-4, L4-5, and L5-S1.

degenerative changes and not due to the accident. The claim should not be expanded." Dr. Heist concluded that appellant could perform his full duties.

On December 14, 2012 OWCP found that Dr. Heist's report created a conflict with the opinion Dr. Lombardi on the issues of the need for surgery and the nature and extent of any ongoing residuals of the work injury and appellant's resulting ability to work.

On January 15, 2013 OWCP referred appellant along with a SOAF and the medical record to Dr. Dean L. Carlson, a Board-certified orthopedic surgeon, to resolve the medical conflict. In a January 31, 2013 report, Dr. Carlson noted appellant's history of injury and treatment. He found that appellant had symptoms to include "toothache-like" lumbosacral pain radiating to both buttocks and lower extremities, with the right side 90 percent greater than the left. Appellant related having constant pain, including severe night pain, and paresthesias to the soles of both feet, worse on the right. Dr. Carlson noted that flexion and extension of the dorsolumbar spine was voluntarily restricted to virtually zero degrees. Appellant could not put his fingertips as far as his patellae, but he had no difficulty getting on and off the examining table and turning over. Dr. Carlson found that prone thrust was negative at the lumbosacral junction and there was severe resistance to bilateral hip flexion, which prevented lifting the right heel from the examining table, and the left heel only four inches. This suggested an overreaction. Sitting root signs were negative to 70 degrees, which was a nonorganic finding when associated with the pronounced guarding of the supine straight leg raising. The right hip had full passive range of motion when done slowly, with no local tenderness. The left hip had full range of motion with no local tenderness. Dr. Carlson found that neurologic testing was normal and that sensory testing was intact to touch over the lower extremities. He diagnosed a resolved lumbosacral sprain. Dr. Carlson compared the August 26, 2008, November 17, 2010, and January 18, 2012 MRI scans and explained that the multiple disc herniations identified on the MRI scan studies preceded the October 21, 2010 trauma. He determined that the positive findings were degenerative in nature. Dr. Carlson opined that the work injury temporarily aggravated appellant's condition, which had resolved, and advised that he reached maximum medical improvement on November 17, 2012. He advised that the lumbar discectomy should not be authorized and opined that appellant could return to full-time duty as a mail handler.

On March 4, 2013 OWCP provided Dr. Carlson with a revised SOAF[3] and requested a supplemental report regarding whether any continuing residuals or disability were due to the October 21, 2010 employment injury. In a March 30, 2013 employment report, Dr. Carlson reported that his opinion had not changed. He explained that appellant could resume his duties as he found no objective signs of impairment on his examination. Dr. Carlson noted that appellant exhibited exaggerated signs of severe low back pain and muscle spasm in the supine position that were not confirmed with his sitting nerve root test. He explained that these "nonorganic findings lead me to doubt the amount of pain and disability that [appellant] genuinely has." Dr. Carlson opined that the October 21, 2010 work injury temporarily aggravated the preexisting disc herniations. He explained that there were three main reasons for his conclusion: no believable objective evidence for physical impairment; most strained backs recover after two years; and the follow-up lumbar MRI scan study of January 18, 2012 showed

[3] The revised SOAF provided greater detail regarding appellant's work duties.

"a decrease in size of the disc herniations since prior study." Dr. Carlson opined that appellant was fully able to perform his date-of-injury full-time, full-duty job as a mail handler equipment operator despite having chronic lumbar spine issues which he was being treated for over a few years up until October 20, 2010. He noted that this included the August 26, 2008 lumbar MRI scan study, which was positive for multiple lumbar disc herniations. Dr. Carlson opined that he found "no objective evidence on physical examination that could prevent him from returning to this occupation." He indicated that appellant did not require further treatment.

On April 10, 2013 OWCP proposed to terminate appellant's compensation as the weight of the medical evidence, as represented by Dr. Carlson, established that the residuals of the work injury of October 21, 2010 had ceased.

Counsel for appellant submitted new evidence. In an April 10, 2013 report, Dr. Lombardi diagnosed lumbar HNP-displacement of lumbar intervertebral disc without myelopathy and recommended surgery. He opined that the right-sided HNP at L4-5 and L5-S1 were related to the work accident.

By decision dated May 22, 2013, OWCP terminated appellant's compensation benefits effective May 22, 2013. On May 28, 2013 counsel for appellant requested a hearing, which was held on September 24, 2013.

On June 27, 2013 appellant's counsel argued that Dr. Carlson did not review the objective testing before and after the work injury. In a June 19, 2013 report, Dr. Lombardi noted that the 2008 MRI scan revealed a small focal right paracentral disc herniation at the L4-5 level and that the November 17, 2010 MRI scan revealed "a central and right-sided disc herniation which now presses slightly upon the thecal sac and on the exiting right L5 nerve root." He indicated at the L5-S1 level, appellant had a superimposed left greater than right foraminal disc herniation with a moderate to severe left foraminal stenosis and problems with the left L5 nerve root. Dr. Lombardi opined that the November 17, 2010 MRI scan clearly demonstrated that appellant had now had mild bilateral neural foraminal narrowing and superimposed central and right-sided disc herniation, and the right-sided disc herniation that was not present in the 2008 MRI scan. He explained that appellant never complained of right-sided sciatica and his symptoms were always on the left. Dr. Lombardi concluded that the November 17, 2010 MRI scan "clearly shows that [appellant] has a larger disc herniation at L5-S1 on the right and a new disc herniation at L5-S1 on the right. The fact that the [appellant] had preexisting disc herniation on the opposite side from where his pain was does not preclude the fact that this injury of October 21, 2010 caused a new herniation at L5-S1 and aggravated a previous small herniation at L4-5 now pressing on the descending nerve root." He recommended that Dr. Carlson review the MRI scans in detail since appellant had "new injuries to the right side of the disc at L4-5 and L5-S1 causing [appellant's] right sciatica which are clearly related to the accident of October 21, 2010."

In an October 18, 2013 report, Dr. Lombardi diagnosed disc herniations at L4-5 and L5-S1. He opined that "To determine that appellant has suffered only a lumbosacral strain and not aggravation of the preexisting herniations is a minimalization of [his] clinical and objective findings." He explained that appellant had "signs of nerve root impairment in that [appellant] has a positive straight leg raising on the right side causing sciatic irritability which is consistent

with his disc herniations on the right side." Dr. Lombardi noted that there was no neurological loss, but he indicated that the disc herniations were causing significant pain precluding appellant from working. He further explained that, while the new MRI scan revealed the size of the discs were smaller, there was an increase in the size of the foraminal disc herniations at L5-S1 causing severe foraminal stenosis, which would result in fairly severe sciatic irritability of the nerve roots. Dr. Lombardi opined that appellant was unable to perform his normal duties due to his fairly constant and severe right sciatica. He explained that the residual sciatic pain due to the work injury contributed to appellant's inability to work. Dr. Lombardi noted that appellant failed conservative treatment and was a candidate for microdisc excision at L5-S1.

By letter dated November 1, 2013, appellant's counsel provided additional evidence to include a November 1, 2013 electromyogram (EMG) in which Dr. Idank found evidence of subacute chronic bilateral L5 radiculopathies.

By decision dated December 11, 2013, an OWCP hearing representative affirmed the May 22, 2013 decision with regard to the termination. However, she found that the new medical evidence from Dr. Lombardi after the termination was sufficient to require additional development with regard to expansion of the claim, residuals, and appellant's ability to work. The hearing representative remanded the case to the district office for further development of the new medical evidence.

On December 27, 2013 OWCP requested that Dr. Carlson review the additional evidence since his examination to include the diagnostic MRI scan reports from August 26, 2008, November 17, 2010, and January 18, 2012.

In a January 16, 2014 reply, Dr. Carlson noted that he had reviewed the new medical evidence. He explained that while Dr. Lombardi indicated that the L5-S1 HNP on November 17, 2010 was not present, the August 26, 2008 lumbar MRI scan from Dr. Pivawer revealed a diagnosis of disc herniation/extrusion L3-4, L4-5, and L5-S1. Dr. Carlson advised that, regarding the November 17, 2010 MRI scan study, the right L5-S1 HNP did not appear to exert any mass effect on the exiting nerves and the January 18, 2012 study revealed a stable right paracentral and left foraminal herniated disc at L5-S1 and no new disc herniation or new root impingement. He noted that it would be helpful if an angle of elevation was noted in Dr. Lombardi's report of a positive straight leg raising on the right. Dr. Carlson indicated that he was unable to pry appellant's right leg off the examining table to perform straight leg raising. He also explained that the most recent lower extremity EMG and nerve conduction study (NCS) performed by Dr. Idank on November 1, 2013 indicated subacute/chronic bilateral L5 radiculopathies. Dr. Carlson explained that "[t]his sounds serious except that [appellant] had normal EMG/NCS lower extremities performed on March 2 and May 6, 2011 post-trauma. He further explained that the findings of November 1, 2013 revealed chronic electrical changes with the less symptomatic left leg exhibiting the more noted electrical change (peroneal nerve latency) and it did it correspond to a dermatomal pattern of his clinical complaints to the soles of both feet. Dr. Carlson concluded that appellant never showed objective neurologic findings by Dr. Lombardi or any other examiner. He further explained that appellant's bilateral leg pain did not follow a dermatomal pattern. Dr. Carlson indicated that appellant's positive straight leg raising was "nonorganic" and synonyms would include "functional, hysteric, psychosomatic, or if monitory gain is invo1ved, malingering)." He explained that the November 1, 2013 EMG did

not change his professional opinion that appellant should not undergo lumbar microdiscectomy and that he could return to work.

By decision dated March 20, 2014, OWCP denied the claim. It found that the evidence failed to establish a medical basis for further entitlement or for further development by OWCP.

On March 25, 2014 counsel for appellant requested a hearing, which was held on June 10, 2014.

By decision dated July 29, 2014, an OWCP hearing representative affirmed the March 20, 2014 decision. She found that Dr. Carlson's supplemental report established that appellant could resume his full duties without the need for further medical treatment.

On October 2, 2014 counsel requested reconsideration and submitted further evidence from Dr. Lombardi. In an undated report received on October 22, 2014, Dr. Lombardi explained that he treated appellant for injuries sustained in the October 21, 2010 accident. He noted reviewing Dr. Carlson's most recent comments and disagreed. It was Dr. Lombardi's "medical opinion that this [appellant's] diagnosis is that of disc herniations at L4-5 and L5-Sl. To determine that [he] has suffered only a lumbosacral strain and not aggravation of the preexisting herniations is a minimization of [appellant's] clinical and objective findings." Dr. Lombardi opined that appellant had signs of nerve root impairment based on a positive straight leg raising on the right side causing sciatic irritability, which was consistent with his right-side disc herniations. He explained that, while appellant did not have neurological loss, the disc herniations caused significant pain that precluded him from performing his normal duties. Dr. Lombardi also explained that while the new MRI scan revealed that the size of the discs were smaller there was an increase in the size of the foraminal disc herniations at L5-S1 causing severe foraminal stenosis, which resulted in fairly severe sciatic irritability of the nerve roots. He referred to the November 1, 2013 EMG and advised that it was objective evidence that appellant had chronic radiculopathies, which were related to his work injury on October 21, 2010. Dr. Lombardi opined that appellant was unable to perform his normal duties due to the fact that he had fairly constant and severe right sciatica. He explained that this residual sciatic pain due to the employment injury was contributing to appellant's disability. Dr. Lombardi reiterated that appellant failed conservative therapy and was a candidate for a micro disc excision at L5-S1.

In a January 14, 2015 decision, OWCP denied modification of the July 29, 2014 decision. It also found that Dr. Lombardi did not explain how the accepted work injury caused or aggravated any disc herniations.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[4] Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the

[4] *Curtis Hall,* 45 ECAB 316 (1994).

employment.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[6] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[7]

Furthermore, FECA provides that if there is disagreement between the physician making the examination for OWCP and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[8] In cases where OWCP has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[9]

ANALYSIS -- ISSUE 1

OWCP determined that a conflict of medical opinion existed regarding the nature and extent of any ongoing residuals of the work injury of October 21, 2010, accepted for a lumbar strain, based on the opinions of Dr. Lombardi, appellant's physician who opined that appellant's work-related condition was disabling, included herniated discs, and required surgery, and Dr. Heist, a second opinion physician who opined that appellant's accepted condition had resolved without residuals. Therefore, it properly referred appellant to an impartial medical examiner, Dr. Carlson, a Board-certified orthopedic surgeon, pursuant to 5 U.S.C. § 8123(a).

In a January 31, 2013 report, Dr. Carlson noted appellant's history and current symptoms of lumbosacral pain radiating to both buttocks and lower extremities, with the right side being more symptomatic. He found flexion and extension of the dorsolumbar spine movement was voluntarily restricted to virtually zero degrees. While appellant could not put his fingertips as far as his patellae, he had no difficulty getting on and off the examining table and turning over. Prone thrust was negative at the lumbosacral junction and he had very severe resistance to bilateral hip flexion, which prevented lifting the right heel from the examining table. Dr. Carlson opined that this was an overreaction and also noted that the sitting root signs being negative to 70 degrees was a nonorganic finding when associated with the pronounced guarding of the supine straight leg raising maneuvers. Neurologic testing was normal. Dr. Carlson concluded that the mechanism of injury was consistent with a resolved lumbosacral sprain. He compared the August 8, 2008 MRI scan with the November 17, 2010 MRI scan and the most recent January 18, 2012 MRI scan and explained that the multiple disc herniations identified on the MRI scan studies preceded the trauma on October 21, 2010 and the positive findings were degenerative in nature. Dr. Carlson opined that the injury temporarily aggravated appellant's

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[5] *Jason C. Armstrong,* 40 ECAB 907 (1989).

[6] *Furman G. Peake,* 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.,* 32 ECAB 1019 (1981).

[7] *Calvin S. Mays,* 39 ECAB 993 (1988).

[8] 5 U.S.C. § 8123(a); *Shirley L. Steib,* 46 ECAB 309, 317 (1994).

[9] *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Gary R. Sieber,* 46 ECAB 215, 225 (1994).

condition, which had resolved. He advised that the lumbar surgery should not be authorized and that appellant could return to full time full duty to his job.

On March 4, 2013 OWCP requested a supplemental report from Dr. Carlson to further address whether any continuing condition or disability was due to the October 21, 2010 work injury.[10] On March 30, 2013 Dr. Carlson advised that appellant could again resume his duties and explained that he found no objective signs of impairment on examination. He noted that appellant exhibited exaggerated low back pain and muscle spasm in the supine position that was not confirmed with his sitting nerve root test. Dr. Carlson explained that these "nonorganic findings" caused him "to doubt the amount of pain and disability that [appellant] genuinely has." He opined that the October 21, 2010 work injury temporarily aggravated appellant's preexisting disc herniations. Dr. Carlson noted three reasons for his conclusion: lack of believable objective evidence of physical impairment; most strained backs resolve within two years; and a January 18, 2012 MRI scan showed that the size of the disc herniations had decreased. He explained that appellant was fully capable of performing his date-of-injury job despite having chronic lumbar spine issues for which he was treated for years before the October 2010 work injury. Dr. Carlson noted an August 26, 2008 lumbar MRI scan was positive for multiple lumbar disc herniations. He found "no objective evidence" on examination that would preclude appellant from returning to his job. Dr. Carlson indicated that appellant did not require further care or treatment. The Board finds that his report is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight in establishing that residuals of appellant's employment injury had ceased. Dr. Carlson provided an extensive review of appellant's medical history, reported his examination findings, and determined that there were no objective findings to correspond with appellant's subjective complaints. He found no objective evidence of any work-related disability.

In these circumstances, OWCP properly accorded special weight to Dr. Carlson's findings. When an impartial medical specialist is asked to resolve a conflict in medical evidence, his opinion, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[11] The Board finds that Dr. Carlson's report represents the special weight of the medical evidence and establishes that there were no ongoing residuals of the October 21, 2010 accepted lumbar strain. Dr. Carlson explained the reasons for his conclusion and found no basis on which to attribute any continuing condition or disability to the work injury.

Subsequent to the evaluation by Dr. Carlson, but prior to the termination of benefits, OWCP received an April 10, 2013 report from Dr. Lombardi. However, Dr. Lombardi merely reiterated previously stated findings and conclusions regarding appellant's condition. As he had been on one side of the conflict in the medical opinion that the impartial specialist resolved, the

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[10] *See Guiseppe Aversa*, 55 ECAB 164 (2003) (where OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original opinion).

[11] *See supra* note 9.

treating physician's report was insufficient to overcome the special weight accorded the impartial specialist, or to create a new medical conflict.[12]

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative, and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.[13]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[14]

ANALYSIS -- ISSUE 2

Following the termination of compensation, appellant submitted several reports from Dr. Lombardi. These reports are insufficient to meet his burden of proof to establish that he has any continuing condition or disability causally related to the October 21, 2010 work injury.

On June 19, 2013 Dr. Lombardi explained that the 2008 MRI scan revealed a small focal right paracentral disc herniation at L4-5 while an MRI scan right after the accident revealed a central and right-sided disc herniation that pressed slightly on the thecal sac and the exiting right L5 nerve root. He opined that this "clearly demonstrated mild bilateral neural foraminal narrowing and superimposed central and right[-]sided disc herniation present" on the November 17, 2010 MRI scan that was not on the 2008 MRI scan. Dr. Lombardi explained how the work injury occurred and that it caused right-sided sciatica. He advised that appellant had not previously complained of right-sided sciatica. Dr. Lombardi opined that November 17, 2010 MRI scan showed a worsening of the right-sided disc herniation at L4-5 and a new herniation L5-S1 on the right and indicated that it "clearly shows that he has a larger disc herniation at L5-S1 on the right and a new disc herniation at L5-S1 on the right." He stated that a preexisting disc herniation on the opposite side did not preclude him from having a new herniation caused by the October 21, 2010 injury. Dr. Lombardi suggested that Dr. Carlson review the MRI scans in detail and contended that appellant had new injuries to the right side of the disc at L4-5 and L5-S1 which were "clearly related to the accident of October 21, 2010." On October 18, 2013 he

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[12] *Barbara J. Warren*, 51 ECAB 413 (2000).

[13] *Talmadge Miller,* 47 ECAB 673, 679 (1996); *Wentworth M. Murray,* 7 ECAB 570, 572 (1955).

[14] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

diagnosed disc herniations at L4-5 and L5-S1 and opined that the finding that appellant only had a lumbosacral strain minimalized his clinical and objective findings. Dr. Lombardi explained that appellant had a positive straight leg raising on the right which was consistent with his disc herniations on the right side. He opined that while appellant did not have neurological loss, the disc herniations caused significant, and disabling pain.

On December 27, 2013 OWCP asked Dr. Carlson to review the new evidence and offer an opinion.[15] In a January 16, 2014 report, Dr. Carlson explained that while Dr. Lombardi indicated that the L5-S1 HNP on November 17, 2010 was not present, this was not correct as the August 26, 2008 lumbar MRI scan diagnosed disc herniation/extrusion L3-4, L4-5, and L5-S1. He explained that the right L5-S1 HNP did not appear to exert any mass effect on the exiting nerves in the November 17, 2010 MRI scan study. Furthermore, the January 18, 2012 MRI scan study revealed a stable right paracentral and left foraminal herniated disc at L5-S1 and no new disc herniation or new root impingement. Dr. Carlson explained that Dr. Idank's November 1, 2013 EMG revealed subacute/chronic bilateral L5 radiculopathies which "sounds serious except that [appellant] had normal" EMGs on March 2 and May 6, 2011, post-trauma. He opined that the November 1, 2013 EMG findings did not correspond to a dermatomal pattern of appellant's clinical complaints to the soles of both feet and appellant never exhibited objective neurologic findings. Dr. Carlson observed that appellant's bilateral leg pain did not follow a dermatomal pattern. He indicated that appellant's positive straight leg raising was "nonorganic." Dr. Carlson reiterated that the November 1, 2013 EMG did not change his opinion.

While Dr. Lombardi provided a report received on October 22, 2014 he essentially repeated his previous findings and conclusions. As he had been on one side of the conflict in the medical opinion that Dr. Carlson resolved, his subsequent similar reports are insufficient to overcome the weight accorded the impartial specialist or to create a new medical conflict.[16] Dr. Lombardi also did not sufficiently explain the medical process by which the accepted lumbar strain caused disc herniations at L4-5 and L5-S1.[17] The need for medical reasoning on this point is particularly important since appellant had a preexisting history of low back problems.

On appeal, appellant's counsel asserts that OWCP did not establish that appellant's accepted condition had resolved and that OWCP should have accepted a lumbar disc herniation. As explained, the opinion of Dr. Carlson represents the special weight of the medical evidence and appellant has not established that any other condition is causally related to his work injury.

Consequently, appellant has not met his burden of proof to establish that his condition on and after May 22, 2013 was causally related to his accepted employment injury.

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[15] *See supra* note 10.

[16] *Id*.

[17] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury).

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective May 22, 2013. The Board also finds that he did not meet his burden of proof to establish that he had any condition or disability after May 22, 2013 causally related to the October 21, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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