United States Department of Labor
Employees' Compensation Appeals Board

L.Y., Appellant	)	
and	)	**Docket No. 16-0774**
	)	**Issued: November 18, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, JOHN D. DINGELL VETERANS ADMINISTRATION MEDICAL CENTER, Detroit, MI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 7, 2016 appellant filed a timely appeal from a November 9, 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). However on March 17, 2016 she advised the Board that she was withdrawing her request for oral argument. Accordingly, the Board will proceed to a decision based on the case record and any arguments submitted. *Id.*

ISSUES

The issues are: (1) whether OWCP properly terminated effective July 31, 2015 appellant's wage-loss compensation and medical benefits for her accepted physical conditions; and (2) whether appellant met her burden of proof to establish that she had continuing employment-related disability after July 31, 2015 due to the June 3, 2010 employment injury.

FACTUAL HISTORY

On June 3, 2010 appellant, then a 42-year-old program support assistant, filed a claim for traumatic injury (Form CA-1) alleging that on that day she slipped on the floor and landed on her back while walking to her supervisor's office. She stopped work on June 3, 2010 and has not returned. OWCP initially accepted the claim for displacement of lumbar intervertebral disc without myelopathy. Appellant received wage-loss and medical benefits on the supplemental and periodic rolls beginning June 19, 2000.

On October 26, 2010 appellant underwent an authorized right L3-4 laminectomy with medial facetectomy, foraminotomy, and discectomy. On March 21, 2011 she underwent another authorized bilateral L3-4 posterolateral fusion with pedicle screws and a complete facetectomy of L3-4 with total and complete decompression of the right L3 nerve root.

On February 28, 2012 appellant underwent a spinal cord stimulator trial under the care of Dr. Henry Tong, a Board-certified physiatrist and Board-certified pain medicine specialist. In a June 4, 2012 report, Dr. Tong opined that the lumbar cord stimulator trial provided "inadequate relief of pain," for the diagnosed condition of lumbar radiculopathy. He continued to diagnose lumbar radiculopathy at L4-5 based on electrodiagnostic studies.

On June 1, 2012 OWCP referred appellant for a second opinion evaluation to determine the current status of her accepted conditions and her ability to return to work. Appellant was examined by Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon. In his report dated July 6, 2012, Dr. Obianwu opined that appellant required temporary physical restrictions and recommended a reexamination six months later. OWCP later referred appellant to Dr. Obianwu for a follow-up report. In his second evaluation on March 1, 2013, Dr. Obianwu reviewed magnetic resonance imaging (MRI) scans of appellant's cervical, thoracic, and lumbar spine. He opined that, other than the hardware remaining from appellant's surgical procedures, appellant no longer had residuals of right-sided foraminal disc protrusion at L3-4. Dr. Obianwu also concluded that appellant was capable of returning to her date-of-injury position without restrictions.

OWCP provided Dr. Tong a copy of Dr. Obianwu's second report. In a March 21, 2013 response, Dr. Tong disagreed with Dr. Obianwu's opinion indicating that appellant still had residuals of her work injury and subsequent lumbar spine procedures. Dr. Tong concluded that appellant remained totally disabled from employment.

On April 16, 2013 OWCP determined that a conflict of medical opinion existed between appellant's treating physician, Dr. Tong, and the second opinion examiner, Dr. Obianwu. It arranged an impartial medical evaluation with Dr. Robert S. Levine, a Board-certified general

surgeon, to resolve the conflict in medical opinion as to appellant's remaining work-related residuals and ability to return to employment.

Dr. Levine, in his August 16, 2013 report, reviewed appellant's history of injury, the statement of accepted facts, and the medical record. He provided finding on examination. Dr. Levine opined that appellant's right-sided foraminal disc protrusion at L3-4 had resolved following the authorized surgery, but residuals remained of the surgery due to epidural fibrosis, the insertion of a cage in the disc space, and fusion. He further opined that appellant experienced an aggravation of her preexisting lumbar spondylosis. Dr. Levine noted, however, that symptom magnification had hampered the examination and recommended an evaluation by a psychiatrist or psychologist regarding appellant's chronic pain complaints.

As Dr. Levine opined that appellant was displaying signs of symptom magnification, OWCP issued a notice of proposed suspension of compensation on October 24, 2013. Appellant was afforded 14 days to submit a valid reason for failing to cooperate with the mandatory examination or have compensation benefits suspended. On December 2, 2013 OWCP suspended appellant's compensation benefits for not cooperating fully with Dr. Levine. Appellant was rescheduled for another impartial examination with Dr. Levine on February 18, 2014. In a February 21, 2014 report, Dr. Levine reported that he reevaluated appellant on February 18, 2014 and he set forth his examination findings. He opined that appellant had residuals of the surgery but that he could not provide an objective assessment of her physical restrictions due to "factors present."

OWCP reinstated appellant's benefits and arranged for a psychiatric testing with John A. Dooley, Ph.D., a licensed clinical psychologist, and a second opinion psychiatric evaluation with Dr. Robert S. Burnstein, a Board-certified psychiatrist. In an April 9, 2014 report, Dr. Burnstein reviewed the statement of accepted facts, appellant's medical records, including Dr. Dooley's psychological testing of March 31, 2014, and set forth examination findings. Dr. Burnstein opined that appellant was not psychiatrically disabled from working, but that her back injury led to a psychiatric diagnosis. He indicated that appellant had a history of depression and anxiety related to her back injury and chronic pain and disability and that this was a psychiatric diagnosis that had been caused and precipitated by her failed back syndrome as diagnosed by Dr. Levine.

On April 28, 2014 appellant's claim was updated to include mood disorder secondary to general medical condition and chronic pain disorder.

On April 28, 2014 OWCP provided Dr. Levine a copy of Dr. Burnstein's report to review and to address the accompanying OWCP-5 work capacity form. In a May 27, 2014 report, Dr. Levine indicated that he reviewed the report from the psychiatrist along with his notes and concluded that he could not complete the work capacity form as appellant needed a functional capacity evaluation. OWCP requested an additional report from Dr. Levine on July 7, 2014 and received several messages from Dr. Levine's office, but ultimately Dr. Levine would not schedule the functional capacity evaluation.

On September 5, 2014 OWCP selected Dr. Donald Garver, a Board-certified orthopedic surgeon, as the new impartial medical specialist to resolve the conflict in medical opinion. In an October 22, 2014 report, Dr. Garver reviewed the statement of accepted facts and the entire

medical record and be provided his impressions and conclusions. He noted from the medical record that due to the increase in pain medication, appellant was "obviously, at this point, significantly addicted to narcotic pain medication and also showed significant levels of depression and anxiety. Dr. Garver indicated that he was concerned that appellant had numerous complaints which never improved, and even after two back surgeries, she never really improved and she ended up seeking further treatment, which always ended up with more pain medication. He opined that, on examination, there was no physical evidence of residuals of foraminal disc protrusions at L3-4 level. Dr. Garver emphasized that appellant had significant give away weakness in her foot, which he opined was an unreliable representation on her part as an attempt to deceive. He related that someone with four years of dorsiflexion weakness would not have fully developed leg musculature. Dr. Garver opined that appellant had no residuals remaining from her injury or the surgical procedures. He opined that appellant's knee complaints were not related to the accepted work injury and appellant had no additional diagnoses related to the work injury. Dr. Garver concluded his report by opining that appellant no longer had work-related residuals. He opined that appellant needed to be "detoxed."

A November 7, 2014 MRI scan noted postsurgical findings, no evidence of herniated disc, but disc space narrowing from L2-S1.

On January 9, 2015 OWCP requested that Dr. Garver clarify whether appellant had residuals of the two lumbar surgeries. In a January 9, 2015 addendum report, Dr. Garver reiterated his conclusion from his October 22, 2014 report.

On June 10, 2015 OWCP issued a notice of proposed termination of wage-loss and medical benefits for the accepted condition finding that the weight of the medical evidence of record established that she no longer had any residuals of her accepted work-related condition or continued disability from work as a result of that condition due to the June 3, 2010 work injury. Appellant was informed that her claim remained open for conservative care of the work-related psychiatric diagnoses. She was afforded 30 days to submit additional evidence or argument.

In response to its notice of proposed termination of wage-loss and medical benefits for the physical diagnoses, OWCP received evidence concerning appellant's back pain and opiod usage.

In a June 5, 2015 report, Dr. Tong reported the history of appellant's employment injury as well as the history of her medical treatment. He indicated that appellant was scheduled for a pain pump trial, but the trial had been denied by OWCP.

In a May 13, 2015 report, Dr. Samuel Perov, a Board-certified anesthesiologist, performed a pain management consultation and provided an assessment of lumbosacral radiculopathy, lumbar spondylosis, lumbar spinal stenosis, and postlaminectomy syndrome of the lumbar region. He noted that appellant was counseled on intrathecal pump and opiod/narcotic usage and agreed to follow clinic policies. Dr. Perov also discussed that weight loss would assist in easing pain.

In a July 1, 2015 report, Dr. Mohamed L. Osman, a Board-certified anesthesiologist, reported appellant's pain began six years ago secondary to work-related injury and that the use of

narcotics for pain was not effective. He prescribed opiod usage. Dr. Osman also counseled appellant on weight loss and indicated that weight loss may promote general (well-being) in addition to easing pain.

Also received were a July 2, 2015 electromyography report and a March 19, 2015 diagnostic test for detection of various medications.

By decision dated July 30, 2015, OWCP terminated appellant's entitlement to wage-loss compensation and medical benefits, effective July 31, 2015, for her accepted work-related condition. It noted that medical benefits remained open for conservative treatment of appellant's psychiatric conditions. Special weight was accorded to Dr. Garver's impartial medical opinion.

On August 16, 2015 OWCP received appellant's August 14, 2015 request for reconsideration. Appellant submitted supplemental statements dated August 14, September 14, and November 9, 2015. In her statements, appellant discussed the October 22, 2014 report from Dr. Garver and her disagreement with his findings and conclusions. She requested that OWCP allow another impartial medical examination.

Appellant submitted evidence previously of record along with new evidence.[3] In a September 11, 2015 report, Amy Tittle, nurse practitioner, noted that appellant reported two months after surgery, that an independent medical examiner manipulated her lower back and since then, her back pain had been worse. Appellant reported that recently her toes and fingers "curl up" on her. She also reported that her pain was debilitating and affected her activities of daily living, including her ability to work. An assessment of intractable low back pain and right leg pain for over five years was provided.

In a September 11, 2015 report, Dr. Jay Jagannatha, a Board-certified neurosurgeon, provided a discussion of appellant's current pain complaints. He suggested further electrodiagnostic testing of the cervical spine and upper extremity to see if there was a source of the neck and arm pain. No diagnosis of a medical condition was provided.

In an August 12, 2015 clinic note, Dr. Robert R. Johnson, II, a neurosurgeon, noted appellant's current complaints of chronic pain due to postlaminectomy syndrome and sciatica and possible treatment options.

In an August 21, 2015 report, Dr. Tong provided a history of the injury and subsequent events as reported by appellant. Regarding Dr. Garver's impartial medical evaluation, Dr. Tong noted that Dr. Garver indicated that appellant's lumbar scar tissue might be cancerous.

An August 25, 2015 MRI scan of the lumbar spine noted current impressions.

On August 2, 2015 Dr. Sruthi Kondur, a Board-certified anesthesiologist, reported diagnoses of lumbosacral radiculopathy, lumbar spondylosis, lumbar spinal stenosis, and

[3] The evidence previously of record included: November 7 and December 3, 2014 diagnostic tests; January 8, May 30, March 21, 2013 and February 23, 2014 reports from the Michigan Head & Spine Clinic; and progress notes from the University Pain Clinic dated March 17, 31, May 13 and July 1, 2015.

postlaminectomy syndrome of the lumbar spine. He also noted that he had discussed appellant's opiod, narcotic usage with her.

In a September 11, 2015 report, Dr. David Lustig, an osteopath, provided a history of cramping of the hands and feet, and an inability to talk. He reviewed the results noted on the August 31, 2015 MRI scan of the lumbar spine and the September 1, 2014 CT scan of the brain and noted that she had been seen by multiple physicians. Dr. Lustig concluded that appellant's spells were difficult to explain from a physiological perspective.

In an October 12, 2015 report, Dr. Tong added a brief discussion of the August 25, 2015 MRI scan concluding that, "when compared to April 11, 2013, unchanged except L2-3 is increased."

By decision dated November 9, 2015, OWCP denied modification of its prior decision. It found that Dr. Garver's report, as that of the impartial medical examiner, was the weight of the medical evidence. The new evidence submitted by appellant was insufficient to establish residuals or continuing disability from work of the accepted physical condition.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[4] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[6] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[7] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[8]

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

[5] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[6] 5 U.S.C. § 8123(a).

[7] 20 C.F.R. § 10.321.

[8] *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

When OWCP secures an opinion from an impartial medical specialist and the opinion of the 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 report. However, when the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the physician is unable to clarify or elaborate on his original report or if the supplemental report is also vague, speculative, or lacks rationale, OWCP must refer appellant to a second impartial medical specialist for a rationalized medical report on the issue in question.[9] Unless this procedure is carried out by OWCP, the intent of section 8123(a) of FECA, will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[10]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to establish that appellant's accepted physical conditions ceased without residuals and that she was not disabled from work as a result of the June 3, 2010 work injury.[11] The Board notes that appellant's claim remains open for medical treatment of her accepted mood and pain disorders.

OWCP accepted appellant's claim for displacement of lumbar intervertebral disc without myelopathy and subsequently accepted a mood disorder secondary to general medical condition and chronic pain disorder. It terminated compensation benefits finding that the accepted physical condition had resolved without residuals and appellant was no longer disabled based on the opinion of the impartial medical examiner, Dr. Garver. OWCP bears the burden to justify modification or termination of benefits.[12]

A conflict in medical opinion arose in this case between Dr. Obianwu, OWCP's second opinion physician, who, in his March 1, 2013 report, opined that other than the hardware appellant no longer had work-related residuals of right-sided foraminal disc protrusion at L3-4 and was capable of returning to her date-of-injury position without restrictions, and Dr. Tong, appellant's treating physician, who, in a March 21, 2013 report, disagreed with Dr. Obianwu reporting that appellant still had residuals of her back condition and subsequent lumbar spine procedures and remained totally disabled from employment. OWCP initially referred appellant to Dr. Levine to resolve the conflict in medical opinion. However, after several unsuccessful attempts by OWCP to get Dr. Levine to clarify his opinion as to appellant's ability to return to employment, OWCP referred appellant to another impartial medical specialist, Dr. Garver. The Board finds that OWCP properly referred appellant to Dr. Garver to resolve the ongoing conflict in medical opinion evidence, pursuant to 5 U.S.C. § 8123(a) and its procedures.[13]

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810(11)(e) (September 2010); *see also Terrance R. Stath*, 45 ECAB 412, 420 (1994).

[10] *Harold Travis*, 30 ECAB 1071 (1979).

[11] *See H.P.* Docket No. 15-0568 (issued September 14, 2015).

[12] *See Curtis Hall*, 45 ECAB 316 (1994); *see also K.B.*, Docket No. 15-11 (issued April 7, 2015).

[13] *See supra* note 9.

Dr. Garver was provided copies of the complete case file, the statement of accepted facts, and an OWCP-5c work capacity form. He was asked to opine whether appellant had any work-related residuals and whether she could return to employment, with or without residuals. In his October 22, 2014 report, Dr. Garver provided a detailed history of the work injury, his review of the medical record, including a review of diagnostic studies, and provided examination findings, impressions and conclusions. He opined that appellant had no residuals of the work injury, no additional diagnoses attributable to the work injury, and no residuals of the surgical procedures dated October 25, 2010 or March 21, 2011. Dr. Garver also documented the symptom magnification he observed and recommended detox from Dilaudid, a prescription drug. He also provided a January 9, 2015 addendum report and reiterated his previous opinion that appellant did not have any residuals from the two lumbar surgeries.

The Board finds that Dr. Garver's report represents the special weight of the medical evidence at the time OWCP terminated benefits and OWCP properly relied on his report in terminating appellant's wage-loss compensation and medical benefits for the accepted physical conditions. The Board finds that he had full knowledge of the relevant facts and evaluated the course of her condition. Dr. Garver is a specialist in the appropriate field. His opinion is based on proper factual and medical history and his report contained a detailed summary of this history. Dr. Garver addressed the medical records and offered his own examination findings to reach a reasoned conclusion regarding appellant's condition and to support his full-duty release.[14]

At the time benefits were terminated, Dr. Garver found no basis on which to attribute any residuals to appellant's accepted physical condition. The Board finds that Dr. Garver's opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's termination of wage-loss compensation and medical benefits on the basis that the accepted physical conditions had ceased.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits on July 31, 2015, the burden shifted to her to establish that she had any continuing disability causally related to the accepted conditions.[15] Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the claimant.[16]

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is

[14] *See Michael S. Mina,* 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

[15] *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

[16] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

claimed. To do so, would essentially allow the employee to self-certify her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden to establish that she was disabled for work as a result of the accepted employment injury.[17]

ANALYSIS -- ISSUE 2

None of the additional reports submitted by appellant provide detailed medical rationale to establish continuing disability due to the accepted back condition and, therefore, the new evidence of record is insufficient overcome the special weight properly accorded to Dr. Garver's report as the impartial medical specialist or to create a new conflict.[18]

Several reports were received from Dr. Tong. Other than mentioning Dr. Garver might have told appellant she might have cancer, Dr. Tong did not discuss Dr. Garver's examination or provide any medical rationale as to why appellant continued to be disabled. While he concluded in his October 12, 2015 report that the August 25, 2015 MRI scan was unchanged, except that the L2-3 narrowing was increased compared to the April 11, 2013 MRI scan, he provided no discussion or medical rationale to establish that this current condition was caused by the accepted injury and was in fact disabling. Furthermore, the Board notes that Dr. Tong was on one side of a conflict in medical evidence that was resolved by Dr. Garver and Dr. Tong did not provide any new findings or rationale to support a finding of disability. Reports from a physician who was on one side of a medical conflict that an impartial medical examiner resolved are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner, or to create a new conflict.[19]

The other medical reports submitted also failed to offer an opinion or medical rationale to establish continuing disability. Dr. Johnson noted appellant's complaints of chronic pain and possible treatment options, but failed to provide an opinion regarding appellant's disability status. Dr. Lustig concluded that appellant's spells of cramping of the hands and feet and inability to talk were difficult to explain from a physiological perspective. No opinion on disability was provided. Dr. Jagannatha discussed appellant's pain, but failed to diagnose a medical condition or offer any opinion regarding disability. The reports from Dr. Kodur do note a diagnosis, but offer no opinion regarding disability.

The physicians failed to provide medical rationale explaining how appellant remained disabled or had continuing residuals as a result of the accepted back condition due to the June 3, 2010 employment injury.[20] Thus the medical reports submitted subsequent to the termination of benefits do not support disability or a continuation of residuals due to the accepted back condition.

[17] *See D.B.*, Docket No. 16-0381 (issued September 14, 2016).

[18] *See Dorothy Sidwell*, 41 ECAB 857 (1990); *J.M.*, Docket No. 11-1257 (issued January 18, 2012).

[19] *I.J.*, 59 ECAB 408, 414 (2008).

[20] *M.B.*, Docket No. 14-0619 (issued September 28, 2015); *W.F.*, Docket No. 12-479 (issued November 27, 2012); *Dean E. Pierce*, 40 ECAB 1249 (1989).

The record also contains a September 9, 2015 report from a nurse practitioner, who related that appellant's debilitating pain affected her ability to work. As nurse practitioners are not considered physicians under FECA, and this document was not signed by a physician, it does not constitute medical evidence in this case.[21]

Appellant's own disagreement with Dr. Garver's findings is irrelevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.[22]

On appeal, appellant contends that Dr. Garver failed to examine her, called her an addict, and provided a negative report as she mentioned to him that she believed his medical license was temporary or under review in Michigan. She further alleged that Dr. Garver works with her treating orthopedic surgeon, Dr. Suleiman. The Board notes that this is the first time appellant has made such allegations concerning Dr. Garver and there is no evidence in the record to support such contentions. There are no reports from Dr. Suleiman. Furthermore, appellant's allegations that she was not examined by Dr. Garver and that he provided a negative report are contrary to the contents of Dr. Garver's medical report of record. As found above, the special weight of the medical opinion evidence rests with the opinion of Dr. Garver who opined that appellant no longer had any residuals from the physical conditions of the employment injury and was no longer disabled from work based on his review of the entire case file, a thorough physical examination and well-reasoned and unequivocal medical opinion.[23]

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 31, 2015, for her accepted lumbar condition. The Board also finds that appellant has failed to establish continuing employment-related disability after that date due to her accepted back condition.

[21] *Roy L. Humphrey*, 57 ECAB 238 (2005).

[22] *K.H.*, Docket No. 14-1824 (issued May 4, 2015); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).

[23] On appeal, appellant submitted additional evidence. As OWCP did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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