

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**P.B., Appellant**

**and**

**DEPARTMENT OF THE ARMY, ARMY  
MEDICAL COMMAND, FORT GORDON, GA,  
Employer**

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**Docket No. 16-1532  
Issued: March 8, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 26, 2016 appellant filed a timely appeal from a June 7, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 wage-loss compensation and medical benefits, effective December 15, 2015, as she no longer had residuals or disability due to her accepted November 11, 2012 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability after December 15, 2015, causally related to the accepted employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 21, 2012 appellant, then a 52-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 11, 2012 she sustained a lower back injury when she was adjusting a patient to a more comfortable position in bed. She stopped work on November 14, 2012 and returned on December 8, 2012. OWCP accepted appellant's claim for temporary aggravation of brachial neuritis or radiculitis and intervertebral disc disorder with myelopathy.

Appellant underwent a magnetic resonance imaging (MRI) scan of the lumbar spine by Dr. Bruce L. James, a Board-certified diagnostic radiologist. In a November 29, 2012 report, Dr. James diagnosed degenerative disc disease at L4-5.

Dr. Thomas P. Garigan, a Board-certified family practitioner, related in an April 2, 2013 report that he had treated appellant for brachial neuritis or radiculitis and intervertebral disc disorder with myelopathy. He explained that he initially treated her on November 19, 2012 for complaints of severe back pain radiating down the posterior aspect of her leg to her knee. Upon physical examination, Dr. Garigan observed significant paraspinal muscle spasm and possible weakness in appellant's left leg. He noted that an MRI scan revealed L4-5 disc disease. Dr. Garigan diagnosed low back pain with herniated L4-5 disc. He reported that appellant was unable to work.

Appellant stopped work again on April 3, 2013 and filed a claim for wage-loss compensation (Form CA-7). OWCP paid appellant medical and wage-loss compensation benefits, and was later placed on the periodic rolls.

On January 12, 2014 appellant returned to part-time work, working six hours per day. She stopped work again on June 10, 2014 and was returned to the periodic rolls for payment of compensation for temporary total disability.

Dr. David A. Shapiro, a chiropractor, conducted an MRI scan of appellant's lumbar spine on December 22, 2014. In his report, he noted mild disc bulge at L4-5 with no significant narrowing of the subarachnoid space.

Appellant returned to work on April 6, 2015, but stopped on April 21, 2015 because of neck and back pain. She was again returned to the periodic rolls.

OWCP referred appellant to Dr. James W. Price, a Board-certified orthopedic surgeon, for a second-opinion examination to determine whether she continued to suffer residuals and remained disabled from work due to her November 11, 2012 employment injury. In a report dated June 26, 2015, Dr. Price accurately described the November 11, 2012 employment injury and reviewed her prior medical treatment. Upon physical examination, he noted appellant's complaints of pain with forward bending beyond 30 degrees, but that she could bend to touch her calf. Appellant also complained of pain to palpation of the mid-to-lower lumbar spine, over the sacroiliac joints, and over the proximal aspect of the sciatic course. Dr. Price reported that she ambulated without difficulty or assistive devices and stood without difficulty.

Dr. Price noted that appellant also complained of pain with classic straight leg raise testing, but not with confusion testing or peroneal nerve pressure. He reported that motor strength testing in the lower extremity was essentially normal. Dr. Price indicated that neurological examination revealed intact sensation to light touch with no sensory deficits in the lower extremities. Vascular and lymphatic examinations also revealed no abnormalities. Dr. Price related that MRI scan reports revealed chronic back pain syndrome and noted that symptom magnification was likely. He explained that appellant complained of residual chronic pain, but there were no hard clinical findings of radiculopathy to be found. Dr. Price reported that he did not find any objective signs of neurological deficits or muscle weakness in the lower extremities related to her disc level. He recommended that appellant undergo a functional capacity evaluation (FCE).

Dr. Price included appellant's FCE report dated July 21, 2015 by Lana Hardeman, an occupational therapist. Ms. Hardeman noted that, although appellant consistently rated her pain as an 8/10 throughout the evaluation, she observed appellant's erect posture and smooth and fluid movements. She also reported that appellant had full, active range of motion of the bilateral lower extremities and trunk. Ms. Hardeman mentioned that appellant performed 25 repetitive squats and climbed 100 steps without a change in posture or speed of movement. She opined that appellant had not performed the FCE with consistent, determined effort. Ms. Hardeman noted that, because of appellant's self-limiting behavior and pain profile, it was doubtful that she would continue to work.

In a September 24, 2015 addendum report, Dr. Price indicated that the results of appellant's FCE seemed quite consistent with his previous clinical examination. He opined that she appeared to be magnifying her symptoms and appeared to be physically capable of carrying out more activity than she reported. Dr. Price explained that many of appellant's complaints during the FCE appeared to be related to her complaints of pain and did not appear to be consistent with his physical findings. He concluded that her objective physical examination findings did not reflect any current residual injury. Therefore, Dr. Price concluded that appellant had no current work limitations.

OWCP proposed to terminate appellant's wage-loss compensation and medical benefits on November 10, 2015. It found that the weight of evidence rested with the opinion of the second-opinion examiner, Dr. Price, who determined in his June 26, 2015 report that there were no objective findings to demonstrate that she continued to suffer residuals of her November 11, 2012 employment injury. Appellant was advised by OWCP that she had 30 days to submit additional evidence or argument if she disagreed with the decision.

In a letter dated December 9, 2015, the employing establishment provided appellant with a job offer as a full-time medical support assistant and submitted a description of the new position. The job offer noted a start date of December 28, 2015. Appellant accepted the job offer on December 10, 2015.

By decision dated December 15, 2015, OWCP finalized the proposed termination of appellant's wage-loss compensation and medical benefits. It found that the weight of medical evidence rested with the second opinion physician, Dr. Price, who determined in his June 26,

2015 report that her work-related back injury had ceased and that she could return to work in her date-of-injury position.

On May 5, 2016 OWCP received appellant's request for reconsideration. Appellant asserted that she has had ongoing back pain since the work-related November 11, 2012 employment injury. She noted that the pain was so excruciating that it put her in a deep depression and caused a strain on her family and her relationship with her husband.

In a March 21, 2016 narrative report, Dr. Garigan noted that appellant had a three-year history of lower back pain. He related that as a consequence of her condition she had work restrictions, prolonged absences from work, extensive medical evaluations, and various treatments, but she continued to complain of persistent bilateral lower lumbar pain, especially on the left side in the paraspinal region. Dr. Garigan discussed that a November 2012 MRI scan revealed mild disc desiccation of L4-5, mild-to-moderate narrowing of the right lateral recess, and mild-to-moderate narrowing of the central canal with effacement of the ventral thecal sac. He reported that an August 2013 MRI scan demonstrated circumferential disc bulge of L4-5. Dr. Garigan indicated that, upon examination on March 9, 2016, he observed tenderness at her lumbosacral paraspinal region, with bilateral muscle spasm. He diagnosed chronic lower back pain, L4-5 intervertebral disc degeneration, and major depressive disorder. Dr. Garigan reported that appellant had a history of "long-standing lower back pain that initially began after an acute injury." He opined that her current back pain appeared to be part of a triad of chronic muscle spasm, depression, and work situation. The interplay of these factors contributed to her persistent pain and depression. Dr. Garigan noted that appellant's activities were limited by her back pain and spasm, but there was no evidence of permanent physical disability.

By decision dated June 7, 2016, OWCP denied modification of the December 15, 2015 termination decision. It found that the weight of medical evidence rested with Dr. Price's report, which found that appellant no longer had residuals or disability as a result of the November 11, 2012 employment injury. OWCP determined that the March 21, 2016 report of Dr. Garigan was of insufficient probative value to outweigh Dr. Price's medical opinion.

### **LEGAL PRECEDENT -- ISSUE 1**

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.<sup>2</sup> OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>3</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

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<sup>2</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

## ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained aggravation of brachial neuritis or radiculitis and intervertebral disc disorder with myelopathy as a result of a November 11, 2012 employment injury. Appellant received wage-loss compensation for intermittent periods. By decision dated December 15, 2015, OWCP terminated her wage-loss compensation and medical benefits based on the opinion of Dr. Price, the second opinion examiner, who concluded in June 26 and September 24, 2015 reports that she no longer suffered residuals of her November 11, 2012 employment injury and was capable of returning to work. The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 15, 2015, as the medical evidence established that she did not have any residuals or disability causally related to the November 11, 2012 employment injury.

In his June 26, 2015 report, Dr. Price related appellant's current complaints of persistent bilateral pain radiating to the lower extremities. He accurately described the November 11, 2012 employment injury and reviewed her history. Dr. Price conducted a physical examination and noted appellant's complaints of pain with forward bending beyond 30 degrees, with classic straight leg raise testing, and upon palpation of the mid to lower lumbar spine. He noted that she was able to ambulate and stand without difficulty and bend down to touch her calf. Dr. Price indicated that neurological, vascular, and lymphatic examinations revealed no abnormalities or sensory deficits in the lower extremities. He explained that, although appellant complained of residual chronic pain, there were no hard clinical findings of radiculopathy to be found. Dr. Price reported that he did not find any objective signs of neurological deficits or muscle weakness in the lower extremities related to her disc level. He further opined in a September 24, 2015 addendum report that appellant appeared to be magnifying her symptoms and did not appear to be consistent with his physical findings. Dr. Price reported that she did not have any current residual injury or work limitations based on objective physical findings.

The Board finds that OWCP properly accorded the weight of medical opinion with Dr. Price who reported that appellant no longer had residuals or disability as a result of the November 11, 2012 employment injury. Dr. Price based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion that she did not have any current residual injury or work limitations. He reported essentially normal objective findings on physical examination and indicated that appellant showed signs of symptom magnification. Dr. Price explained that, although she still complained of pain, he found no objective signs or clinical findings to demonstrate any neurological deficits or radiculopathy related to her accepted lumbar injury. Because Dr. Price provided a well-rationalized opinion based on medical evidence regarding appellant's November 11, 2012 employment injury, the Board finds that OWCP properly relied on his June 26, 2015 second opinion report in terminating appellant's wage-loss compensation and medical benefits for the November 11, 2012 employment injury.<sup>5</sup>

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<sup>5</sup> See *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

## LEGAL PRECEDENT -- ISSUE 2

After OWCP has met its burden of proof to terminate compensation benefits, the burden for reinstating compensation benefits shifts to appellant to establish that she had any subsequent disability causally related to the accepted employment injury.<sup>6</sup> To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>10</sup>

## ANALYSIS -- ISSUE 2

Following OWCP's December 15, 2015 decision terminating appellant's wage-loss compensation and medical benefits, effective December 15, 2015, appellant submitted a March 21, 2016 report by Dr. Garigan and asserted that she continued to suffer residuals of her accepted back injury. The Board finds that Dr. Garigan's report is of diminished probative value to establish that appellant had any remaining work-related residuals or disability after December 15, 2015.

In his March 21, 2016 report, Dr. Garigan related appellant's continued complaints of back pain and noted tenderness with bilateral muscle spasm on physical examination. He opined that her current back pain appeared to result from "a triad of chronic muscle spasm, depression, and work situation." Dr. Garigan noted that there was no evidence of permanent disability. The Board notes that Dr. Garigan did not opine that appellant had any continuing residuals or disability due to her work-related injury. While Dr. Garigan diagnosed chronic lower back pain, L4-5 intervertebral disc degeneration, and major depressive disorder, he did not attribute these

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<sup>6</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008).

<sup>8</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-0658 (issued October 22, 2009); *D.I.*, 59 ECAB 158 (2007).

<sup>9</sup> *I.J.*, *supra* note 7; *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *D.S.*, Docket No. 09-0860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000).

diagnosed conditions to the November 11, 2012 employment injury.<sup>11</sup> Therefore, the Board finds that appellant has not met her burden of proof to establish disability or need for medical care due to her November 11, 2012 employment injury after December 15, 2015.

On appeal, appellant alleges that she still suffers from chronic back pain, as well as medical depression and anxiety, every day of her life. Despite her assertion, however, the medical evidence of record has failed to establish that her current back symptoms caused continuing disability due to the accepted employment injury.<sup>12</sup>

The Board finds that appellant has failed to establish continuing residuals or disability related to the accepted injuries.

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 OWCP properly terminated appellant's wage-loss compensation and medical benefits effective, December 15, 2015, as she no longer had any residuals or disability causally related to the November 11, 2012 employment injury. The Board also finds that appellant has not met her burden of proof to establish continuing disability after December 15, 2015, causally related to the accepted employment injury.

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<sup>11</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (the Board found that for conditions not accepted or approved by OWCP as due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury).

<sup>12</sup> *Supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 7, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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