United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 18-1243**
	)	**Issued: October 7, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Staten Island, NY, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 4, 2018 appellant, through counsel, filed a timely appeal from January 5 and April 2, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 25, 2017, as she had no continuing

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

disability or residuals causally related to her January 18, 2015 employment injury; (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals after July 25, 2017; and (3) whether OWCP abused its discretion by denying authorization for a surgical fusion at L5-S1.

FACTUAL HISTORY

On January 24, 2015 appellant, then a 27-year-old part-time city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained a back injury when she slipped and fell on stairs on January 18, 2015 while in the performance of duty. OWCP accepted the claim for lumbar and cervical radiculitis. Appellant stopped work on January 21, 2015. She returned to limited-duty work on July 6, 2015. OWCP paid wage-loss compensation on the supplemental rolls from March 7 through July 5, 2015.

Dr. Anthony Alastra, a Board-certified neurosurgeon, evaluated appellant on March 24, 2016. He opined that she had a work-related injury consistent with L5-S1 traumatic spondylosis which caused lumbosacral pain and concordant L5-S1 radicular symptomatology into the buttocks and left lower extremity. Dr. Alastra recommended a one-level fusion or spinal column stimulation.

An April 29, 2016 lumbosacral spine x-rays revealed mild facet arthrosis at L5-S1, but was otherwise unremarkable.

In a May 12, 2016 report, Dr. Alastra recommended that appellant undergo a full decompressive laminectomy facetectomy and foraminotomy with fusion at L5-S1 with fixation device. A formal request for authorization of the surgery was submitted to OWCP on May 17, 2016.

In a June 15, 2016 development letter, OWCP advised appellant that the additional diagnosed conditions had not been accepted as causally related to the January 18, 2015 employment injury. It indicated that a well-rationalized explanation from a physician relating such conditions to the employment injury was necessary prior to the approval of any further additional conditions or requested procedures.[3] OWCP afforded appellant 30 days to submit the necessary evidence.

A July 15, 2016 electromyography/nerve conduction velocity (EMG/NCV) study of the lower extremities was reported as normal, with no evidence of lumbar radiculopathy, entrapment neuropathy, or peripheral neuropathy.

In a July 19, 2016 report, Dr. Alastra noted that the MRI scan and flexion-extension studies revealed a traumatic injury at L5-S1 in the form of severe arthrosis causing a disc injury, facet injury, and foraminal narrowing resulting in S1 radiculopathy. He opined that the traumatically-

[3] The additional conditions included cervical and lumbar disc displacement, lumbar spondylosis, lumbar traumatic disc disease, left L5-S1 radiculopathy, and sacrococcygeal disorders.

induced spondylosis was related to her employment injury. Dr. Alastra concluded that appellant was totally disabled and that she required a one level lumbar fusion of L5-S1.

In a November 1, 2016 report, Dr. Anthony Chiurco, a Board-certified neurosurgeon and OWCP second opinion physician, reviewed the history of appellant's injury, a statement of accepted facts (SOAF), and the medical record. He found no objective findings on physical examination or x-rays. Dr. Chiurco opined that the spondylosis at L5-S1 was not causally related to the January 18, 2015 injury and, if it was aggravated by the employment injury, it had resolved by the time of his examination. He opined that there was no objective cause for disability based on the lack of findings, and concluded that appellant could return to work without restrictions. Dr. Chiurco noted that appellant was limited only by pain complaints. He further opined that appellant required no further medical treatment and that the requested lumbar spine fusion, laminectomy, and application of prosthetic device was completely unnecessary as there was a lack of correlation with appellant's complaints or objective findings. Dr. Chiurco noted that the degree of foraminal stenosis at L5-S1 on the left due to spondylosis was mild and should not be compromising such that it would require surgical intervention. He noted that while it was possible that appellant's calf pain on the left could be a symptom of L5 radiculopathy, he could not recall in over 40 years of experience that lateral calf discomfort was based on nerve compression. With regard to a proposed lumbar spine fusion, Dr. Chiurco found no evidence of instability to warrant such a procedure and recommended against the surgical procedure. He further found that appellant had reached maximum conservative treatment. Dr. Chiurco opined that appellant should have been capable of full-time duty six months after the injury following her treatment with lumbar physical therapy and transforaminal injections.

By preliminary notice dated November 14, 2016, OWCP advised appellant of its proposed termination of her wage-loss compensation and medical benefits based on Dr. Chiurco's second opinion report. Appellant was afforded 30 days to submit additional evidence in support of her claim.

In a November 29, 2016 report, Dr. Alastra disagreed with Dr. Chiurco's findings. He noted that appellant clearly had limited range of motion (ROM) as well as clear palpable muscle spasm in the lumbosacral spine and left buttock, she also had findings consistent with changes at L5-S1 with radiculopathy, as evidenced by paresthesia on the left lateral calf. Dr. Alastra indicated that there was significant overlap across the dermatomes from level to level. He explained that it was not uncommon to see foci of dermatomal sensory paresthesias in part of the dermatome as opposed to the entire expected dermatome. Dr. Alastra also noted that Dr. Chiurco failed to reference appellant's overall functional capacity or the imaging studies which documented "fishmouthing" at the L5-S1 disc space, which was indicative of disc instability and abnormal movement. He advised that appellant had significant facet arthrosis and joint fluid consistent with traumatic spondylosis.

A January 19, 2017 EMG/NCV study revealed evidence of left L5-S1 radiculopathy.

In a January 25, 2017 report, Dr. Marc A. Cohen, an orthopedic surgeon, diagnosed lumbar internal disc disruption disease, discogenic instability at L5-S1, lateral recess stenosis at L5-S1, and lumbosacral radiculopathy. He agreed that appellant would benefit from a lumbar decompression anterior posterior fusion stabilization.

A January 28, 2017 L4-5 and L5-S1 lumbar discogram showed evidence of grade 4 annular tear at L5-S1.

OWCP determined that a conflict existed between Dr. Chiurco and Dr. Alastra regarding the issues of diagnoses causally related to the accepted employment injury; the need for further medical treatment, including surgery; and whether appellant had continuing disability due to the accepted employment injury. Appellant was referred to Dr. Edward Krisiloff, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a February 7, 2017 report, Dr. Saurabh Dang, a Board-certified anesthesiologist, recommended a percutaneous disc decompression at L5-S1.

In a February 16, 2017 letter of medical necessity, Dr. Alastra attributed the need for a lumbar fusion to the July 16, 2015 employment injury. In a February 28, 2017 report, he amended the letter of necessity to reflect that the findings of the recent diagnostic studies, including the lumbar discogram, had corroborated and correlated the presence of an L5-S1 disc injury with a resultant left S1 radiculopathy.

In a March 21, 2017 report, Dr. Krisiloff noted appellant's history of injury, the nature of the medical conflict, his review of the medical record including the January 19, 2017 EMG/NCV studies and January 28, 2017 lumbar spine discogram, and physical examination findings. He reported that examination of appellant's lumbar spine revealed full ROM, no obvious deformity in the back, negative straight leg raise, normal ROM in the hips, knee joints, and ankles; and essentially normal motor strength and sensory examination. Dr. Krisiloff opined that appellant exhibited no current objective findings on examination to support the accepted diagnoses of continuing lumbar or cervical radiculitis, as she had no evidence of lumbar muscle spasm or tightness, normal ROM, and no neurologic findings in the extremities. He thus concluded that the accepted conditions had resolved and additional medical care was not required. Dr. Krisiloff noted that appellant's subjective complaints of back pain did not correspond with his objective findings. He opined that appellant was capable of performing full-duty, regular work and agreed with the opinion of Dr. Chiurco that she was capable of performing normal work duties six months after her injury. Dr. Krisiloff further opined that she did not exhibit any additional conditions based on his evaluation. He noted that, while she had early L5-S1 spondylosis, a nonwork-related condition, appellant had not suffered from spinal stenosis, radiculopathy, sacroiliitis, or disc herniation. Dr. Krisiloff also opined that the requested surgical procedure of lumbar spinal fusion and insertion of spinal fixation device was not medically necessary and should therefore not be authorized. He indicated that appellant was only 28 years old and that she had not exhibited signs of instability at L5-S1. While appellant had evidence of early spondylosis, a spinal fusion with instrumentation should not be performed at her age as it would likely lead to further problems and require corrective surgery in the future. Dr. Krisiloff recommended continued exercise and stretching, occasional use of anti-inflammatories, and weight loss as treatments concerning appellant's spondylosis at L5-S1. He concluded that appellant had reached maximum medical improvement for the accepted conditions, which had resolved, and that she was capable of returning to full duty without restrictions. An April 21, 2017 work capacity evaluation (Form OWCP-5c) was completed, which noted that appellant could perform her date-of-injury position full time without restriction.

On April 14, 2017 Dr. Dang performed a percutaneous disc decompression at L5-S1. This procedure was authorized by OWCP on February 16 and May 11, 2017.

In an April 27, 2017 report, Dr. Alastra noted that appellant had undergone a microlumbar discectomy at L5-S1 level on the left with Dr. Dang. However, appellant's symptoms appeared to have been aggravated. Physical examination confirmed continued left S1 radiculopathy with persistent paresthesias down the back of the left leg and calf into the foot along with pain on palpation of the myofascial regions of the lumbosacral spine and left buttock. Appellant walked with an antalgic gait and had a slightly decreased S1 reflex likely secondary to nerve irritation from her discectomy. Dr. Alastra maintained that appellant had a grade 4 disc tear and injury which caused irritation/inflammation around the L5-S1 disc segment on the left. He reiterated that the L5-S1 fusion was necessary to eradicate the diseased disc. Authorization for the lumbar fusion with biomechanical device was requested again on May 19, 2017.

By decision dated June 14, 2017, OWCP denied authorization for lumbar spine fusion combined with insertion of spinal fixation device. The special weight of the medical evidence was accorded to the opinion of Dr. Krisiloff in his capacity as an impartial medical examiner.

By preliminary notice dated June 14, 2017, OWCP advised appellant of its proposed termination of her wage-loss compensation and medical benefits. It found that the opinion of Dr. Krisiloff, as the impartial medical examiner, constituted the special weight of the evidence and established that she had no further employment-related disability or need for further medical treatment. Appellant was afforded 30 days to submit additional evidence.

On June 20, 2017 appellant, through counsel, requested a hearing before an OWCP hearing representative regarding the June 14, 2017 decision denying authorization of the requested lumbar fusion surgery.

In a June 30, 2017 attending physician's report (Form CA-20) Dr. Nakul Gupta, an anesthesiologist, indicated that he had examined appellant on May 19, 2017 for lumbar spondylosis, disc displacement, and sacroiliitis, which he opined was caused or aggravated by the January 18, 2015 employment injury. He indicated that appellant was able to work four hours a day with restrictions as set forth in an accompanying duty status report (Form CA-17).

By decision dated July 25, 2017, OWCP terminated appellant's entitlement to wage-loss compensation and medical benefits with special weight afforded to Dr. Krisiloff, the independent medical examiner (IME).

On July 28, 2017 OWCP received progress reports dated May 19 and June 30, 2017 from Dr. Nakul Mahajan, Board-certified in pain medicine and anesthesiology, who noted that appellant was awaiting authorization for a L5-S1 fusion by Dr. Alastra. He indicated that appellant was also found to be on temporary partial disability status and working part time.

On August 1, 2017 appellant, through counsel, requested an oral hearing before an OWCP hearing representative regarding the July 25, 2017 termination decision.

In an August 8, 2017 report, Dr. Alastra continued to recommend lumbar interbody fusion for treatment of her postlaminectomy syndrome, severe degenerative lumbar spondylosis,

degenerative disc disease, and left S1 radiculopathy. He indicated that appellant had developed postlaminectomy syndrome due to the "inappropriate and ill-advised surgical intervention."

In an October 17, 2017 report, Dr. Alastra summarized his treatment as well as the diagnostic testing, noting that she was felt to be a good candidate for surgical fusion. He noted that the flexion-extension x-rays demonstrated some fish-mouthing at the L5-S1 segment indicating incompetence with facet strain, but no evidence of gross instability on flexion-extension. This corroborated that the segment was traumatically injured and not simply a traumatic disc herniation causing a radiculopathy. Dr. Alastra noted that because of the facet and disc hypermobility secondary to traumatic injury, a simple discectomy would not relieve appellant's back pain and that a surgical fusion was the more appropriate surgical treatment. He noted that nerve conduction studies showed no evidence of chronic nerve injury or radiculopathy and that surgical intervention in a timely manner would limit the risk of permanent nerve damage developing. Dr. Alastra also noted that the discography confirmed a grade 4 annular tear at the L5-S1 level. He reported that the L5-S1 microdiscectomy on the left provided no relief for appellant's symptoms and, if anything, aggravated and made her symptoms worse. Dr. Alastra reported that from April 2017 to the present, appellant's symptoms worsened with regard to muscle spasms, pain, and radiculopathy. Based on this, he recommended that she undergo the lumbar fusion he had initially recommended. Dr. Alastra also noted that appellant suffered an injury on September 14, 2017 when she tripped and fell because of her persistent symptoms.[4] He argued that additional delay in treatment may result in permanent nerve damage. Dr. Alastra additionally opined that because of the severity of her symptoms, appellant was no longer able to maintain a light-duty modified work schedule and was now temporarily totally disabled. He concluded that appellant has a work-related traumatic disc injury of L5-S1 and that the appropriate surgical treatment was in the form of a one level fusion.

A hearing was held on October 24, 2017 regarding the June 14, 2017 decision. Counsel asserted that the opinion of Dr. Krisiloff was insufficient to constitute the special weight of the medical evidence.

By decision dated January 5, 2018, an OWCP hearing representative affirmed the June 14, 2017 decision. She found that Dr. Krisiloff's opinion was sufficiently rationalized to constitute the special weight of the evidence as the IME and supported that the requested lumbar fusion procedure was not medially indicated and necessary as a result of the work injury.

A hearing was held on January 17, 2018 regarding the July 25, 2017 termination decision. Counsel asserted that the opinion of Dr. Krisiloff was insufficient to constitute the special weight of the medical evidence.

By decision dated April 2, 2018, an OWCP hearing representative affirmed the July 25, 2017 termination decision. She found that Dr. Krisiloff's opinion was sufficiently rationalized to constitute the special weight of the evidence as the IME established that the employment-related disability and conditions had ceased.

[4] This injury is currently being developed under OWCP File No. xxxxx599. On April 12, 2018 OWCP combined File No. xxxxxx599 with the current claim, File No. xxxxxx208, as the master file.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[5] OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[7] 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.[8]

Section 8123(a) 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.[9] The implementing regulations provide 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.[10]

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME 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.[11]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 25, 2017, as she had no further disability or residuals causally related to her January 18, 2015 employment injury.

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[5] *L.C.*, Docket No. 18-1759 (issued June 26, 2019); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[6] *S.T.*, Docket No. 18-1144 (issued August 9, 2019); *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[7] *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *T.P.*, 58 ECAB 524 (2007).

[8] *Id.*

[9] 5 U.S.C. § 8123(a).

[10] 20 C.F.R. § 10.321.

[11] *See C.V.*, Docket No. 17-1159 (issued April 6, 2018); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

OWCP referred appellant to Dr. Chiurco for a second opinion regarding the status of her accepted conditions. In his November 1, 2016 report, Dr. Chiurco opined that appellant had no residuals of the accepted conditions and was objectively able to work a full day without restriction. Dr. Alastra, the attending physician, indicated that appellant had L5-S1 traumatic spondylosis causally related to the accepted employment injury and that appellant was totally disabled. OWCP properly found a conflict of medical opinion and referred appellant to Dr. Krisiloff for an impartial medical examination and an opinion as to whether she continued to have employment-related disability and residuals.

Counsel argued that OWCP prematurely sought Dr. Krisiloff's medical opinion without clarifying Dr. Chiurco's medical opinion regarding possible aggravation of appellant's lumbar spondylosis at L5-S1. Dr. Chiurco advised in his November 1, 2016 report that while appellant's lumbosacral spondylosis at L5-S1 could have been aggravated by the January 18, 2015 work injury, this condition had resolved by the time of his examination. Dr. Alastra, however, had opined that appellant's lumbar spondylosis at L5-S1 was traumatically induced, disabling, and required surgery. Thus, a conflict in medical opinion was properly created regarding whether the spondylosis condition was caused or aggravated by the employment injury and if appellant's disability and need for surgery was causally related to the employment injury or the underlying condition. OWCP properly referred the case to Dr. Krisiloff.[12]

The Board finds that the opinion of Dr. Krisiloff is well rationalized and based on a proper factual and medical history. Dr. Krisiloff accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's condition which comported with his findings.[13] In his March 21, 2017 report, he found that appellant had not exhibited current objective findings to support the accepted diagnoses of continuing lumbar or cervical radiculitis, as she had no evidence of lumbar muscle spasm or tightness, normal ROM, and no neurologic findings in the extremities. Dr. Krisiloff thus concluded that the accepted conditions had resolved and additional medical care was not required. He opined that appellant was capable of performing full-duty, regular work and agreed with Dr. Chiurco that she was capable of performing normal work duties six months after her injury. Based on his examination, Dr. Krisiloff further opined that she did not have additional conditions related to the January 18, 2015 employment injury. He specifically found that the L5-S1 spondylosis was not related to the employment injury and that she did not suffer from spinal stenosis, radiculopathy, sacroiliitis, or disc herniation. As Dr. Krisiloff's report is detailed, well rationalized and based on a proper factual background, his opinion is entitled to the special weight accorded an IME.[14] The Board therefore finds that OWCP has met its proof to terminate appellant's wage-loss compensation and medical benefits for the accepted conditions of lumbar and cervical radiculitis.[15]

While Dr. Gupta opined in her June 30, 2017 form reports that appellant's conditions of spondylosis, disc displacement, and sacroiliitis were caused or aggravated by the January 18, 2015

[12] *See supra* note 9 and note 10.

[13] *See C.V.*, Docket No. 17-1159 (issued April 6, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

[14] *See C.V., id.; J.M.*, 58 ECAB 478 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[15] It is noted that appellant was not in receipt of compensation benefits at the time of the termination.

employment injury and rendered her partially disabled, without medical rationale explaining how the employment incident caused or aggravated the diagnosed conditions, such opinion is of diminished probative value and insufficient to establish causal relationship.[16]

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective July 25, 2017.[17]

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates compensation benefits, the burden of proof shifts to the claimant to establish that he or she has continuing disability causally related to the accepted employment injury.[18] To establish causal relationship between the disability claimed and the employment injury, appellant must submit rationalized medical evidence or opinion based on a complete medical and factual background supporting causal relationship.[19]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals after July 25, 2017.

Following the termination of her compensation, appellant submitted additional evidence from Drs. Mahajan and Alastra. However these reports were of insufficient probative value to create a new conflict with Dr. Krisiloff's medical opinion.

On July 28, 2017 OWCP received progress reports from Dr. Mahajan who indicated that appellant remained temporarily partially disabled. Dr. Mahajan did not provide a probative medical opinion, based upon objective medical findings establishing that appellant was disabled or currently required medical treatment due to an employment-related condition.[20] His report was therefore insufficient to establish continuing disability.

Appellant submitted additional reports from Dr. Alastra, including the October 17, 2017 report. The Board has long held, however, that reports from a physician who was on one side of a medical conflict resolved by an IME are generally insufficient to overcome the special weight accorded to the report of the IME or to create a new conflict.[21] The Board finds that as Dr. Alastra was on one side of the conflict resolved by Dr. Krisiloff, his additional reports are of insufficient

[16] *See R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[17] *Id*.

[18] *See R.R.*, Docket No. 19-0173 (issued May 2, 2019); *D.M.*, Docket No. 17-1052 (issued January 24, 2019).

[19] *See R.R., id.*; *A.M.*, Docket No. 17-1192 (issued September 19, 2018).

[20] *See E.C.*, Docket No. 17-1645 (issued June 11, 2018).

[21] *See R.B.*, Docket No. 16-1481 (issued May 2, 2017).

weight to overcome the special weight accorded to Dr. Krisiloff's opinion or to create a new medical conflict.[22]

The Board thus finds that appellant has not established continuing residuals or disability after July 25, 2017.[23]

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.

LEGAL PRECEDENT -- ISSUE 3

Section 8103 of FECA[24] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.[25] In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on its authority being that of reasonableness.[26] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[27]

In order for a requested surgical procedure to be authorized, appellant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.[28]

ANALYSIS -- ISSUE 3

The Board finds that OWCP did not abuse its discretion by denying authorization for a surgical fusion at L5-S1.

As detailed above, OWCP properly accorded special weight of the medical opinion evidence to Dr. Krisiloff. He opined that the requested surgical procedure of lumbar spinal fusion

[22] *See G.T.*, Docket No. 17-1959 (issued June 22, 2018); *D.G.*, Docket No. 17-0608 (issued March 19, 2018).

[23] *See A.M., supra* note 19.

[24] 5 U.S.C. § 8103(a).

[25] *Id*.

[26] *J.E.*, Docket No. 18-0228 (issued August 8, 2019); *Joseph P. Hofmann*, 57 ECAB 456 (2006).

[27] *J.O.*, Docket No. 19-0326 (issued July 16, 2019); *Claudia L. Yantis*, 48 ECAB 495 (1997).

[28] *J.R.*, Docket No. 17-1523 (issued April 3, 2018); *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

and insertion of spinal fixation device was not medically necessary and should not be authorized. He provided rationale for his opinion by noting that appellant was only 28 years old and she had not exhibited signs of instability at L5-S1. Dr. Krisiloff indicated that while she had early spondylosis at L5-S1, a spinal fusion with instrumentation should not be performed at her age as it would likely require further corrective surgery in the future. He recommended continued conservative methods for her spondylosis.

Despite Dr. Chiurco's and Dr. Krisiloff's medical opinions that appellant's spondylosis at L5-S1 was not work related and that surgery was not necessary, OWCP authorized a percutaneous disc decompression at L5-S1, which Dr. Dang performed on April 14, 2017. Dr. Alastra, in his August 8, 2017 report, indicated that appellant had developed postlaminectomy syndrome due to the "inappropriate and ill-advised surgical intervention." He opined that such surgery was inappropriate and made appellant's condition worse. In his other reports, including the October 17, 2017 report, Dr. Alastra continued to opine that appellant's spondylosis at L5-S1 was work related and that appellant should undergo the requested lumbar fusion surgery as it was the appropriate treatment and provided the greatest potential for significant improvement of appellant's symptoms. OWCP, however, never accepted that appellant's spondylosis at L5-S1 was work related. As previously discussed, Dr. Alastra was on one side of the conflict resolved by Dr. Krisiloff and his additional reports are of insufficient weight to overcome the special weight accorded to Dr. Krisiloff's opinion or to create a new medical conflict on the issue of causal relationship of appellant's spondylosis at L5-S1.[29]

In his January 25, 2017 report, Dr. Cohen diagnosed lumbar internal disc disruption disease, discogenic instability at L5-S1, lateral recess stenosis at L5-S1, and lumbosacral radiculopathy and agreed that a lumbar decompression anterior posterior fusion stabilization would benefit appellant. Dr. Cohen however did not offer an opinion regarding the cause of appellant's condition and, thus, it is of limited probative value on the issue of causal relationship.[30]

The evidence of record does not establish that OWCP abused its discretion by denying authorization for L5-S1 lumbar fusion surgery.

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective July 25, 2017 as she had no further disability or residuals causally related to her January 18, 2015 employment injury. The Board further finds that appellant had not met her burden of proof to establish continuing employment-related disability or residuals after July 25, 2017 due to her accepted employment injuries. The Board also finds that OWCP did not abuse its discretion by denying authorization of surgical fusion at L5-S1.

[29] *See G.T.*, Docket No. 17-1959 (issued June 22, 2018); *D.G.*, Docket No. 17-0608 (issued March 19, 2018).

[30] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 2 and January 5, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 7, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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