



## **FACTUAL HISTORY**

On July 3, 2017 appellant, then a 68-year-old sales store checker, filed a traumatic injury claim (Form CA-1) alleging that on June 30, 2017 he sustained injuries to his right knee, elbow, forearm, and low back when he tripped on a sidewalk entrance and fell while in the performance of duty. He stopped work on July 1, 2017. OWCP accepted the claim for right knee laceration, right knee sprain, right elbow laceration, right elbow abrasion, and right elbow fracture. The employing establishment paid appellant continuation of pay from July 1 through 13, 2017. Appellant returned to a modified-duty assignment for two days, on July 14 and 15, 2017, but stopped work thereafter.<sup>2</sup> OWCP paid him wage-loss compensation on the supplemental rolls from August 17 to November 18, 2017. On November 20, 2017 appellant returned to full-time light work.

On November 17, 2017 appellant, through counsel, requested that OWCP expand the acceptance of the claim to include aggravation of lumbar spondylosis with grade 1 anterolisthesis of L3 on L4 with right lower extremity radiculitis and aggravation of mild-to-moderate degenerative osteoarthritis of the right shoulder, as causally related to the accepted June 30, 2017 employment injury.

The record reflects that Dr. Laura Ross, an osteopathic physician Board-certified in orthopedic surgery, in October 19 and 30, 2017 reports, indicated that appellant's lumbar spine, right elbow, right knee, and right shoulder were injured in the June 30, 2017 employment incident. Based on her review of a September 6, 2017 right shoulder x-ray and September 8, 2017 lumbar spine magnetic resonance imaging (MRI) scan, she also diagnosed an exacerbation of lumbar spondylosis with grade 1 anterolisthesis of L3 on L4 with right lower extremity radiculitis and mild-to-moderate degenerative osteoarthritis of the right shoulder. Dr. Ross opined that the grade 1 anterolisthesis of L3 on L4 was directly caused by the employment incident. She also opined that the employment incident caused an exacerbation of underlying spondylosis because appellant had no symptoms prior to the employment incident.

In a December 28, 2017 developmental letter, OWCP advised appellant that additional medical evidence was necessary to expand the acceptance of his claim. It advised him of the type of medical evidence necessary to establish his claim and afforded him 30 days to provide the necessary evidence.

OWCP subsequently received a December 11, 2017 report from Dr. Munir Ahmed, a Board-certified orthopedic surgeon. In relevant part, Dr. Ahmed's diagnoses included aggravation of age-related degenerative changes of the right shoulder with post-traumatic right shoulder strain

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<sup>2</sup> On September 22, 2017 appellant filed a notice of recurrence (Form CA-2a), claiming disability commencing July 18, 2017. OWCP created a new occupational disease claim (Form CA-2) under File No. xxxxxx152 based on the employment exposure of July 14 and 15, 2017. By decision dated September 4, 2019, the Board set aside OWCP's July 16, 2018 decision and remanded the case for further development and issuance of a *de novo* decision. It found that appellant's notice of recurrence and subsequent claims for wage-loss compensation within 90 days of his return to work following his July 15, 2017 employment injury should have been developed as a claim for recurrence under OWCP File No. xxxxxx417. Docket No. 19-0493 (issued September 4, 2019).

and sprain, post-traumatic lumbar strain and sprain, lumbar radiculitis, and femoral neuropathy of the right leg.<sup>3</sup>

By decision dated January 29, 2018, OWCP denied expansion of the acceptance of the claim to include aggravation of lumbar spondylosis with grade 1 anterolisthesis of L3 on L4 with right lower extremity radiculitis and aggravation of mild-to-moderate degenerative osteoarthritis of the right shoulder. It found that there was insufficient medical rationale to establish causal relationship between the diagnosed conditions and the accepted employment injury.

On February 5, 2018 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

On March 28, 2018 OWCP referred appellant, a March 20, 2018 statement of accepted facts (SOAF), and the medical record to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion examination as to whether the acceptance of the claim should be expanded to include additional conditions causally related to the June 30, 2017 employment injury. In an April 13, 2018 report, Dr. Askin noted the factual and medical history of appellant's claim and his review of the medical records, including MRI scan evidence of lumbar degenerative disc disease and right shoulder rotator cuff tear, and presented physical examination findings. He opined that the accepted conditions had resolved. Dr. Askin further opined that the claim should not be expanded to include additional medical conditions as causally related to the June 30, 2017 employment injury. He noted the imperfections in appellant's low back and right shoulder were likely baseline, explaining that rotator cuffs tears are routine accompaniments of aging and are incidentally found in persons of appellant's age.

Additional medical reports were received. This included reports from Dr. Joan F. O'Shea, a Board-certified neurosurgeon and orthopedic spine specialist. Dr. O'Shea evaluated appellant on May 15, 2018 and performed a follow-up visit on June 26, 2018. She considered lumbosacral x-rays that were performed on May 21, 2018. Dr. O'Shea's diagnostic assessment, after evaluation, included lower back pain secondary to preexisting degenerative disc disease, herniated disc at L4-5 and L5-S1 with biforaminal stenosis at L4-5 and L5-S1; questionable L3-4 spondylosis; and right shoulder pain. In a July 2, 2018 letter, she noted a history of the employment injury and described examination and diagnostic findings. Dr. O'Shea suggested lumbosacral epidurals as well as lumbar x-rays in extension and flexion to check for instability given the possibility of spondylolisthesis at L3-4.

A hearing was held on May 23, 2018. By decision dated July 13, 2018, OWCP's hearing representative set aside the January 29, 2018 decision, finding that Dr. Askin had not provided sufficient rationale for his opinion regarding causal relationship of appellant's low back and right shoulder conditions. On remand, the hearing representative directed OWCP to administratively

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<sup>3</sup> Dr. Ahmed opined that appellant had 12 percent permanent impairment of the right upper extremity under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)(6<sup>th</sup> ed. 2009).

combine the instant claim with OWCP File No. xxxxxx152, prepare a new SOAF covering both claims, and request that Dr. Askin provide a supplemental opinion.<sup>4</sup>

On July 25, 2018 OWCP provided an updated SOAF to Dr. Askin and requested a supplemental opinion. In a July 30, 2018 response, Dr. Askin noted that appellant was 68 years of age and had numerous foci of age-related degeneration as well as consequences of gout and possible consequences of an old motorcycle accident. He opined that appellant had fully recovered from the accepted employment injuries and may resume his full duties. Dr. Askin also opined that the anterolisthesis, the radiculitis, and the degenerative osteoarthritis reported by Dr. Ross were age-related imperfections of appellant's age and were not directly caused, aggravated, precipitated or accelerated by the singular event reported. He explained that there was no continuing or lingering effects of trauma demonstrated in appellant's provided records or by clinical examination.

By decision dated August 16, 2018, OWCP denied the expansion of the acceptance of appellant's claim to include additional diagnoses of exacerbation of lumbar spondylosis with grade 1 anterolisthesis of L3-4 with right lower extremity radiculitis and exacerbation of mild-to-moderate degenerative osteoarthritis of the right shoulder. It found that the weight of the medical evidence rested with the opinion of Dr. Askin, the second opinion examiner. On August 21, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the denial of the expansion.<sup>5</sup>

On December 21, 2018 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Askin's reports of April 13 and July 30, 2018, which found that all the accepted employment injuries causally related to the June 30, 2017 employment injury had resolved, that appellant may resume his full duties, that any limitations were due to conditions unrelated to the June 30, 2017 employment injury, and that no additional medical care was needed for all the conditions related to the June 30, 2017 employment injury. OWCP afforded appellant 30 days to submit additional evidence. No additional evidence was received.

A hearing was held on January 14, 2019 regarding the August 16, 2018 denial of expansion of the claim.

By decision dated January 28, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective January 29, 2019, for the accepted conditions of right knee laceration, right knee sprain, right elbow laceration, right elbow abrasion, and right elbow fracture. The weight of the medical opinion evidence was accorded to Dr. Askin's second opinion reports.

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<sup>4</sup> OWCP administratively combined File Nos. xxxxxx152 and File No. xxxxxxx417 with the latter serving as the master file.

<sup>5</sup> By decision also dated August 16, 2018, OWCP granted appellant a schedule award for 12 percent permanent impairment of right upper extremity.

On February 4, 2019 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review regarding the January 28, 2019 termination decision. The hearing was held on June 21, 2019.

Medical reports from Dr. Ross dated January 22, February 19, and March 15, 2019 were received. In her March 15, 2019 report, Dr. Ross addressed Dr. Askin's report. She noted that appellant had reported back pain from the onset of injury. Dr. Ross maintained that the force of a fall which caused an elbow fracture was also injurious to the shoulder. She pointed out that the arthritic and degenerative conditions which Dr. Askin attributed solely to age were not problematic for appellant prior to the employment injury. Dr. Ross maintained that the employment incident exacerbated those conditions to a level where appellant was symptomatic most of the time.

By decision dated March 25, 2019, an OWCP hearing representative vacated OWCP's August 16, 2018 decision regarding appellant's request for expansion of the acceptance of his claim. The hearing representative found that a conflict in medical opinion existed between Dr. Ross, who opined that the June 30, 2017 employment injury adversely affected the diagnosed low back and right shoulder conditions, and Dr. Askin, who maintained that those conditions were solely due to the aging process. She remanded the case to OWCP for an updated SOAF and referral for an impartial medical examination to determine whether the diagnosed back and right shoulder conditions were causally related to the June 30, 2017 employment injury.

OWCP referred appellant along with an updated SOAF dated April 18, 2019 and list of questions to Dr. Ian Fries, a Board-certified orthopedic surgeon, serving as an impartial medical examiner (IME).

In an August 9, 2019 report, Dr. Fries noted his review of the April 18, 2019 SOAF and appellant's medical record and appellant's complaints. He reported his physical examination findings of July 31, 2019. Dr. Fries diagnosed: right acromioclavicular and glenohumeral joint degeneration, degenerative full-thickness suprapinatus tear, and likely adhesive capsulitis; right elbow nondisplaced supracondylar fracture, right olecranon bone tenderness; chronic low back pain, multilevel lumbar spine degeneration; bilateral total knee replacements; and left hallux metatarsophalangeal joint gout. Based on appellant's continued right shoulder complaints and findings since the June 30, 2017 incident, Dr. Fries opined that it was reasonable to consider that the incident aggravated preexisting degenerative pathologies of the right shoulder. This was based upon appellant's claim of no prior symptoms and the absence of any medical records prior to the employment incident that might be relevant on this issue. Regarding appellant's low back condition, Dr. Fries related that he must accept Dr. Ross' documentation and conclude that any injuries sustained to his back or lower extremity had fully resolved. He related that any subsequent complaints in these areas were due to conditions unrelated to appellant accepted trauma. Dr. Fries concluded that "certainly preexisting age-related lumbar degenerative disc disease could become symptomatic spontaneously or due to sequent trauma." He, however, opined that appellant's lumbar spine pathology was not related to the June 30, 2017 employment injury and he did not have symptomatic lumbar radiculopathy. Dr. Fries indicated his agreement with Dr. O'Shea and the other physicians of record that appellant reached maximum benefits from treatment of his lumbar pathology, noting that Dr. Ross had changed her opinion earlier this year. He noted that appellant currently had disability due to his right shoulder, possibly his low back and bilateral total knee replacements.

By decision dated September 5, 2019, an OWCP hearing representative affirmed OWCP's January 28, 2019 termination decision. The hearing representative found that Dr. Askin's opinion represented the weight of the medical evidence that the accepted medical conditions had resolved without residuals.

In a letter dated September 20, 2019, OWCP requested that Dr. Fries clarify his August 9, 2019 opinion and provide a well-reasoned medical opinion as to whether the acceptance of appellant's claim should be expanded to include right shoulder or lumbar conditions. In an October 16, 2019 addendum report, Dr. Fries quoted from his August 9, 2019 report that the June 30, 2017 employment injury had aggravated preexisting degenerative pathologies of the right shoulder, that appellant's lumbar spine pathology was not related to the June 30, 2017 employment injury, and that appellant did not have symptomatic lumbar radiculopathy. He indicated that he was unaware of any new condition affecting appellant and that appellant had reached maximum medical benefit from care for any injuries he sustained on June 30, 2017 when presented for examination on July 31, 2019.

On November 21, 2019 OWCP again requested that Dr. Fries clarify his July 31 and October 16, 2019 opinions regarding whether appellant's claim should be expanded for acceptance of a right shoulder condition.

OWCP subsequently received an October 29, 2019 report, wherein Dr. Ross reported physical examination findings of the right shoulder, noting that appellant's back, elbow, and knee examination was unchanged. Dr. Ross indicated that the August 2019 MRI scan of the right shoulder showed rotator cuff tear, glenohumeral effusion and chronic clavicular joint arthrosis along with biceps tendinitis. She diagnosed status post right elbow injury/fracture, status post lumbar spine injury and right shoulder injury, rotator cuff tear and right shoulder with worsening arthrosis, post-traumatic. Dr. Ross indicated that the August 2019 MRI scan findings correlated with the June 30, 2017 employment injury. She opined that appellant injured his rotator cuff in addition to fracturing the glenoid and sustained an exacerbation of his underlying arthrosis as a result of the employment injury.

In a November 22, 2019 report, Dr. Fries opined that the temporary aggravation of appellant's right shoulder had resolved as there were no measurable residuals and objective findings were consistent with preexisting and age-related pathology. He indicated that appellant has substantial degenerative right shoulder pathology unrelated to the June 30, 2017 employment injury.

By decision dated December 6, 2019, OWCP accepted the additional conditions of temporary aggravation of preexisting right shoulder degeneration (resolved as of August 9, 2019) based on the reports from Dr. Fries.

By separate decision also dated December 6, 2019, OWCP denied the expansion of the acceptance of the claim to include an additional diagnosis of exacerbation of lumbar spondylosis with grade 1 anterolisthesis of L3-4 right lower extremity radiculitis. The special weight of the medical evidence was accorded to the reports of Dr. Fries.

On December 16, 2019 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review with regard to both December 6, 2019 OWCP decisions.

A telephonic hearing was held on April 1, 2020. By decision dated May 13, 2020, the hearing representative affirmed both December 6, 2019 OWCP decisions.

### **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.<sup>6</sup> It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment injury.<sup>7</sup> 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.<sup>8</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>9</sup> To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.<sup>10</sup>

Section 8123(a) of FECA<sup>11</sup> provides that, if there is disagreement between the physician making the examination for OWCP and the employee's physician, the Secretary shall appoint a third physician, known as a referee physician or IME, who shall make an examination.<sup>12</sup> 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.<sup>13</sup> Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>14</sup>

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<sup>6</sup> *J.T.*, Docket No. 19-1723 (issued August 24, 2020); *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>7</sup> *See C.G., Sr.*, Docket No. 20-0808 (issued April 23, 2021); *S.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>8</sup> *S.P., supra* note 6; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Ryker*, 40 ECAB 284 (1988).

<sup>9</sup> *S.P., supra* note 6; *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>10</sup> *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>11</sup> *Supra* note 1 at § 8123(a).

<sup>12</sup> *Id.*; *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>13</sup> 20 C.F.R. § 10.321.

<sup>14</sup> *D.G., supra* note 10; *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

### **ANALYSIS -- ISSUE 1**

OWCP properly determined that a conflict in medical opinion existed between Dr. Ross, appellant's treating physician, and Dr. Askin, the second opinion physician, on the issue of whether the June 30, 2017 employment injury adversely affected the diagnosed low back and right shoulder conditions. Dr. Ross opined that the June 30, 2017 employment injury adversely affected the diagnosed low back and right shoulder conditions while Dr. Askin maintained that those conditions were solely due to the aging process. Accordingly, pursuant to 5 U.S.C. § 8123(a), it referred appellant to Dr. Fries, serving as the IME, to resolve the conflict.<sup>15</sup>

In an August 9, 2019 report, Dr. Fries noted appellant's history, reviewed the medical record, and noted examination findings. Based on appellant's continued right shoulder complaints and findings since the June 30, 2017 incident, Dr. Fries opined that it was reasonable to consider that the incident aggravated preexisting degenerative pathologies of the right shoulder. This was based upon appellant's claim of no prior symptoms and the absence of any medical records prior to the employment injury that might be relevant on this issue. In addendum reports of October 16 and November 22, 2019, Dr. Fries opined that OWCP should accept a temporary aggravation of the preexisting right shoulder degeneration. In his November 22, 2019 report, he further opined that the temporary aggravation of the right shoulder had resolved as there were no measurable residuals and objective findings were consistent with preexisting and age-related pathology unrelated to the June 30, 2017 employment injury.

The Board finds that the August 9, October 16, and November 22, 2019 reports of Dr. Fries are entitled to the special weight of the medical opinion evidence as they establish that appellant's temporary aggravation of preexisting right shoulder degeneration had resolved as of August 9, 2019. Dr. Fries provided an accurate history of the June 30, 2017 employment injury, and reviewed appellant's medical records. He performed a thorough, clinical examination and provided findings on examination. Dr. Fries noted that appellant's subjective complaints were due to his degenerative conditions and not as a result of the June 30, 2017 employment injury. The Board finds that Dr. Fries provided a well-rationalized opinion based on a complete factual background, SOAF, a review of the medical record, and physical examination findings. Accordingly, Dr. Fries' medical opinion was sufficient for OWCP to justify the acceptance of temporary aggravation of preexisting right shoulder degeneration, which resolved as of August 9, 2019.

### **LEGAL PRECEDENT -- ISSUE 2**

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>16</sup>

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<sup>15</sup> *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *G.B.*, Docket No. 19-1510 (issued February 12, 2020); *R.H.*, 59 ECAB 382 (2008).

<sup>16</sup> *L.F.* Docket No. 20-0459 (issued January 27, 2021); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.<sup>17</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment must be based on a complete factual and medical background.<sup>18</sup> Additionally, the opinion of the physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.<sup>19</sup>

Where OWCP has referred the case to an IME to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.<sup>20</sup>

### ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision.

As found above, OWCP properly determined that a conflict in medical opinion existed between Dr. Ross, appellant's treating physician, and Dr. Askin, the second opinion physician, as to whether the June 30, 2017 employment injury adversely caused or aggravated appellant's low back and lower extremity conditions and OWCP referred appellant to Dr. Fries for an impartial medical evaluation.

In his August 9, 2019 report, Dr. Fries noted his review of the April 18, 2019 SOAF and appellant's medical record. He reported his physical examination findings of July 31, 2019. In relevant part, Dr. Fries diagnosed chronic low back pain and multilevel lumbar spine degeneration. In his August 9, 2019 report, he also related that he must accept Dr. Ross' documentation and conclude that any injuries sustained to his back or lower extremity had fully resolved. Dr. Fries related that any subsequent complaints in these areas were due to conditions unrelated to appellant's accepted trauma. OWCP recognized that his opinion was unclear and rationalized as to whether appellant's diagnosed lumbar and lower extremity conditions, as found by Dr. Ross, had existed and were causally related to the accepted employment injury, even if it had resolved prior to his evaluation. On September 20, 2019 it requested that Dr. Fries clarify his opinion regarding appellant's alleged right shoulder, lumbar conditions and lower extremity conditions, and provide rationalized medical opinion in support of his conclusions. However, in his October 16, 2019 report, Dr. Fries referenced his August 9, 2019 report and did not add any further explanation or medical rationale. While on November 21, 2019 OWCP requested that Dr. Fries

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<sup>17</sup> *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>18</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>19</sup> *See M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>20</sup> *See supra* note 16.

further clarify his report regarding appellant's claimed right shoulder condition, it did not request further clarification regarding appellant's claimed lumbar condition.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>21</sup> Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>22</sup>

In a situation where OWCP secures an opinion from an IME for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, it has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.<sup>23</sup>

The Board finds that Dr. Fries' reports required further clarification, supported by medical rationale, as to whether appellant's accepted employment injury caused or aggravated appellant's lumbar spondylosis with grade 1 anterolisthesis at L3-4 and right lower extremity radiculitis. As OWCP did not obtain a rationalized medical opinion clarifying Dr. Fries' prior reports, this case must be remanded for further development of his opinion.

On remand, OWCP shall refer appellant's entire medical record to Dr. Fries and request that he provide a supplemental opinion as to whether the accepted employment injury caused or aggravated appellant's lumbar spondylosis with grade 1 anterolisthesis at L3-4 and right lower extremity radiculitis. After this and other such further development as deemed necessary, it shall issue a *de novo* decision.

### CONCLUSION

The Board finds that OWCP met its burden of proof to establish that the accepted temporary aggravation of a preexisting right shoulder degeneration had resolved as of August 9, 2019. The Board further finds that the case is not in posture for decision with regard to expansion of the acceptance of the claim to include additional medical conditions of lumbar spondylosis with grade 1 anterolisthesis of L3-4 and right lower extremity radiculitis causally related to his accepted employment injury.

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<sup>21</sup> See *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>22</sup> *Id.*; see also *S.A.*, Docket No. 18-1024 (issued March 12, 2020).

<sup>23</sup> Docket No. 17-1118 (issued April 5, 2018); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 13, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part; the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 21, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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