

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

L.K., Appellant	)	
	)	
and	)	<b>Docket No. 20-0443</b>
	)	<b>Issued: August 8, 2023</b>
U.S. POSTAL SERVICE, ELEPHANT BUTTE	)	
POST OFFICE, Elephant Butte, NM, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On December 18, 2019 appellant filed a timely appeal from July 26 and November 18, 2019 merit decisions and a November 29, 2019 nonmerit 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.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly denied claims for travel reimbursement for medical treatment on September 10 and 17, and December 3, 2018; (2) whether OWCP properly denied appellant's November 22, 2019 request for reconsideration of the merits of her claim

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

<sup>2</sup> The Board notes that, following the November 29, 2019 decision, appellant submitted evidence to OWCP and with her appeal to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1).

pursuant to 5 U.S.C. § 8128(a); (3) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 17, 2019, as she no longer had disability or residuals causally related to her accepted March 31, 2015 employment injury;<sup>3</sup> and (4) whether appellant has met her burden of proof to establish continuing disability or residuals on or after July 17, 2019 causally related to the accepted March 31, 2015 employment injury.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On April 6, 2015 appellant, then a 45-year-old sales and service distribution associate, filed a notice of traumatic injury (Form CA-1) alleging that she injured both shoulders on March 31, 2015 when she was struck by a falling gate, while in the performance of duty. On January 22, 2016 OWCP accepted the claim for concussion without loss of consciousness and sprain of the ligaments of the cervical and lumbar spine. It subsequently expanded the acceptance of appellant's claim to include cervical disc displacement, occipito-atlanto-axial region, intervertebral disc displacement of the lumbosacral region, and cervical and lumbar disc protrusions. Appellant stopped work on March 31, 2015.

On August 31, 2017 OWCP referred appellant to Dr. Gary D. Barham, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine if appellant continued to have residuals of the accepted work-related injury. In a September 19, 2017 report, Dr. Barham discussed appellant's work history. He noted findings on examination of walking without an antalgic gait, ability to stand on toes and go up on heels, negative straight leg raises, negative Lasague test, equal reflexes in upper and lower extremities, and normal Babinski test. Dr. Barham reviewed x-rays and x-ray reports and noted no evidence of boney injury in the cervical, thoracic or lumbosacral spine, and no spondylosis. He noted that in performing the physical examination there were questionable parts of validity and opined that there was anxiety, hysteria and psychic overlay that was affecting the testing. Dr. Barham advised that from an orthopedic standpoint appellant could return to work. He noted that the current diagnosed conditions that were causally related to her work injury were lumbosacral sprain and cervical vertebral muscle strain. Dr. Barham advised that the right hip was not related to the accepted March 31, 2015 employment injury because appellant had preexisting osteoarthritis. He noted that appellant reached maximum medical improvement (MMI) with regard to her orthopedic injuries six weeks after the injury. Dr. Barham advised that there was no need for surgical intervention or further treatment of the neck and back and indicated that appellant could return to the same position held prior to the date of injury.<sup>5</sup>

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<sup>3</sup> The termination of benefits relates only to the accepted conditions of sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other intervertebral disc displacement lumbosacral region, and sprain of the right hip.

<sup>4</sup> Docket No. 18-1183 (issued May 12, 2020); Docket No. 17-1393 (issued March 20, 2018).

<sup>5</sup> On March 20, 2018 OWCP authorized spinal neck fusion and fixation.

On October 13, 2017 OWCP requested clarification of Dr. Barham's September 19, 2017 report. It specifically requested that he address whether the right shoulder or right hip conditions were aggravated, precipitated, or accelerated by the March 31, 2015 employment injury, and if not, to provide well-reasoned medical rationale in support of his opinion, and to identify if any of appellant's accepted conditions have resolved.

In a supplemental report dated October 18, 2017, Dr. Barham noted that the March 31, 2015 employment injury did not markedly aggravate, precipitate, or accelerate any preexisting underlying condition. He noted there was no major muscular, skeletal pathology of significance to be aggravated by the trauma experienced on March 31, 2015 and there were no supporting radiographic or clinical signs in the record. Dr. Barham advised that soft tissue injuries such as contusions and bruises resolve within 7 to 10 days. He further noted that concussion without loss of consciousness, sprain of the ligaments of the lumbar and cervical spine, cervical displacement, occipito-atlanto-axial region, and other intervertebral disc displacement of the lumbosacral region were resolved.

On December 4, 2017 OWCP determined that there was a conflict in medical opinion between appellant's treating physicians, Dr. Keith R. Johnson, a Board-certified orthopedist and Dr. Bassam Al-Homsi, a Board-certified internist, and OWCP's second opinion physician, Dr. Barham. Drs. Johnson and Al-Homsi both opined that appellant continued to have residuals from her work-related injuries and that the right hip and right shoulder conditions were related to the accepted March 31, 2015 employment injury. Dr. Barham opined that appellant's work-related injuries had resolved and the right shoulder and right hip were preexisting conditions that were not related to the March 31, 2015 work injury.

On December 12, 2017 OWCP expanded the acceptance of appellant's claim to include postconcussion syndrome, migraine not intractable and post-traumatic seizures.

On February 16, 2018 OWCP scheduled an impartial medical examination with Dr. Daniel Romanelli, a Board-certified orthopedic surgeon. It provided Dr. Romanelli with a statement of accepted facts (SOAF) and a series of questions.

In a March 2, 2018 report, Dr. Romanelli noted his review of the SOAF, the medical record, and appellant's complaints of extreme hip, lumbar spine, shoulder and neck pain. He provided detailed examination findings. Dr. Romanelli diagnosed work-related cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right hip sprain/strain, nonphysiologic, nonanatomic nonorganic subjective complaints of global pain consistent with behavioral illness, no evidence of concussion. He indicated that sprains and strains usually resolve within 6 to 12 weeks. Dr. Romanelli opined that appellant was at MMI for the cervical sprain/strain, lumbar spine sprain/strain, right shoulder and right hip sprain/strain to a reasonable degree of medical probability by June 31, 2015, and that further medical treatment was not necessary or medically appropriate for these conditions. He reviewed extensive diagnostic studies and advised that x-rays showed mild degenerative changes consistent with her age, and the natural progression of degenerative changes not related to the March 31, 2015 employment injury. Dr. Romanelli additionally noted that the examination was extremely inconsistent with nonphysiologic complaints consistent with behavioral illness. He opined that there was no further medical treatment necessary or medically appropriate for the work-related injuries. Dr. Romanelli

asserted that she had no temporary, permanent, or preventative restrictions, and that she could return to full duty in the same position held prior to the date of injury. He concluded that, to a reasonable degree of medical probability and certainty, the accident of March 31, 2015 did not aggravate, precipitate, or accelerate any preexisting or underlying condition.

On March 13, 2018 OWCP expanded the acceptance of appellant's claim to include strain of the muscle, fascia, and tendon of the right hip.

Appellant submitted a request for travel reimbursement for medical appointments on September 5, 10, and 17, October 4, 15, and 19, and December 3, 18, and 31, 2018 and January 26, 2019.

On September 5, 2018 appellant attended a medical appointment and noted traveling 290 miles. On September 10 and 17, 2018 she reported attending appointments with Dr. Reymundo A. Molina, a licensed counselor and school psychologist, and noted traveling 160 miles on each date. Appellant submitted restaurant receipts dated September 5, 2018 for \$26.47, September 10, 2018 for \$5.39, and September 17, 2018 for \$3.66.

Appellant attended physical therapy treatment on October 15, 2018.

In a letter dated April 2, 2019, OWCP noted that it had received appellant's request for travel reimbursement on the above dates, but that she had not provided verification that she obtained medical treatment on the dates requested. It advised her to submit the necessary documentation within 30 days.

OWCP received additional evidence. On January 15, 2019 Dr. Johnson performed arthroscopy of the right hip with acetabuloplasty of the pincer lesion, arthroscopic femoroplasty of the right hip Cam lesion, manipulation of the right hip under anesthesia, arthroscopy with synovectomy of the right hip, arthroscopic surgical debridement of the articular cartilage, and debridement and resection of the labrum. He diagnosed right hip labral tear, hip impingement, pincer and Cam lesion, labral tear, and synovitis of the right hip.

In a letter to OWCP dated April 9, 2019, appellant asserted that her travel expenses were improperly denied for failure to submit proof of visitation. She further asserted that Dr. Molina billed OWCP for these visits, and the bills served as proof of her treatment on those dates.

Appellant submitted a Form OWCP-957 dated April 9, 2019 for appointments on September 10 and 17, 2018. She noted attending appointments with Dr. Molina on both days, traveling 160 miles for each appointment. Appellant submitted a receipt noting a date of service of September 10, 2018, bill status, billed amount, and bill type. The receipt did not identify a specific health care provider. On the bottom of the receipt, appellant noted that date of service was the date of her appointment and the bill status reflected "paid," which proved that she was treated for her March 31, 2015 employment injury by Dr. Molina on that date.

By decision dated May 6, 2019, OWCP denied authorization for travel reimbursement for medical treatment for September 10, 17, October 15, December 3, 2018 and January 26, 2019. It

found no evidence to support that appellant received medical treatment for her accepted conditions on those dates.

OWCP received reports dated August 29 and September 27, 2018 from Dr. Johnson who treated appellant for right shoulder and right hip pain, which began after a gate fell on her at work on March 31, 2015. Dr. Johnson diagnosed right acetabular labrum tear, hip pain, and right shoulder sprain. He treated appellant from January 22 through July 10, 2019 for orthopedic aftercare from a right hip arthroscopy labral repair on January 15, 2019 and diagnosed right sacroiliac joint pain, other sprain of the right hip, femoral acetabular impingement, hip pain, and acetabular labrum tear.

In an initial consultation on December 3, 2018, Dr. Daniel C. Bonis, a Board-certified anesthesiologist, evaluated appellant for low back pain, which began in 2015 when a commercial gate fell on her. He diagnosed sacroiliitis, low back pain, hypothyroidism, anxiety disorder, depressive episodes, and long-term opiate use.

Appellant was treated by Dr. Jessie D. Coleman, a Board-certified anesthesiologist, on December 31, 2018 for low back pain radiating into the bilateral lower extremities, which began in 2015 after a commercial gate fell on her back. Dr. Coleman diagnosed sacroiliitis, low back pain, hypothyroidism, anxiety disorder, depressive episodes, allergic rhinitis, and long-term opiate use. He performed intra-articular injections on December 31, 2018 and January 26, 2019 and diagnosed sacroiliitis and intractable hip pain.

In a letter dated April 2, 2019, appellant noted that she was treated by Dr. Molina on September 10, 17, and October 15, 2018, and by Dr. Bonis on December 3, 2018. She asserted that the bills were paid by OWCP, which substantiate that she was treated on those dates.

On May 14, 2019 appellant requested reconsideration of the May 6, 2019 decision. She submitted a receipt, noting various dates of service, bill status, billed amount, and bill type. The receipt did not identify a specific health care provider.

On June 24, 2019 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits for sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other intervertebral disc displacement lumbosacral region, and sprain of the right hip because her March 31, 2015 employment injury had resolved. It found that the special weight of medical evidence rested with the March 2, 2018 medical report of Dr. Romanelli, OWCP's impartial medical examiner (IME), who found that appellant no longer had any disability or residuals causally related to her accepted March 31, 2015 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

Appellant submitted a May 10, 2018 report from Dr. Johnson who diagnosed internal derangement of the right knee, right hip labral tear, right shoulder rotator cuff tear, and cervical sprain. Dr. Johnson opined that these injuries occurred on March 31, 2015 when a gate crashed down on her head. He recommended a right hip arthroplasty with femoroplasty and acetabuloplasty.

On January 10, 2019 Dr. Helson Pacheco-Serrant, a Board-certified neurosurgeon, noted appellant was status post anterior cervical discectomy with fusion at levels C4-5, C5-6 performed on April 18, 2018 and she remained totally disabled.

On January 26, 2019 Dr. Coleman treated appellant for sacroiliitis and intractable hip pain beginning in 2015 when a commercial gate fell on her at work. He performed an intra-articular injection.

Appellant submitted work capacity evaluations (Form OWCP-5c) from Dr. Al-Homsi dated March 14, April 24, May 14, July 11, and July 14, 2019, who noted that appellant had a cervical fusion on April 18, 2018, arthroscopy on January 15, 2019, and intra-articular injections on January 26, 2019, and was totally disabled from work. In an undated optometric and ophthalmologist report, Dr. Al-Homsi diagnosed visual impairment associated with traumatic brain injury, visual processing and visual motor dysfunction, hyperopia, and presbyopia.

On March 20, 2019 Dr. Bonis diagnosed sacroiliitis and intractable hip pain and performed an intra-articular joint injection. On April 17, 2019 he diagnosed sacroiliitis, other spondylosis with myelopathy of the lumbar region and low back pain and performed radiofrequency ablation at right S1-S4.

By decision dated July 17, 2019, OWCP denied modification of the May 6, 2019 decision.

By decision dated July 26, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective July 17, 2019 with regard to sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other intervertebral disc displacement lumbosacral region, and sprain of the right hip. It found that the special weight of medical evidence rested with Dr. Romanelli, the IME.

OWCP received additional evidence. On July 23, 2019 Dr. Javed Iqbal, a Board-certified neurologist, treated appellant for a history of a head injury and diagnosed seizures, migraine headaches, and memory loss impairment.

Appellant also submitted OWCP-5c forms from Dr. Al-Homsi dated August 2, September 23, and October 10, 2019 who noted that appellant had a cervical fusion, hip arthroscopy, and S1 joint injections and continued to suffer from seizures and dizziness and was totally disabled. In a report dated August 9, 2019, Dr. Al-Homsi noted that appellant was asymptomatic prior to the March 31, 2015 employment injury when she was struck by a large commercial gate and opined that all of her treatment related to the injuries sustained on March 31, 2015.

In an August 5, 2019 statement, appellant indicated that she attended medical appointments with Dr. Molina and Las Cruces Pain Center, and the bills for the office visits were paid by OWCP. With regard to providing proof that she was treated by Dr. Molina on September 10, 17, and October 15, 2018 she suggested OWCP contact his office for the notes and bills.

On August 5, 2019 appellant requested reconsideration of the July 17, 2019 decision.

By decision dated August 14, 2019, OWCP affirmed the July 17, 2019 decision in part and vacated in part. It found that the medical evidence substantiated that she was medically seen for treatment of her employment injury on October 15, 2018 and January 26, 2019; however, it denied appellant's travel reimbursement requests for September 10, 17, and December 3, 2018 as the evidence was insufficient to support treatment in relation to her work injury for those dates.

On August 22, 2019 appellant requested reconsideration. She submitted an August 21, 2019 work note from Dr. Johnson, who diagnosed anterior superior quadrant chondral labral tear by MRI scan. Dr. Johnson performed surgery on January 15, 2019 and opined that the labral tear was caused by the traumatic event of the gate falling on appellant.

Appellant submitted a medical travel refund request dated September 6, 2019 for an appointment on December 3, 2018. She noted attending an appointment at the Las Cruces Pain Center on this date and noted traveling 290 miles for the appointment. Appellant submitted a receipt noting a date of service of December 3, 2018, bill status as "paid," billed amount, and bill type. The receipt did not identify a specific health care provider. Appellant attached a restaurant receipt dated December 3, 2018 for \$25.21.

By decision dated November 18, 2019, OWCP denied modification of the prior decision.

OWCP received a Form OWCP-5c dated November 18, 2019, wherein Dr. Al-Homsi noted that appellant had a cervical fusion, hip arthroscopy, and S1 joint injections and continued to suffer from seizures and dizziness and was totally disabled.

On November 22, 2019 appellant requested reconsideration. She submitted a copy of the November 18, 2019 decision with handwritten notes indicating that she attended physical therapy treatment on October 1, 8, and 22, November 7, 14, 21, and 28, and December 10, 2018. Appellant also submitted copies of correspondence from her to her providers. By decision dated November 29, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

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

OWCP's regulations provide that the employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances, or supplies.<sup>6</sup> To determine a reasonable travel distance, it will consider the availability of services, the employee's condition, and the means of transportation. Effective August 29, 2011, the most recent regulations provide that a round-trip distance of up to 100 miles is considered a reasonable distance to travel.<sup>7</sup> If round-trip travel of more than 100 miles is contemplated, or air transportation or overnight accommodations will be needed, the employee must submit a written request to OWCP for prior authorization with information describing the circumstances and necessity for such travel expenses. OWCP will approve the request if it determines that the travel

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<sup>6</sup> 20 C.F.R. § 10.315(a).

<sup>7</sup> *Id.*

expenses are reasonable and necessary and are related to obtaining authorized medical services, appliances, or supplies.<sup>8</sup>

Pursuant to FECA Bulletin No. 14-02, when a claimant submits a travel reimbursement in excess of 100 miles for a single date of service, the bill will automatically be suspended, and the Central Bill Processing provider will send notification to OWCP's claims examiner.<sup>9</sup> FECA Bulletin No. 14-02 notes that in some limited circumstances it may be necessary for a claimant to travel more than 100 miles on a regular basis, such as when the claimant lives in a remote area.<sup>10</sup>

In interpreting this section, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.<sup>11</sup> The only limitation on OWCP's authority is that of reasonableness. OWCP may authorize medical treatment, but determine that the travel expense incurred for such authorized treatment was unreasonable or unnecessary.<sup>12</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly denied appellant's claims for travel reimbursement.

Appellant submitted a request for travel reimbursement for medical appointments on September 10 and 17, and December 3, 2018.

OWCP's regulations provide that the employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances, or supplies.<sup>13</sup> OWCP will approve the request if it determines that the travel expenses are reasonable and necessary and are related to obtaining authorized medical services, appliances, or supplies.<sup>14</sup>

Appellant submitted documentation of medical treatment on various dates; however, the evidence of record does not establish that she received medical treatment for her March 31, 2015 employment injury on September 10 and 17, and December 3, 2018. As noted above, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.<sup>15</sup> The only limitation on OWCP's authority is that of reasonableness. Although OWCP had

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<sup>8</sup> *Id.* at § 10.315(b).

<sup>9</sup> FECA Bulletin No. 14-02 (issued January 29, 2014).

<sup>10</sup> *Id.*

<sup>11</sup> *G.C.*, Docket No. 19-0298 (issued June 24, 2019).

<sup>12</sup> *Id.*

<sup>13</sup> *Supra* note 8.

<sup>14</sup> *Supra* note 10.

<sup>15</sup> *Supra* note 13.



authorized travel expenses for appellant to attend medical appointments with the same providers in the past, this does not establish a right to continuing authorization.<sup>16</sup>

As the medical evidence of record does not establish that appellant received medical treatment on the claimed dates, the Board finds that OWCP properly denied appellant's request for travel reimbursement.

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

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>17</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>18</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>19</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>20</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>21</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>16</sup> See *W.H.*, Docket No. 14-1662 (issued February 3, 2015).

<sup>17</sup> 5 U.S.C. § 8128(a); see *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); see also *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

<sup>18</sup> 20 C.F.R. § 10.606(b)(3); see also *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *L.D., id.*; *B.W.*, Docket No. 18-1259 (issued January 25, 2019).

<sup>19</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>20</sup> *Id.* at § 10.608(a); see also *Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *R.W.*, Docket No. 18-1324 (issued January 21, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>21</sup> *Id.* at § 10.608(b); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, Docket No. 19-0291 (issued June 21, 2019).

The Board finds that appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>22</sup>

The Board further finds that appellant has not provided relevant and pertinent new evidence in support of her request for reconsideration. With the November 22, 2019 reconsideration request, appellant provided a report from Dr. Al-Homsi dated November 18, 2019. This report, however, fails to address the underlying merit issue of whether appellant was entitled to travel reimbursement for the remaining claimed dates. Appellant also submitted a copy of the November 18, 2019 decision with handwritten notes indicating that she attended physical therapy treatment on October 1, 8, and 22, November 7, 14, 21, and 28, and December 10, 2018. Appellant also submitted copies of correspondence from her to her providers. However, this evidence is irrelevant to the underlying issue as it does not corroborate that appellant attended appointments on the dates in question. The submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>23</sup> As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>24</sup>

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608(b), OWCP properly denied appellant's request for reconsideration of the merits of the claim.<sup>25</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.<sup>26</sup> After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the

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<sup>22</sup> *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>23</sup> *M.B.*, Docket No. 17-1980 (issued May 14, 2019); *E.G.*, Docket No. 18-0270 (issued August 24, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>24</sup> 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

<sup>25</sup> *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

<sup>26</sup> *See D.B.*, Docket No. 19-0663 (issued August 27, 2020); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

employment.<sup>27</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>28</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>29</sup> 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.<sup>30</sup>

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.<sup>31</sup> This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>32</sup> 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.<sup>33</sup>

### ANALYSIS -- ISSUE 3

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other intervertebral disc displacement lumbosacral region, and sprain of the right hip, effective July 17, 2019, as she no longer had disability or residuals causally related to her accepted March 31, 2015 employment injury.

OWCP properly determined that a conflict in medical opinion existed between Dr. Johnson and Dr. Al-Homsi, appellant's treating physicians, who continued to opine that appellant still suffered residuals and work restrictions due to her March 31, 2015 employment injury, and Dr. Barham, OWCP's second opinion physician, who found that appellant no longer suffered

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<sup>27</sup> See *D.G., id.*; *R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>28</sup> *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>29</sup> *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>30</sup> *K.W.*, *supra* note 28; see *A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

<sup>31</sup> 5 U.S.C. § 8123(a); see *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>32</sup> 20 C.F.R. § 10.321.

<sup>33</sup> *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

residuals or work restrictions due to her March 31, 2015 employment injury. Appellant was referred to Dr. Romanelli for an impartial medical examination to resolve the conflict in medical evidence regarding whether she continued to have residuals or work restrictions causally related to the March 31, 2015 employment injury.

In a March 2, 2018 report, Dr. Romanelli noted appellant's history, reviewed the medical record, and noted examination findings. He noted that diagnostic studies of the cervical spine, lumbar spine, pelvis and right hip show preexisting degenerative changes. Dr. Romanelli diagnosed work-related cervical sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, right hip sprain/strain, nonphysiologic, nonanatomic nonorganic subjective complaints of global pain consistent with behavioral illness, no evidence of concussion. He indicated that sprains and strains usually resolve within 6 to 12 weeks. Dr. Romanelli noted multiple inconsistencies in the examination that was suggestive of behavioral illness. He advised that appellant reached MMI for sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other intervertebral disc displacement lumbosacral region, and sprain of the right hip to a reasonable degree of medical probability by June 31, 2015. Dr. Romanelli indicated that any ongoing complaints would be more likely related to appellant's degenerative condition than to a traumatic injury on March 31, 2015. He noted that no further treatment was indicated in relation to the accepted sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other intervertebral disc displacement lumbosacral region, and sprain of the right hip. Dr. Romanelli also reported that appellant had no ongoing work restrictions due to the above accepted conditions.

The Board finds that Dr. Romanelli's March 2, 2018 report is entitled to the special weight of the medical opinion evidence and establishes that appellant no longer had disability or residuals causally related to the accepted conditions of sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other intervertebral disc displacement lumbosacral region, and sprain of the right hip due to her March 31, 2015 employment injury. Dr. Romanelli provided an accurate history of the March 31, 2015 employment injury, reviewed her medical records, performed a thorough clinical examination and provided findings on examination. He noted that appellant's subjective complaints were due to her degenerative conditions and behavioral illness, and not as a result of the March 31, 2015 employment injury. Dr. Romanelli opined that appellant's accepted sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other intervertebral disc displacement lumbosacral region, and sprain of the right hip had resolved and that she no longer had work restrictions due to these accepted conditions. The Board finds that Dr. Romanelli provided a well-rationalized opinion based on a complete factual background, SOAF, a review of the medical record, and physical examination findings. Accordingly, Dr. Romanelli's medical opinion was sufficient for OWCP to justify the termination of appellant's wage-loss compensation and medical benefits, effective July 17, 2019, as she no longer had disability or residuals causally related to her accepted employment injury.<sup>34</sup>

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<sup>34</sup> See *D.G.*, Docket No. 19-1259 (issued January 29, 2020); see also *D.T.*, Docket No. 10-2258 (issued August 1, 2011); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

After receiving OWCP's notice of proposed termination, appellant submitted additional reports from Dr. Johnson dated May 10, 2018 through June 12, 2019 and Dr. Al-Homsi dated March 14 through July 14, 2019. However, Drs. Johnson and Al-Homsi were on one side of the conflict, which Dr. Romanelli had resolved. The Board has held that reports from a physician who was on one side of a medical conflict are insufficient to overcome the special weight accorded to the IME, or to create a new conflict.<sup>35</sup>

Appellant also submitted reports from Dr. Bonis, Dr. Coleman, and Dr. Pacheco-Serrant, who diagnosed sacroiliitis and noted that appellant was disabled, and required continued medical treatment. These physicians, however, did not explain how this condition was disabling and causally related to the accepted employment injury.<sup>36</sup> Accordingly, these reports are insufficient to overcome the special weight of the medical evidence accorded to Dr. Romanelli.<sup>37</sup>

The Board, therefore, finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for the conditions of sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other intervertebral disc displacement lumbosacral region, and sprain of the right hip, effective July 17, 2019, as she no longer had disability or residuals causally related to her accepted March 31, 2015 employment injury.

#### **LEGAL PRECEDENT -- ISSUE 4**

When OWCP properly terminates appellant's wage-loss compensation and medical benefits, the burden of proof shifts to her to establish continuing disability or residuals, on or after that date, causally related to the accepted employment injury.<sup>38</sup> To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.<sup>39</sup> Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.

#### **ANALYSIS -- ISSUE 4**

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals for the conditions of sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other

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<sup>35</sup> See *C.L.*, Docket No. 18-1379 (issued February 5, 2019); *I.J.*, 59 ECAB 408 (2008).

<sup>36</sup> *R.P.*, *id.*

<sup>37</sup> *Id.*

<sup>38</sup> *C.C.*, Docket No. 19-1062 (issued February 6, 2020).

<sup>39</sup> *T.C.*, Docket No. 19-1383 (issued March 2, 2020); see *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

intervertebral disc displacement lumbosacral region, and sprain of the right hip, on or after July 17, 2019, causally related to the accepted March 31, 2015 employment injury.

Following the termination of her wage-loss compensation and medical benefits, appellant submitted reports from Dr. Al-Homsi dated August 2 through November 18, 2019 who diagnosed cervical fusion, hip arthroscopy, and S1 joint injections and advised that appellant continued to suffer from seizures and dizziness and was totally disabled. While he concluded that appellant was totally disabled, he did not provide rationale to explain why her continuing disability was causally related to her accepted conditions. The Board has held that a mere conclusion without the necessary rationale as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.<sup>40</sup> Dr. Al-Homsi's reports are, therefore, of diminished probative value and insufficient to meet appellant's burden of proof.<sup>41</sup>

In an August 21, 2019 work note, Dr. Johnson diagnosed anterior superior quadrant chondral labral tear by MRI scan. He noted that he performed surgery on January 15, 2019 and opined that the labral tear was caused by the traumatic event of the gate falling on appellant. As Dr. Johnson was on one side of the conflict, his report, without more by way of medical rationale, is insufficient to create a new conflict in medical opinion to overcome the special weight properly accorded to Dr. Romanelli.<sup>42</sup>

The record contains a July 23, 2019 report from Dr. Iqbal who treated appellant for a history of a head injury and diagnosed seizures, migraine headaches, and memory loss impairment. Dr. Iqbal did not, however, address the relevant issue of whether appellant was disabled from work or required further medical treatment due to her accepted employment-related medical conditions, and thus his opinion is of limited probative value.<sup>43</sup>

Appellant has not submitted sufficiently-rationalized medical evidence establishing employment-related disability or residuals for the conditions of sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other intervertebral disc displacement lumbosacral region, and sprain of the right hip, on or after July 17, 2019, due to the accepted employment injury. As such, the Board finds that she has not met her burden of proof.<sup>44</sup>

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.

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<sup>40</sup> *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

<sup>41</sup> *L.S.*, Docket No. 19-0959 (issued September 24, 2019).

<sup>42</sup> *See J.M.*, Docket No. 11-1257 (issued January 18, 2012); *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>43</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019).

<sup>44</sup> *T.C.*, Docket No. 19-1383 (issued March 2, 2020); *see N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's requests for travel reimbursement for medical treatment. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a). The Board also finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for sprain of the cervical spine, sprain of the lumbar spine, other cervical disc displacement occipito-atlanto-axial region, other intervertebral disc displacement lumbosacral region, and sprain of the right hip, effective July 17, 2019, as she no longer had disability or residuals causally related to her accepted March 31, 2015 employment injury. The Board further finds that she has not met her burden of proof to establish continuing employment-related residuals or disability on or after July 17, 2019, causally related to her accepted March 31, 2015 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 26, November 18, and November 29, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 8, 2023  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board