



## **ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 8, 2021 as she no longer had disability or residuals causally related to her accepted September 11, 1995 employment injury; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals on or after January 8, 2021 due to her accepted September 11, 1995 employment injury.

## **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 11, 1995 appellant, then a 37-year-old tax examiner, filed a traumatic injury claim (Form CA-1) alleging that on that date she experienced a headache, blurred vision, and pain across her upper back, shoulder and neck area when she fell from a chair while in the performance of duty. She stopped work on September 11, 1995. OWCP accepted the claim for lumbosacral sprain, a contusion of the face, scalp, and neck except eyes, occipital scalp hematoma, herniated lumbar discs at L4-5 and L5-S1, and herniated cervical discs at C4-5, C5-6 and C6-7. It paid appellant wage-loss compensation for total disability on the periodic rolls beginning November 17, 1995.

A November 28, 2016 magnetic resonance imaging (MRI) scan of the cervical spine showed disc degeneration with a disc herniation at C5-6 on the left impinging on the cervical cord with broad reversal of normal cervical lordosis, disc degeneration with diffuse disc herniations at C4-5 and on the left at C6-7, disc degeneration with a broad disc protrusion at C7-T1, upper thoracic disc degeneration, central disc protrusion at C3-4, and disc bulging at C2-3.

A January 28, 2020 lumbar MRI scan revealed a congenitally small spinal canal, disc bulging at L1-2, a disc herniation toward the left neural foramen at L2-3, disc degeneration with a broad disc herniation and left more than right neural foraminal narrowing at L3-4, disc degeneration with multifactorial segmental stenosis, degenerative offset, and right more than left neural foraminal narrowing at L4-5, and disc degeneration with a broad disc herniation, marginal osteophytosis and left significantly more than right neural foraminal narrowing at L5-S1.

On March 5, 2020 OWCP referred appellant to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for a second opinion examination. It provided a statement of accepted facts (SOAF) that indicated that it had accepted the claim for lumbosacral sprain, a contusion of the face, scalp, and neck except eyes, and displacement of lumbar and cervical intervertebral discs without myelopathy.

In a progress report dated March 23, 2020, Dr. Lance Yarus, an osteopath, indicated that he was evaluating appellant for a workers' compensation injury. He noted that she was not

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<sup>3</sup> Docket No. 97-962 (issued November 3, 1998).

working, that she had not resumed work after the injury, and was unable to work due to pain. Dr. Yarus diagnosed cervicalgia, lumbar radiculopathy, and lumbar facet syndrome.

On May 19, 2020 Dr. Didizian reviewed appellant's history of injury and current complaints of neck and left leg pain. On examination he observed no spasm of the paraspinal, full motor strength of the upper and lower extremities, and a negative straight leg raise. Dr. Didizian observed that appellant's contusions of the face, scalp and neck had resolved, that there was no evidence of cervical intervertebral disc displacement with or without myelopathy, and that the lumbar intervertebral disc displacement and lumbosacral sprain had resolved. He advised that some of her subjective complaints corresponded with the objective findings, noting that the most recent lumbar MRI scan showed disc bulging at L1-2, a disc herniation toward the left L2-3 neural foramina, an L3-4 broad disc herniation with left more than right neural foraminal narrowing, disc degeneration, stenosis, and right more than left neuroforaminal narrowing at L4-5, and disc degeneration, marginal osteophytosis, and left more than right L5-S1 neural foraminal narrowing. Dr. Didizian found that appellant's opioid usage was consistent with medical guidelines but recommended weaning her off narcotics.

In a June 19, 2020 attending physician's report (Form CA-20), Dr. Yarus diagnosed disc bulges and prolapses at C3-4, C4-5, C5-6, and C6-7, problems with the left shoulder at the rotator cuff, and chronic pain. He checked a box marked "Yes" that the condition was caused or aggravated by appellant falling off an office chair on September 11, 1995. Dr. Yarus advised that she could not currently work.

In a May 28, 2020 telehealth report, Dr. Yarus discussed appellant's complaints of continued pain and noted that she was disabled due to pain.<sup>4</sup> He diagnosed cervicalgia, lumbar radiculopathy, and lumbar facet joint syndrome.

In a supplemental report dated July 21, 2020, Dr. Didizian advised that the objective findings failed to support appellant's subjective complaints. He provided his review of the diagnostic studies. Dr. Didizian diagnosed lumbosacral joint sprain, a contusion of the face, scalp, and neck, and displacement of cervical intervertebral and lumbar disc without myelopathy and found that these conditions were employment related. He related, "In addition, another accepted injury was aggravation of spondylolysis, spondylosis without myelopathy or radiculopathy, lumbosacral spine." Dr. Didizian advised that there was no evidence that appellant's continued pathology was causally related to the accepted employment injury. He related that the accepted conditions were "not active and there were no objective findings to support it." Dr. Didizian indicated that appellant had narcotic dependency. He found that she could return to sedentary employment and found that as her date-of-injury job was sedentary she had no restrictions.

On August 14, 2020 OWCP prepared a new SOAF advising that it had accepted appellant's claim for lumbosacral sprain, a contusion of the face, scalp and neck except eyes, occipital scalp hematoma, cervical disc herniations at C4-5, C5-6, and C6-7, and lumbar disc herniations at L4-5 and L5-S1. It requested that Dr. Didizian review the updated SOAF and discuss whether it changed his opinion. OWCP further asked that he advise whether appellant had sustained an employment-related aggravation of spondylosis and, if so, whether it had resolved. It additionally

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<sup>4</sup> The record contains progress reports from Dr. Yarus dated July 30, August 31, and October 1, 2020.

requested that Dr. Didizian address whether her dependency on narcotics arose because of treatment for her employment injury and whether she could perform her usual employment taking her current narcotic dose.

In an addendum dated August 24, 2020, Dr. Didizian reviewed the updated SOAF and accepted conditions and reported that his opinion remained unchanged. He advised that if appellant sustained an aggravation of spondylosis as indicated in the original SOAF, it had resolved as of the date of his examination. Dr. Didizian indicated that appellant had become dependent on narcotics originally taken for her employment injury. He advised that he was not in a position “to decide as to how much the narcotic is going to affect her work capacity.” Dr. Didizian related, “Normally, if one has dependency and [is] able to function with the proper narcotic dose as in this case, there is no reason why she cannot go back on sedentary job. On the other hand, if she has full dependency and it does affect her sensorium, then any kind of employment would not be appropriate.”

On November 20, 2020 OWCP notified appellant of its proposed termination of her wage-loss compensation and medical benefits as the weight of the evidence established that she no longer had any employment-related residuals or disability due to her accepted September 11, 1995 employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

In reports dated November 2 and December 3, 2020, Dr. Yarus diagnosed cervicgia, lumbar radiculopathy, and lumbar facet syndrome. He noted that appellant had not resumed work following her injury and was currently disabled due to pain.

By decision dated January 8, 2021, OWCP terminated appellant’s wage-loss compensation and medical benefits effective that date. It found that Dr. Didizian’s opinion represented the weight of the evidence and established that she had no further disability or residuals of her accepted September 11, 1995 employment injury.

On January 28, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

Thereafter, OWCP received a July 16, 2020 report from Dr. Yarus.<sup>5</sup> Dr. Yarus advised that he had reviewed Dr. Didizian’s May 19, 2020 report. He related that appellant had persistence disc pathology and radiculopathy, noting that the most recent MRI scan showed lumbar herniation causing her continued complaints and cervical MRI scans that also reflected “the pathologic injury that occurred in the subject incident.” Dr. Yarus asserted that she tolerated her opioids well and was at the appropriate dosing. He opined that taking the medication away would “cause side effects that are dangerous and detrimental to her health.” Dr. Yarus recommended no change in regard to appellant’s care.

A telephonic hearing was held on May 12, 2021.

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<sup>5</sup> Appellant further submitted a progress report dated January 4, 201 from Dr. Yarus which was similar to his prior reports of record.

By decision dated July 27, 2021, OWCP's hearing representative affirmed the January 8, 2021 decision.

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

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>6</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>7</sup> Its burden of proof 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 for disability.<sup>9</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>10</sup>

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

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 8, 2021.

OWCP based its termination of appellant's wage-loss compensation and medical benefits on the opinion of Dr. Didizian, OWCP's referral physician. However, the Board finds that his opinion does not contain adequate medical rationale sufficient to establish that she ceased to have disability or residuals of her accepted employment conditions and, therefore, is insufficient to serve as a basis for OWCP's termination action.<sup>11</sup>

OWCP referred appellant to Dr. Didizian on March 5, 2020. It provided a SOAF that specified that it had accepted the claim for lumbosacral sprain, a contusion of the face, scalp, and neck, and displacement of lumbar and cervical intervertebral discs without myelopathy.

In a report dated May 19, 2020, Dr. Didizian found that appellant had no evidence of cervical intervertebral disc displacement and that her face, scalp, and neck contusions, lumbosacral sprain, and lumbar intervertebral disc disease had resolved. He discussed her complaints of neck and left leg pain. Dr. Didizian indicated that some of appellant's subjective complaints correlated with the objective findings, noting that her most recent lumbar MRI scan revealed disc bulging,

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<sup>6</sup> *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

<sup>7</sup> *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

<sup>8</sup> *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

<sup>9</sup> *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>10</sup> *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>11</sup> *J.D.*, Docket No. 20-1167 (issued January 26, 2021); *Del K. Rykert*, 40 ECAB 284 (1988).

disc degeneration and disc herniations at various levels. On July 21, 2020 he advised that an additional accepted condition was an aggravation of spondylolysis of the lumbar spine. Dr. Didizian opined that the accepted conditions had resolved without further objective findings and that appellant could resume her date-of-injury job without restrictions. OWCP subsequently updated its SOAF to reflect that it had accepted appellant's claim for lumbosacral sprain, a contusion of the face, scalp and neck except eyes, occipital scalp hematoma, cervical disc herniations at C4-5, C5-6, and C6-7, and lumbar disc herniations at L4-5 and L5-S1.<sup>12</sup> In a supplemental report dated August 24, 2020, Dr. Didizian opined that his opinion had not changed and that any aggravation of spondylosis had resolved as of the date of his examination. He asserted that appellant was dependent on narcotics which she had begun taking due to her employment injury. Dr. Didizian advised that he was not able to render an opinion on whether her narcotic use would affect her ability to function.

The Board finds that Dr. Didizian failed to provide adequate medical rationale for his finding that appellant had no residuals of her accepted employment injury. In his May 19, 2020 report, Dr. Didizian opined that the objective findings supported some of her subjective complaints and referred to a lumbar MRI scan showing disc herniations, bulges, and degeneration. While he concluded that the objective conditions had resolved, he did not provide any explanation for his findings or explain why he had found that appellant's disc herniations had resolved in light of the findings on the diagnostic studies. The Board has held that a medical opinion is of limited probative value if it contains a conclusion regarding a given medical matter which is unsupported by medical rationale.<sup>13</sup> Dr. Didizian failed to explain medically how the findings on physical examination, diagnostic studies, and history supported his conclusion.<sup>14</sup> He did not refer to specific objective medical findings to substantiate that appellant's accepted conditions had resolved such that she was no longer disabled.<sup>15</sup> Consequently, Dr. Didizian's opinion is insufficient to meet OWCP's burden of proof.

Additionally, Dr. Didizian did not address how appellant's dependency on opioids affected her ability to work.<sup>16</sup> He further found that she may have sustained an aggravation of spondylolysis of the lumbar spine.

For these reasons, OWCP improperly terminated appellant's wage-loss compensation and medical benefits effective January 8, 2021.<sup>17</sup>

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<sup>12</sup> The International Classification of Diseases (ICD) provides the conditions of herniated discs as a synonym for intervertebral disc displacement.

<sup>13</sup> See *M.G.*, Docket No. 20-0867 (issued October 13, 2021); *P.C.*, Docket No. 20-0371 (issued January 26, 2021).

<sup>14</sup> See *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Roger Dingess*, 47 ECAB 123 (1995).

<sup>15</sup> See *R.B.*, Docket No. 19-1501 (issued February 23, 2021).

<sup>16</sup> See *A.A.*, Docket No. 15-0937 (issued August 17, 2015).

<sup>17</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**CONCLUSION**

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 8, 2021.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 25, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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