

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 1, 2023, as she no longer had disability or residuals causally related to her accepted employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after June 1, 2023, causally related to the accepted employment injury.

FACTUAL HISTORY

On July 8, 2019 appellant, then a 58-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on July 6, 2019 she sustained injuries to her head, neck, shoulders, and lumbar spine, as a result of working beyond her limitations due to a staff shortage, while in the performance of duty. She stopped work on July 6, 2019.⁴

In a separate statement, appellant indicated that she worked a modified assignment pursuant to OWCP File No. xxxxxx614, six hours a day from 1:00 p.m. to 7:00 p.m. She indicated that on June 28, 2019 her schedule was changed to a split shift from 7:00 a.m. to 10:00 a.m. and then 3:30 p.m. to 6:30 p.m. On July 6, 2019 appellant indicated that she was short staffed as there were four mail carriers who called out. She reported feeling the effects of the heavy workload, which caused a migraine headache, pain radiating into her neck, and dizziness. Appellant requested assistance from another employing establishment location but there was no response. Her neck pain and migraine headache caused her to leave work early and seek treatment in the emergency room.

On July 6, 2019 Dr. Marilyn Althoff, Board-certified in emergency medicine, for a history of chronic neck pain and an episode of near syncope at work. Appellant reported over-exerting herself at work exacerbating her chronic neck pain. She diagnosed near syncope and weakness, and discharged appellant in stable condition.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated July 24, 2019 revealed straightening of the lumbar lordotic curvature associated with muscle spasm, L5-S1 acute posterior right para-centric annular tear, and general hypertrophic facets with facet synovitis.

By decision dated August 23, 2019, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish that the injury and/or events occurred as she described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

⁴ OWCP assigned the present claim OWCP File No. xxxxxx917. On December 13, 2005 appellant sustained an injury due to a motor vehicle accident. OWCP assigned that claim, OWCP File No. xxxxxx357 and accepted it for cervical sprain/strain and cervical radiculopathy. On November 13, 2007 appellant filed a notice of recurrence (Form CA-2a) claim, which was converted to a new injury claim, assigned OWCP File No. xxxxxx052. OWCP accepted that claim for bilateral carpal tunnel syndrome. Appellant filed an occupational disease claim (Form CA-2) on August 3, 2012, which OWCP accepted for aggravation of preexisting cervical and lumbar radiculopathy under OWCP File No. xxxxxx961. She filed a traumatic injury claim on June 1, 2013 that OWCP accepted for aggravation of preexisting cervical and lumbar degenerative disorders under OWCP File No. xxxxxx614. Appellant filed a claim for injuries to her shoulders, neck, and left arm sustained while she was keying on August 28, 2020, under OWCP File No. xxxxxx691. That claim was not formally adjudicated.

On September 3, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated December 5, 2019, an OWCP hearing representative set aside the August 23, 2019 decision and remanded the case for further development. The hearing representative instructed OWCP to further develop whether appellant was required to exceed her six-hour-a-day work restriction. The hearing representative also converted appellant's claim to an occupational disease claim.

By decision dated April 2, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her diagnosed medical conditions were causally related to the accepted factors of her federal employment.

OWCP subsequently received additional evidence. An MRI scan of the cervical spine dated July 17, 2019 revealed straightening of the cervical lordotic curvature from C1-5, disc desiccation from C2-6 with disc thinning at C4-5 and C5-6, C4-5 left posterior disc herniation abutting the cervical cord, and C5-6 degenerative disc associated with a left posterior disc osteophyte complex.

On April 27, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on August 6, 2020.

In a report dated August 19, 2020, Dr. Mimi Chang, a Board-certified physiatrist, noted treating appellant since July 25, 2012 for work-related cervical and lumbar spine conditions. She noted that appellant was restricted to working six hours a day, effective July 16, 2013. Dr. Chang treated her on July 8, 2019 after a severe onset of pain and migraine headache with associated dizziness. Appellant reported that the episode and near syncope attack occurred after she was forced to work beyond her limitations on July 6, 2019 due to a staff shortage after four mail carriers called out for work. She described walking back and forth for over 20 minutes, standing and reaching above the shoulder to sort mail for over 20 minutes, constantly lifting over 20 pounds, and bending and kneeling over 20 minutes to break down mail and packages. Appellant reported that her six-hour limited-duty schedule was changed, thereby prolonging her shift and increasing her work to include morning and evening postal operation assignments. She noted that, in order to fulfill her job obligation on July 6, 2019, she had to take on an excessive workload and work beyond her limitation, which aggravated her preexisting medical condition. Dr. Chang opined that appellant's work activities on July 6, 2019 caused an exacerbation of her chronic cervical spine and lumbar spine degenerative disorder and a sudden onset of increased pain and decreased mobility of her neck, shoulders, back, hands, and the left side of her body.

By decision dated October 16, 2020, OWCP's hearing representative set aside the April 2, 2020 decision and remanded the case for further medical development. The hearing representative instructed OWCP to combine OWCP File Nos. xxxxxx917, xxxxxx961, xxxxxx614, xxxxxx052, xxxxxx357, and xxxxxx691 and refer appellant to a second opinion physician for evaluation.

On January 4, 2022 OWCP referred appellant to Dr. Sean Lager, a Board-certified orthopedic surgeon, for a second opinion examination. It provided him with a statement of accepted facts (SOAF) setting forth the accepted conditions.

In a report dated January 17, 2022, Dr. Lager discussed the July 6, 2019 employment incident and appellant's complaints of low back and neck pain. He noted that she sustained work-related injuries to her lumbar spine in 2005, 2007, 2012, and 2013. On examination Dr. Lager noted that appellant walked with a shuffling labored gait, she had limited range of motion of the neck and spine, tenderness over the lower lumbar spine, positive straight leg raising sign bilaterally, deep tendon reflexes symmetrical for upper and lower extremities, and diminished sensation of the left lower extremity. He noted that there was no objective evidence that appellant sustained an injury under OWCP File No. xxxxxx917 because of the factors, duties, and exposures of her federal employment. Dr. Lager further noted that there were no diagnosed conditions attributed to the accepted factors of her federal employment. He noted that due to appellant's age, it was more probable than not that the findings were degenerative in nature. Dr. Lager noted findings of decreased range of motion and strength and evidence of symptom magnification on examination. He noted that he disagreed with Dr. Chang's diagnosis of cervical disc syndrome with radiculopathy or lumbar intervertebral disc syndrome. Dr. Lager opined that based on his physical examination and review of the medical records a preexisting medical condition was not aggravated by appellant's federal employment. He advised that appellant could return to work full-time without restrictions and no further treatment was indicated under OWCP File No. xxxxxx917.

By *de novo* decision dated February 16, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that the diagnosed lumbar and cervical conditions were causally related to the accepted factors of federal employment.

On March 10, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated May 2, 2022, OWCP's hearing representative vacated the February 16, 2022 decision as a conflict in medical opinion existed between Dr. Chang, appellant's treating physician, and Dr. Lager, the second opinion physician, regarding her current condition and the extent of any employment-related disability.

OWCP received additional evidence. In duty status reports (Form CA-17) dated June 10 and December 9, 2022, Dr. Chang noted that appellant continued to be partially disabled and returned her to work part time, four hours per day, with restrictions.

On January 20, 2023 OWCP referred appellant to Dr. Donald Cally, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated February 3, 2023, Dr. Cally, serving as the impartial medical examiner (IME), reviewed the history of appellant's July 6, 2019 employment injury and her subsequent medical treatment. He discussed her complaints of neck pain with numbness and tingling in her left hand and low back pain that radiates down her left leg with paresthesia. Dr. Cally noted a slightly antalgic gait, tenderness to palpation of the neck, limited range of motion of the neck, intact reflexes, normal motor examination, and slight decrease in light touch in all five fingers of the left hand. With regard to the low back there was slight tenderness to palpation, limited range of motion, reflexes were symmetrical at the knees and ankles, normal motor examination, and decreased sensation to light touch in the left lower extremity at L4 and L5 nerve root distribution. Dr. Cally noted that based on the examination, review of the records, and history reported by appellant, the work factors experienced on July 6, 2019 temporarily aggravated/exacerbated her

preexisting degenerative chronic condition. He indicated that appellant was not currently receiving treatment for her conditions and reported that she has not been treated since September 2022. Dr. Cally noted that she returned back to work as a supervisor. He opined that from an objective standpoint there was no evidence that the accepted employment factors caused or contributed to appellant's current neck or back pathology.

On April 5, 2023 OWCP requested a supplemental report from Dr. Cally requesting that he identify any preexisting conditions that were aggravated by the accepted employment factors, identify the specific work factors involved, and indicate whether the aggravation ceased.

On April 19, 2023 Dr. Cally identified the preexisting degenerative conditions that were aggravated on July 6, 2019 as disc desiccation from C2-6 with disc thinning at C4-5 and C5-6, C4-5 left posterior disc herniations, C5-6 degenerative disc associated with a left posterior disc osteophyte complex, L5-S1 acute posterior right paracentric annular tear, and hypertrophic facets with facet synovitis. He noted the work factors that caused the temporary aggravation included a staff shortage on July 6, 2019, which caused an increased workload including performing more manual labor with respect to handling and distribution of employing establishment services. Dr. Cally explained that appellant had a temporary aggravation of her preexisting degenerative conditions that has ceased. With respect to her neck and back symptoms, her current condition was related to her preexisting chronic condition.

By decision dated June 1, 2023, OWCP accepted appellant's claim for aggravation of intervertebral disc degeneration lumbar region L5-S1 resolved, aggravation of intervertebral disc degeneration cervical region, resolved. It based its determination on the February 3 and April 19, 2023 reports of Dr. Cally the IME.

OWCP received additional evidence. In CA-17 form reports dated June 9 and December 8, 2023, Dr. Chang returned appellant to work four hours a day with restrictions. In a report dated June 21, 2023, she related treating appellant since July 25, 2012 for work-related cervical and lumbar spine conditions. Dr. Chang noted that on July 6, 2019 appellant experienced a staff shortage and was forced to work beyond her limitations, working longer hours, and managing a larger workload. She noted that appellant's work activities on July 6, 2019 caused an aggravation/exacerbation of her chronic cervical and lumbar spine degenerative disorders resulting in a sudden onset of increased pain and loss of mobility of her neck, shoulders, back, hands, and left side of her body. Dr. Chang opined that based on her examination, review of the diagnostic reports, and medical history, within a reasonable degree of medical certainty, the accepted employment factors caused a worsening of appellant's health and mobility. She recommended long-term partial disability and work restricted to four hours a day, five days a week. In a work capacity evaluation (Form OWCP-5c) dated June 21, 2023, Dr. Chang continued appellant's part-time limited-duty work restrictions.

On June 22, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on November 9, 2023.

By decision dated January 23, 2024, OWCP's hearing representative affirmed the June 1, 2023 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.⁵ Having determined that, an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁸

Section 8123(a) of FECA provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”⁹ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective June 1, 2023, as she no longer had disability or residuals causally related to her accepted employment injury.

OWCP properly determined that a conflict in medical opinion existed between Dr. Chang, appellant’s treating physician, who continued to opine that appellant had residuals and work restrictions due to her accepted employment injury, and Dr. Lager, OWCP’s second opinion physician, who found that appellant no longer suffered residuals or work restrictions due to her accepted employment injury. It properly referred appellant to Dr. Cally for an impartial medical examination to resolve the conflict in medical opinion.

In his February 3, 2023 report, Dr. Cally, the IME, noted that based on the examination, review of the records, and history reported by appellant, the work factors experienced on July 6,

⁵ See *N.P.*, Docket No. 19-0296 (issued July 25, 2019); *H.P.*, Docket No. 18-0851 (issued December 11, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *J.D.*, Docket No. 18-0958 (issued January 8, 2019); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁷ See *D.P.*, Docket No. 18-0038 (issued January 4, 2019); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁸ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ 5 U.S.C. § 8123(a).

¹⁰ See *J.P.*, Docket No. 23-0075 (issued March 26, 2023); *C.M.*, Docket No. 20-1647 (issued October 5, 2021); *James P. Roberts*, 31 ECAB 1010 (1980).

2019 temporarily aggravated/exacerbated her preexisting degenerative chronic condition. He noted that appellant was not currently receiving treatment for her conditions and reported that she had not been treated since September 2022. Dr. Cally opined that from an objective standpoint there was no evidence that the accepted employment injury caused or contributed to her current neck or back pathology. In an addendum report dated April 19, 2023, he explained that the work factors that caused the temporary aggravation of her preexisting conditions on July 6, 2019 included a staff shortage, an increased workload, and performing more manual labor with respect to handling and distribution of employing establishment services. Dr. Cally explained that appellant had a temporary aggravation of her preexisting degenerative conditions that had ceased. With respect to her neck and back symptoms, her current condition was related to her preexisting chronic condition. He found that appellant had no further residuals of her cervical and lumbar conditions based on the lack of objective findings on prior physical examination and historically. Dr. Cally reiterated that, based on his review of the medical records and findings on prior examination, appellant had no objective evidence of her work injuries, no neurological defects, or any physical findings showing the need for further medical treatment.

The Board finds that Dr. Cally's reports dated February 3 and April 19, 2023, are entitled to the special weight of the medical opinion evidence establishing that appellant no longer had residuals or disability due to her accepted employment injury. Dr. Cally provided an accurate history of injury and reviewed her medical records. He performed a thorough, clinical examination and provided findings on examination. Dr. Cally noted that appellant's subjective complaints were due to her degenerative conditions and not as a result of the accepted employment injury. He opined that appellant's accepted aggravation of intervertebral disc degeneration lumbar region L5-S1, aggravation of intervertebral disc degeneration cervical region, had resolved and that she no longer had work restrictions due to her accepted employment injury. The Board finds that Dr. Cally provided a well-rationalized opinion based on a complete factual background, statement of accepted facts, a review of the medical record and physical examination findings. Accordingly, Dr. Cally's medical opinion was sufficient for OWCP to justify the termination of appellant's wage-loss compensation and medical benefits, effective June 1, 2023, as she no longer had disability or residuals due to her accepted employment injury.¹¹

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date, causally related to the accepted employment injury.¹² 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 causal relationship.¹³

¹¹ 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).

¹² See *M.D.*, Docket No. 21-0080 (issued August 16, 2022); *C.P.*, Docket No. 21-0173 (issued March 23, 2022); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

¹³ *Id.*

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after June 1, 2023, causally related to the accepted employment injury.

Following OWCP's June 1, 2023 decision, appellant submitted a June 21, 2023 report from Dr. Chang who noted that on July 6, 2019 appellant experienced a staff shortage and was forced to work beyond her limitations including working longer hours and managing a larger workload. She noted that appellant's work activities on July 6, 2019 caused an aggravation/exacerbation of her chronic cervical and lumbar spine degenerative disorders resulting in a sudden onset of increased pain and loss of mobility of her neck, shoulders, back, hands, and left side of her body. Dr. Chang opined that based on her examination, review of the diagnostic reports, and medical history, within a reasonable degree of medical certainty, the employment factors caused a worsening of appellant's health and mobility. She recommended long-term partial disability and work restricted to four hours a day, five days a week. However, Dr. Chang was on one side of the conflict, which Dr. Cally 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.¹⁴

OWCP received CA-17 forms from Dr. Chang dated June 9 and December 8, 2023, that returned appellant to work four hours a day with restrictions. Similarly, in a Form OWCP-5c dated June 21, 2023, Dr. Chang continued appellant's work restrictions. However, she did not explain with sufficient rationale as to how any continuing conditions and disability were causally related to accepted employment injury. The Board has held that a medical report is of limited probative value if it contains a medical opinion which is unsupported by medical rationale.¹⁵

As the medical evidence of record is insufficient to establish continuing disability or residuals on or after June 1, 2023, causally related to the accepted employment injury, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits effective June 1, 2023, as she no longer had disability or residuals causally related to her accepted employment injury. The Board further finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after June 1, 2023, causally related to the accepted employment injury.

¹⁴ See *C.L.*, Docket No. 18-1379 (issued February 5, 2019); *I.J.*, 59 ECAB 408 (2008).

¹⁵ *Id.*; see also *G.N.*, Docket No. 23-0763 (issued February 21, 2024).

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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