United States Department of Labor
Employees' Compensation Appeals Board

K.A., Appellant	)	
and	)	**Docket No. 14-1626**
	)	**Issued: May 13, 2015**
DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, HEADQUARTERS, Washington, DC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 24, 2014 appellant filed a timely appeal from a February 4, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss benefits effective June 7, 2013; and (2) whether appellant has established continuing disability caused by residuals of her accepted conditions after the termination of her wage-loss benefits.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On August 14, 2009 appellant, then a 39-year-old staff assistant, slipped on the floor and fell on her left knee, and fell on it again as she tried to stand. On September 17, 2009 OWCP accepted the claim for a sprain of the distal tibiofibular ligament of the left ankle, a sprain of the lateral collateral ligament of the left knee, and a contusion of the left knee and lower leg. On December 10, 2009 it accepted the additional condition of a tear of the lateral meniscus of the left knee.

In a report dated September 4, 2009, Dr. Philip B. Bovell[2] noted that appellant had slipped and fallen on a waxy floor at work. He stated that when she hit her knee swelling occurred immediately. Appellant twisted her ankle and knee at the same time. Dr. Bovell noted that she had been transported to an emergency room where x-rays were taken, noting no fractures. He diagnosed appellant with a left ankle sprain involving the anterior tala-fibula ligament and a left knee sprain with strain and effusion.

In a report dated September 28, 2009, Dr. Daniel R. Ignacio, Board-certified in physical medicine and rehabilitation, stated that, after the incident of August 14, 2009, appellant had acute pain along the left knee and left leg, for which she was treated. He noted that the pain had not resolved and that she had developed pain along her lower back, along with numbness, and weakness along the left leg. Dr. Ignacio diagnosed appellant with acute left knee strain with probable internal derangement, peroneal neuropathy, and lumbar strain syndrome. He noted that "With regard to the lumbar strain, this has been related to the injury to the left leg with abnormal gait and the constant giving way of the left leg and therefore the lumbar pain is consequential to the work-related conditions of August 14, 2009."

On October 21, 2009 appellant returned to work for four hours per day with restrictions.

In a nurse report dated October 22, 2009, a field nurse stated that she contacted appellant's treating physician, who noted that he did not want appellant to drive 45 minutes to his office three times per week for physical therapy, as her knee was quite swollen. The nurse made arrangements for her to be transported.

On August 24, 2009 Dr. William O'Grady, Board-certified in diagnostic radiology, interpreted the results of a magnetic resonance imaging (MRI) scan of appellant's left knee. He stated impressions of grade 2 and 3 signal changes in the anterior horn of the lateral meniscus with a questionable subtle tear at its central attachment; mild degenerative arthritis at the patellofemoral compartment and slight degenerative changes in the femorotibial compartments; small joint effusion; a slight subcutaneous edema anterior to the distal attachments of the iliotibial band; and a questionable minimal popliteal cyst.

In a report dated October 23, 2009, Dr. Bovell stated that an MRI scan of appellant's left knee showed a meniscus tear over the lateral aspect, degenerative joint disease over the fibular

[2] Dr. Bovell's Board certification and medical specialty could not be confirmed with the American Board of Medical Specialties or the American Osteopathic Association.

tibia joint surface and the surfaces of both femoral joints, and a popliteal cyst. An electromyographic study revealed L5 radiculopathy and left peroneal neuropathy.

On November 6, 2009 Dr. O'Grady interpreted the results of x-rays of appellant's left ankle as unremarkable with no obvious fracture, dislocation, bone lesion, or joint effusion.

Appellant underwent arthroscopic surgery on January 8, 2010, which had previously been approved by OWCP. In an operative report, Dr. Bovell noted:

> "Examination of the knee showed anterior cruciate was essentially intact. Examination of the patella showed that there was some fibrillation under the patellar surface. This was subsequently shaved. Examination of the medial meniscus showed that it was intact. Examination of the lateral meniscus showed that there was a tear in the periphery of midsection of the meniscus. This was subsequently shaved and debrided and debridement was done of the tissue around this area. There was some condylar defect seen in this area on the lateral aspect of the femoral condyle. This area was subsequently shaved. Further, examination of the knee showed that it was unremarkable."

There were no complications and appellant was discharged on the same day. Dr. Bovell placed her under temporary total disability following the surgery. Appellant underwent physical therapy, which was also approved by OWCP.

In a report dated January 28, 2010, Dr. Bruce E. Perry, an orthopedic surgeon, evaluated appellant and diagnosed her with chronic left knee pain with instability with a lateral meniscus tear. He noted that she injured her left knee stepping in a pothole in her neighbor's yard in late October or early November 2009.

By letter dated March 29, 2010, OWCP informed appellant that she was to be placed on the periodic rolls for compensation effective March 1, 2010.

Appellant returned to work four hours per day with restrictions as of April 12, 2010. She was released to full-time work as of June 12, 2010, with restrictions of no more than two hours of lifting, one hour of climbing, and no squatting or kneeling

On October 13, 2010 appellant filed a claim for recurrence of disability for the prior October 4 through 22, 2010.

In a note dated October 14, 2010, Dr. Bovell noted that appellant was still experiencing some effusions, varying in size, and intensity. He noted that she recently started walking with a limp due to aggravation that occurred at work. Dr. Bovell stated that appellant was recently off work from October 4 through 12, 2010 due to this discomfort.

On October 18, 2010 OWCP advised appellant that the evidence of record was insufficient to establish that her recurrence was related to her original work injury. It noted that she last returned to regular duty on June 12, 2010 and requested that she submit additional medical information in support of her claim for disability.

In a record of a telephone conversation dated November 8, 2010, a claims examiner noted that appellant stated that she was off work for her back, which she believed was a consequential condition to her knee injury. She stated that she would need to review appellant's case and forward to an OWCP medical adviser to determine whether her back condition was related to the original work injury. On November 8, 2010 OWCP forwarded appellant's case file to an OWCP medical adviser, who noted in a report dated November 8, 2010 that there was a causal relationship between her original work injury and aggravation of a lumbosacral spine condition.

On November 9, 2010 OWCP accepted the additional condition of thoracic or lumbosacral neuritis or radiculitis. It listed appellant's other accepted conditions as a sprain of the distal tibiofibular ligament of the left ankle; a sprain of the lateral collateral ligament of the left knee; a contusion of the left knee and lower leg; a current tear of the lateral meniscus of the left knee; localized primary osteoarthritis of the lower left leg; a left popliteal synovial cyst; and joint effusion of the left lower leg.

By decision dated November 9, 2010, OWCP accepted appellant's recurrence.

On January 10, 2011 appellant underwent a knee injection of DepoMedrol and Xylocaine with Dr. Ignacio.

In a report dated March 28, 2011, Dr. Ignacio stated that appellant's condition had not resolved and that she remained symptomatic. He noted that the delay in her recovery was related to severe progressive left knee dysfunction with associated patellofemoral dystrophy. Dr. Ignacio stated that appellant remained totally disabled to work and that vocational rehabilitation was not appropriate at the time. Appellant continued to submit periodic medical reports documenting that her condition still existed and that she remained disabled from work.

In a record of a telephone discussion dated January 17, 2012, appellant informed a claims examiner that the employing establishment had terminated her position. On January 19, 2012 she called back and a claims examiner informed her that by personnel guidelines, after one year the employing establishment could terminate her position, but that she would continue to receive compensation on the periodic rolls until OWCP received medical evidence supporting her ability to perform some type of work.

Appellant underwent intramuscular neural enhancement therapy on February 9, 2012 with Dr. Ignacio.

In a report dated November 8, 2012, Dr. Ignacio diagnosed appellant with status post surgery to the left knee with residual pain; severe progressive internal derangement of the left knee; chronic right peroneal neuropathy; chronic lumbar disc syndrome with chronic lumbar radiculopathy; and complex regional pain syndrome. He stated that she remained totally unable to work. Dr. Ignacio recommended that appellant be given home care assistance for about three hours a day for at least three times per week for the next 8 to 12 weeks to help assist her with personal care and daily activities.

On November 26, 2012 OWCP referred appellant to Dr. Kevin Hanley, a Board-certified orthopedic surgeon, for evaluation of her extent of disability, and as to whether she continued to suffer residuals from the incident of August 14, 2009.

By letter dated December 5, 2012, OWCP asked Dr. Hanley to address the additional question of whether the requested home care assistant was connected to, necessary, or warranted in the treatment of the work injury of August 14, 2009.

In a report dated December 3, 2012, Dr. Verne K. Kemerer, a Board-certified diagnostic radiologist, examined the results of an MRI scan of appellant's left knee. He found a small effusion of the extensor mechanism with mild prepatellar edema; intact anterior and posterior cruciate ligaments; normal medial and lateral compartments; normal collateral ligaments; and a normal popliteal fossa. Dr. Kemerer stated his impression of a small effusion.

On December 13, 2012 Dr. Hanley submitted his second opinion evaluation of appellant. He noted:

> "[Appellant] underwent surgery on January 8, 2010, which was an arthroscopic surgery. The findings at the time of surgery were rather minimal. A peripheral tear of the lateral meniscus was simply debrided away. There was no ligamentous injury. There are minimal changes on the articular cartilage of either the femoral condyle or the patella. However, [appellant] has been treated by Dr. Ignacio continuously, very frequently, over the last three-and-a-half years, and at the present time, based on my review of the medical records, is absolutely no better than she was when she initially had treatment; probably worse."

On examination, Dr. Hanley noted that there were absolutely no significant objective findings related to appellant's left knee, though she walked with a limp. Relating to her back, he noted that it was straight without kyphosis, scoliosis or spasm, and no thick limitation of motion was evident. Dr. Hanley noted that appellant volitionally limited motion due to discomfort. He stated:

> "First of all, a summary comment in my mind is appropriate. [Appellant] currently does not show signs of a significant and completely disabling condition of the musculoskeletal system. The original injury was clearly an injury to the knee with soft tissue injuries possibly to the back and ankle, but which left no significant substantive change in the anatomic structures. I believe that the treatment rendered to [appellant] by Dr. Bovell was quite appropriate, the findings at the time of surgery were rather minimal, and one would anticipate a complete recovery after this particular finding. [Appellant] has been managed very inappropriately over the last three years by Dr. Ignacio, multiple and frequent visits to the [physician's] that are unnecessary and accomplished absolutely nothing, other than to reconfirm her roll as a disabled individual."

Dr. Hanley stated that a home care assistant was not necessary noting:

> "I agree that an injury to the left knee did occur by direct cause. I do not believe that the back shows any reasonable problems from the incident and requires no further treatment. Treatment for the knee would simply be that of observation and pain management. Pain management should be with nonnarcotic medication only as this is a nonmalignant condition. In my mind, the only period of disability in

this particular case would have been for about six weeks after the operative procedure at which time [appellant] should have been undergoing physical therapy. Physical limitations at this time are no standing or walking greater than six hours during the course of an eight[-]hour day, no repetitive kneeling or squatting, no climbing. I believe that [appellant] is perfectly capable of performing the duties as described in her prior job. I do not believe that [appellant] is a candidate for vocational rehabilitation, as I do not believe that it is necessary. I do not believe that she has an impact in any of her activities of daily living."

On January 22, 2013 OWCP proposed to terminate appellant's compensation for wage loss, finding that the weight of the medical evidence established no continuing residuals of her work-related conditions.

By letter dated February 4, 2013, the employing establishment offered appellant her prior position as a staff assistant. It noted that the limitations as outlined by Dr. Hanley would not preclude her from returning to work in a full-time, full-duty capacity as her job had no special physical requirements and was sedentary in nature.

On January 31, 2013 Dr. Ignacio performed an ultrasound of appellant's left knee. He noted an abnormal ultrasound consistent with chronic tendinopathy of the patellar tendon; an abnormal signal along the collateral ligament indicative of chronic strain of the collateral ligament with no frank tear; and an abnormal lateral meniscus suggestive of chronic denervation and partial tear with early calcification. In a report of the same date, Dr. Ignacio stated that, based on prior diagnostic studies, appellant continued to have residuals of her work-related injury.

Dr. Ignacio noted:

"With regard to a report of Dr. Hanley, which is the basis for the proposal to terminate compensation for wage loss for the above medical conditions, I found this report to be interesting but rather erroneous. For one thing, Dr. Hanley indicated that there was no ligamentous injury. This is an incorrect conclusion reflective of the poor judgment on the part of this physician. [Appellant] had extensive injury to the left knee and in fact even had surgeries and multiple MRI [scans] demonstrating the significant ligamentous injury and tear of the meniscus and even significant strain/tear of the cruciate ligament and the collateral ligament, and these have been completely missed by Dr. Hanley, who did indicate that there is tear of the lateral meniscus and that surgery was indicated.... Dr. Hanley's examination simply [stated] that everything is normal, and yet [she] does have multiple scars and has limited movement and has significant tenderness along the knee, which have been confirmed by the MRI [scan] and other objective studies.... I disagree with Dr. Hanley that no significant substantive changes in the anatomic structures are involved.... I disagree with [him] that the injury was rather minimal and that the tendon anticipates a complete recovery after this particular finding. [Appellant's] MRI [scans] are completely abnormal, in fact showing significant damage to the knee including chronic quadriceps and patellar

> tendon injury, tear of the cruciate ligament, and torn meniscus. These MRI [scans] were performed on March 9, 2011 and December 3, 2012 demonstrating continuing edema, joint effusion, and injury to the left knee. The recent ultrasound again confirmed the abnormal findings with early calcification of the lateral collateral ligament indicative of the chronic ongoing strain to the torn lateral meniscus."

In a report dated February 12, 2013, Dr. Georgia Cu, Board-certified in family medicine, examined appellant and stated an impression of status post surgery to the left knee with residual pain; severe progressive internal derangement of the left knee; chronic right peroneal neuropathy; chronic lumbar disc syndrome with chronic lumbar radiculopathy; and complex regional pain syndrome.[3] She stated that appellant remained unable to work.

On February 27, 2013 appellant accepted the offer of employment from the employing establishment, but noted that she only accepted under duress.

By letter dated April 30, 2013, OWCP informed appellant that it had determined a conflict in the medical evidence existence and scheduled a referee examination with Dr. Richard Cirillo, a Board-certified orthopedic surgeon.

On May 2, 2013 Dr. Cu reexamined appellant and noted the same diagnoses as in her report of February 12, 2013. She stated that appellant continued to be unable to work.

In a diagnostic report dated May 6, 2013, Dr. Jorge M. Garciala, a Board-certified radiologist, examined the results of x-rays of appellant's bilateral knees. He noted bilateral small joint effusions, with no fracture, or joint space narrowing.

In a report dated May 10, 2013, Dr. Philip S. Man, a Board-certified radiologist, examined the results of an MRI scan of appellant's left knee. He noted mild chondromalacia at the lateral and patellofemoral compartments, with no meniscal or ligamentous tears.

On May 24, 2013 Dr. Cirillo reported regarding his independent medical examination. On examination, he found a normal lumbar spine without pain and a full range of motion; and a left knee with diffuse pain. Dr. Cirillo stated:

> "Based on the information available to me, [appellant] should be able to return to work as an administrative assistant. I do not recommend that she perform any lifting more than 20 pounds [and] she should be allowed to change her position [and] no prolonged walking performed. On my exam[ination], I see no functional deficits [and] bilaterally [appellant's] thigh/calf circumferences are approximately equal. If indeed a significant nerve or functional deficit was present, this should be different.... I do feel that the diagnosed condition [of a tear of the meniscus] is medically connected to the work injury by direct cause.... I feel that total disability due to this work-related condition was from the time of injury to [six] weeks after [appellant's] surgery on January 8, 2010. [Appellant] should have

[3] Dr. Cu and Dr. Ignacio are partners in the same medical office.

> been able to return to her previous desk work status at that time.... I do not feel that vocational rehabilitation is needed/indicated at this point. [Appellant] does appear to still have some residuals of the injuries based upon her subjective complaints. Her subjective complaints however are difficult to support objectively."

He stated that appellant had reached maximum medical improvement (MMI).

In a decision dated June 7, 2013, OWCP terminated appellant's wage-loss benefits effective on that date, based upon Dr. Cirillo's report of May 24, 2013. It noted that her medical benefits were not terminated.

In a report dated June 6, 2013, Dr. Cu noted that appellant had recently been diagnosed by a Dr. Imelda Cabalar with rheumatoid arthritis. She examined appellant and stated that she remained unable to work.

On June 14, 2013 Dr. Bovell reviewed the reports of Drs. Hanley and Cirillo. He stated that he could not see how crepitation in appellant's left knee was missed by both physicians. Dr. Bovell stated, "It appears that Dr. Cirillo's report is a duplicate of Dr. Hanley's report." He further noted, "By accumulating [appellant's] complaints, all the findings from the MRI [scan] and x-ray and the clinical treatment that was offered by the [i]ndependent [physician's], clearly shows that there is reasonable cause to conclude that [appellant's] condition will get worst over time and the accepted diagnoses are definitely a result of the fall sustained August 14, 2009."

On July 3, 2013 appellant requested an oral hearing before an OWCP hearing representative.

In a report dated June 17, 2013, Dr. Ignacio examined appellant and responded to Dr. Cirillo's report of May 24, 2013. He stated:

> "With regard to a letter of U.S. Department of Labor indicating that [appellant's] workman compensation benefits will be terminated based on the report of Dr. Cirillo dated May 24, 2013. I reviewed the report of Dr. Cirillo who outlined the history of the injury that she sustained to the left knee and to the lumbar spine with the lumbar neuritis and the left knee strain. Dr. Cirillo described the torn lateral meniscus as well as the injury to the femoral condyle as well as the accepted osteoarthritis of the left knee. [He] also outlined the continued pain to the left knee as well as to the lower back and also the symptoms of weakness particularly along the left leg. Dr. Cirillo also outlined the severity of the lumbar pain which is rather severe, constant with associated symptoms of the numbness, weakness particularly along the left leg, and the joint stability of the left knee. These are all consistent with [appellant's] condition.... Dr. Cirillo indicated that [her] disability was from the time of surgery, that is, January 8, 2010 up to six weeks after surgery. However, [appellant] does have a significant complex injury not only to the knee but also to the lumbar spine and because of this complex medical condition she is not able to return to work from the time she had surgery

on January 8, 2010 up to the present time." Appellant continued to submit reports from Dr. Ignacio documenting continued pain in the left knee.

In a diagnostic report dated July 20, 2013, Dr. Kemerer examined the results of an MRI scan of appellant's lumbar spine. He stated an impression of a normal lumbar spine.

In a record of a telephone conversation dated September 16, 2013, appellant noted that the employing establishment had issued a job offer in February 2013, but had not issued her one since her compensation was terminated. The claims examiner explained that, because her compensation was terminated due to her ability to work, it was up to the employing establishment to determine whether work could be offered.

By letter dated October 18, 2013, OWCP informed appellant that a hearing would be held with regard to her case. The hearing was held on November 21, 2013. Appellant testified that she continued to have stiffness and pain in her left knee. She stated that Drs. Hanley and Cirillo had examined her for only 10 minutes in their respective examinations. Appellant noted that she was still off work, and did not attend physical therapy because she could not afford to drive to it without an income. She stated that she could not perform sedentary work because walking was very difficult. The hearing representative stated that appellant would consider additional current reports from appellant's physicians.

In a report dated December 11, 2013, Dr. Ignacio stated, "[Appellant] does suffer from increasing chronic pain mostly in her back and her left knee since she was injured at work on August 14, 2009. In fact, she has had extensive medical treatments of surgery to the left knee, chronic tear of the lateral meniscus as well as the lateral femoral condyle, and patellar articular fibrillation." He examined her and stated that she was not able to return to work.

By decision dated February 4, 2014, the hearing representative affirmed the decision of June 7, 2013. She found that the medical reports from Drs. Ignacio and Bovell concerning ongoing disability were not based on objective findings but instead relied on subjective pain complaints. The hearing representative stated that OWCP properly afforded the weight of the evidence to the referee physician Dr. Cirillo, as his opinion fully discussed appellant's history of injury, medical treatment, and diagnostic tests, as well as providing a thorough medical rationale for his opinion.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[4] 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.[5]

[4] *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001); *Alice J. Tysinger*, 51 ECAB 638, 645 (2000).

[5] *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

FECA provides that, if there is a 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 the examination.[6] The implementing regulations state that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee or impartial examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[7]

To be of probative value, a medical opinion must be based on a complete factual and medical background, must be of reasonable medical certainty, and be supported by medical rationale.[8] Medical rationale is a medically sound explanation for the opinion offered.[9]

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual, and medical background, must be given special weight.[10]

ANALYSIS -- ISSUE 1

In the present case, OWCP found that a disagreement existed between Drs. Ignacio, Cu, and Bovell, the attending physicians, and Dr. Hanley, the second opinion physician, as to whether appellant continued to be disabled due to the June 7, 2013 employment injury. Dr. Hanley found an essentially normal examination with no objective evidence of residuals of the employment injury. Drs. Ignacio, Cu, and Bovell indicated that appellant continued to have residuals of her employment injury that resulted in her disability.

In accord with 5 U.S.C. § 8123(a), OWCP properly referred the case to Dr. Cirillo for a referee examination and an opinion as to whether appellant continued to have employment-related residuals which caused disability. In a report dated May 24, 2013, Dr. Cirillo provided a history, results on examination, and reviewed medical evidence. Based on an accurate factual and medical background, he opined that appellant did not have any objective evidence of residuals of the employment injury, but had residuals based upon subjective complaints. Dr. Cirillo found no evidence of functional deficits and stated, "I feel that total disability due to this work-related condition was from the time of injury to 6 weeks after her surgery on January 8, 2010. She should have been able to return to her previous desk work status at that time." Dr. Cirillo concluded that appellant had reached MMI.

[6] 5 U.S.C. § 8123(a).

[7] 20 C.F.R. § 10.321.

[8] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[9] *See Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound, and logical).

[10] *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

Drs. Ignacio and Bovell submitted reports purporting to find problems in the medical reasoning of Dr. Cirillo. Dr. Bovell stated, "It appears that Dr. Cirillo's report is a duplicate of Dr. Hanley's report," and claimed that he could not understand how Dr. Cirillo missed crepitation in appellant's knee. Dr. Ignacio stated:

> "Dr. Cirillo indicated that [appellant's] disability was from the time of surgery, that is, January 8, 2010 up to six weeks after surgery. However, [appellant] does have a significant complex injury not only to the knee but also to the lumbar spine and because of this complex medical condition she is not able to return to work from the time she had surgery on January 8, 2010 up to the present time."

However, Dr. Cirillo reported his findings based on the physical examination he performed. A review of the May 24, 2013 report does not establish that his opinion was based on a single examination finding. As noted, Dr. Cirillo provided results on examination that reported some diffuse pain. He based his opinion on all examination results, diagnostic studies, and medical history. Dr. Cirillo explained that appellant's disability resolved six weeks after her surgery on January 8, 2010 and that her current symptoms were subjective in nature. He examined her lumbar spine and left leg and found no significant objective signs of her conditions. This represents a medically sound explanation of the opinion offered.

The Board, therefore, finds that Dr. Cirillo provided a rationalized medical opinion in this case. As a referee physician, Dr. Cirillo's report is entitled to special weight. The Board finds that OWCP met its burden of proof to terminate wage-loss compensation effective June 7, 2013.

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

LEGAL PRECEDENT -- ISSUE 2

It is well established that, after termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative, and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.[11]

ANALYSIS -- ISSUE 2

Following the termination of her wage-loss benefits, appellant submitted reports from Drs. Ignacio, Bovell, and Cu. With respect to the termination of compensation as of June 7, 2013, as noted above Dr. Cirillo represented the weight of the evidence. Additional reports from a physician on one side of the conflict that is properly resolved by a referee specialist are generally insufficient to overcome the weight accorded the referee specialist's report or to create a new conflict.[12] Drs. Ignacio, Bovell, and Cu stated that appellant continued to have disability

[11] *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

[12] *See Harrison Combs, Jr.*, 45 ECAB 716 (1994); *Dorothy Sidwell*, 41 ECAB 857 (1990).

resulting from her employment injury, but did not provide medical opinions supported by medical rationale establishing a continuing employment-related condition or disability after June 7, 2013. Appellant therefore did not meet her burden of proof to establish continuing disability after June 7, 2013.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate wage-loss compensation effective June 7, 2013. The Board also finds that appellant did not meet her burden of proof to establish continuing disability after June 7, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 4, 2014 is affirmed.

Issued: May 13, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board