

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM E. MISHOU, III and U.S. POSTAL SERVICE,  
POST OFFICE, Petaluma, Calif.

*Docket No. 97-2447; Submitted on the Record;  
Issued August 21, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation for benefits effective June 27, 1997.

On April 6, 1990 appellant, then a 47-year-old mail processor, filed a notice of traumatic injury alleging that he injured his lower back on the same date when he fell into a cart in the performance of his federal employment. The Office accepted the claim for lumbar strain and appellant received appropriate compensation benefits. Following appellant's return to limited duty, he filed notices of recurrence of disability on April 27 and December 10, 1991. The Office accepted these claims and provided appropriate compensation benefits.

On July 29, 1994 the Office requested current medical evidence from appellant's treating physician to determine his entitlement to continuing compensation payments. The Office allowed appellant 60 days to submit a narrative report from his treating physician addressing objective evidence of the injury, whether appellant's current condition was related to the accepted April 6, 1990 work injury, whether there was residual disability from that injury and the course of treatment. The Office repeated this request to appellant's health care service on September 26, 1994.

Appellant submitted a progress report from his treating physician, Dr. Donald Bunce, a Board-certified orthopedic surgeon, dated September 28, 1994. Dr. Bunce stated that appellant was disabled due to low back pain and right sciatica for about four years. He noted that appellant was not a candidate for surgery and described appellant's course of treatment, including drug therapy.

On September 30, 1994 Dr. Konstantin Zaharoff, a treating physician, responded to the Office's request for information. Dr. Zaharoff indicated that appellant could not sit for more than 15 minutes at a time, stand for more than 5 minutes at a time and walk greater than a distance of 1,000 feet at a time. He stated that appellant could work eight hours a day within

these limitations. He indicated that these restriction were permanent and that they were due to his employment injury. Finally, Dr. Zaharoff indicated that there were no objective findings of disability.

On November 7, 1994 the Office requested that Dr. Zaharoff clarify his opinion as he did not provide explanation with his findings. The Office specifically requested that he clarify whether appellant was precluded from working due to his accepted employment injury and to state the basis for his work restrictions.

On October 30, 1996 the Office referred the case, along with the case record and a statement of accepted facts, to Dr. Charles T. Buckerfield, a Board-certified orthopedic surgeon, to provide a second opinion.

Appellant was subsequently terminated from his employment based on his conviction for illegally selling drugs.

On November 25, 1996 Dr. Buckerfield provided his second opinion examination. Dr. Buckerfield noted the history of appellant's April 6, 1990 injury and the treatment his physicians provided. He recorded appellant's present complaints and conducted a physical examination. Dr. Buckerfield stated that the etiology of appellant's back pain was not apparent. He indicated that appellant's physical examination regarding range of motion revealed that appellant's complaints were subjective rather than objective. He stated that the radiographic studies and computerized axial tomography failed to reveal the etiology of appellant's pain. He, therefore, found that appellant's symptoms were not supported by objective evidence. On this basis, Dr. Buckerfield determined that appellant had recovered from his April 6, 1990 injury.

On May 15, 1997 the Office issued a "Notice of Proposed Termination of Compensation." The Office indicated that the weight of the evidence failed to establish disability causally related to his April 6, 1990 injury. The Office allowed appellant 30 days to present evidence or argument to the contrary.

On June 5, 1997 Dr. Zaharoff wrote that he was unable to issue an opinion regarding whether appellant had any residual disability from his April 1990 injury by the June 15, 1997 deadline set by the Office.

By decision dated June 27, 1997, the Office terminated appellant's benefits because the weight of the evidence failed to establish that appellant suffered from residuals related to his April 6, 1990 injury. In an accompanying memorandum, the Office noted that it delayed issuing its decision until June 27, 1997, to allow Dr. Zaharoff time to submit his clarifying opinion.

The Board finds that the Office met its burden of proof to terminate appellant's benefits effective June 27, 1997.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits. After it has been determined that an employee has disability causally related to his federal employment, the Office may not

terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>1</sup>

In the present case, Dr. Zaharoff, appellant's treating physician and a Board-certified internist, submitted an opinion indicating that appellant had residual disability due to his April 1990 employment injury. Dr. Zaharoff, however, failed to provide a full explanation for this conclusion. Although the Office presented Dr. Zaharoff with an opportunity to clarify his opinion, the physician failed to do so. Moreover, Dr. Zaharoff specifically indicated that there was no objective evidence to support his conclusion regarding residual disability. Accordingly, because Dr. Zaharoff's opinion was not adequately rationalized or supported by objective evidence, it is entitled to diminished weight.<sup>2</sup>

In contrast, Dr. Buckerfield, a Board-certified orthopedic surgeon, provided a well-rationalized medical opinion concluding that any residuals from appellant's April 1990 injury had resolved. Dr. Buckerfield based his conclusion on his physical findings, the radiographic evidence and the computerized axial tomography, all of which revealed no objective evidence of residuals related to the accepted injury. Accordingly, because Dr. Buckerfield provided the only well-rationalized opinion of record addressing whether appellant's April 1990 had resolved,<sup>3</sup> his opinion constitutes the weight of the medical evidence.<sup>4</sup> The Office, therefore, met its burden to terminate appellant's benefits on June 27, 1997.

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<sup>1</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>2</sup> *See Nicolea Brusio*, 33 ECAB 1138 (1982).

<sup>3</sup> Dr. Bunce, a treating physician and a Board-certified orthopedic surgeon, provided a contemporaneous opinion which failed to address whether appellant's April 1990 accepted injury had resolved.

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

The decision of the Office of Workers' Compensation Programs dated June 27, 1997 is hereby affirmed.

Dated, Washington, D.C.  
August 21, 1998

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member