

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAUL R. PERREAULT and U.S. POSTAL SERVICE,  
POST OFFICE, Medford, Oreg.

*Docket No. 98-2616; Submitted on the Record;  
Issued June 10, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS:

The issue is whether appellant is entitled to disability compensation after January 21, 1998, as a result of a June 13, 1997 employment injury.

On June 13, 1997 appellant then a 50-year-old maintenance worker, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that earlier that day he fell backwards while seated in a chair and struck his head on a locker and his back against the floor. He was treated in the emergency room at Rogue Valley Medical Center, Medford, Oregon, that same evening and released with an initial diagnosis of back muscle contusion and strain. On June 16, 1997 appellant was cleared to return to light-duty work. Dr. George W. Bailey, a Board-certified internist, examined appellant on June 17, 1997 and diagnosed thoracic spine pain, secondary to an accidental fall. He subsequently recommended physical therapy, which appellant began on June 27, 1997. However, approximately two weeks after beginning therapy, appellant complained of increased pain, which he attributed to the physical therapy. As a result, Dr. Bailey advised appellant not to work for a period of three days beginning on July 10, 1997. When he cleared appellant to return to work on July 14, 1997, he advised that appellant could only perform light duty for four hours per day. On August 18, 1997 Dr. Bailey revised appellant's restrictions to allow for light-duty work, five hours per day.<sup>1</sup> On September 30, 1997 the Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain.<sup>2</sup>

In September 1997, just as appellant's period of eligibility for continuation of pay was about to expire, he filed a claim for continuing compensation on account of disability

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<sup>1</sup> Appellant continued to work in a part-time, light-duty capacity until May 7, 1998.

<sup>2</sup> The Office subsequently modified its acceptance to include cervicothoracic strain.

(Form CA-8) accompanied by an August 29, 1997 attending physician's supplemental report (Form CA-20a) prepared by Dr. Bailey.<sup>3</sup>

In October 1997, Dr. Bailey referred appellant for examination by Dr. Mark D. Peterson, an orthopedic surgeon. In a report dated October 9, 1997, Dr. Peterson diagnosed cervicothoracic pain and bilateral numbness, with radiographic evidence of thoracic spondylosis. Additionally, he offered a differential diagnosis of "possible cervical disc herniation or simply cervicothoracic strain." Dr. Peterson recommended a magnetic resonance imaging (MRI) scan of the cervical and upper thoracic spine, which appellant obtained on October 20, 1997. Upon reviewing appellant's MRI scans on October 23, 1997, Dr. Peterson found no clear evidence of spinal cord or nerve root compression. Additionally, while he noted "slight wedging of T2," he found no significant changes in the marrow signal suggestive of a fracture. Dr. Peterson further indicated that he saw no acute disc herniations or other intraspinal pathology that would account for appellant's neurologic symptoms. He concluded that surgery was not indicated.

In an October 30, 1997 letter to Dr. Bailey, the Office asked that he provide an explanation for his decision to restrict appellant to part-time work after appellant had previously been released to return to full-time work. The Office further inquired as to whether Dr. Bailey was aware that appellant had been in a motor vehicle accident in 1996, which required chiropractic treatment for a cervical condition and if so to explain what impact this may have had on appellant's work-related condition. Dr. Bailey responded on November 3, 1997, and explained that the decision to restrict appellant's duties was not based on any objective findings, but merely based on appellant's subjective complaints of increased pain. Additionally, he could not offer an opinion regarding the effects of appellant's prior motor vehicle accident on his current condition other than to note that it was not an active injury at the time he began treating appellant in June 1997.

On December 17, 1997 the Office referred appellant for a second opinion evaluation with Dr. Michael R. Marble, a Board-certified orthopedic surgeon. The Office advised appellant that the evaluation was necessary in order to address the relationship of his present condition and his June 13, 1997 injury and to determine the extent and degree of any remaining disability. On that same day the Office advised Dr. Marble of the referral and forwarded a copy of appellant's medical records as well as a statement of accepted facts and a list of specific questions to address. He examined appellant on January 21, 1998, and reported his findings that same day. Dr. Marble diagnosed cervicothoracic strain consistent with a history of a fall. He also diagnosed developmental dorsal kyphosis of some significance, however, Dr. Marble explained that this condition was not altered in any way by appellant's June 13, 1997 employment injury. With respect to appellant's subjective complaints of persistent pain, Dr. Marble noted that appellant's pain could not be easily explained in the absence of any documented organic disease.

Additionally, in response to specific questions posed by the Office in its December 17, 1997 referral letter, Dr. Marble first explained that appellant did not demonstrate any objectively measurable loss of function. He further noted that appellant's complaints of pain were entirely

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<sup>3</sup> Appellant repeated this practice on a regular basis through May 1998. He occasionally submitted Form CA-7 (claim for compensation on account of traumatic injury or occupational disease) instead of Form CA-8.

subjective and could not be related in any firm way to any objective pathology that would be considered to be a result of the June 13, 1997 employment injury. Dr. Marble also indicated that appellant was capable of performing full-time, light-duty work. In conclusion, Dr. Marble recommended that appellant be returned to full-time normal work activities on a graduated, but clearly defined schedule over a four- to six-week period.

Under cover letter dated February 19, 1998, the Office forwarded Dr. Marble's January 21, 1998 report to Dr. Bailey and requested that he review this information and provide a supplemental report. Dr. Bailey responded on March 4, 1998, indicating that he basically "agree[d] completely with Dr. Marble's report." Dr. Bailey specifically noted his agreement with Dr. Marble's recommendation of a "graduated return to work on a full-time basis over a 4 to 6 week period." Dr. Bailey subsequently cleared appellant to return to his full-time, regular duties on April 29, 1998.

In a decision dated July 1, 1998, the Office found that the medical evidence failed to support a finding of continuing disability beyond January 21, 1998, causally related to appellant's accepted cervicothoracic strain. The Office advised appellant that he would receive compensation for intermittent wage loss during the period of September 9, 1997 through January 21, 1998. In an accompanying memorandum, the Office explained that its decision was based primarily upon Dr. Marble's January 21, 1998 findings, which appellant's treating physician had expressed his agreement with.

The Board finds that appellant is not entitled to continuing compensation after January 21, 1998.

Under the Federal Employees' Compensation Act,<sup>4</sup> the Office has the burden of justifying modification or termination of compensation once a claim is accepted and compensation paid.<sup>5</sup> Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>6</sup>

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.<sup>7</sup> The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *William Kandel*, 43 ECAB 1011, 1020 (1992).

<sup>6</sup> *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

<sup>7</sup> *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

<sup>8</sup> *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

The issue of whether appellant has continuing disability due to his accepted condition is primarily a medical question. The Board finds that the weight of the medical evidence of record, as represented by the report of Dr. Marble, establishes that appellant's accepted cervicothoracic strain had resolved by January 21, 1998; the date of his examination. The Board concludes that Dr. Marble's opinion was based on a thorough review of the medical records and an accurate history of appellant's employment injury. He found no objectively measurable loss of function and normal strength and neurological findings. Additionally, while Dr. Marble noted that appellant demonstrated some loss of mobility in the thoracic region, he attributed this loss to appellant's dorsal kyphosis, which was unrelated to the June 13, 1997 employment injury. Having found no meaningful explanation for appellant's persistent subjective complaints of pain, Dr. Marble concluded that appellant was immediately capable of resuming full-time, light-duty work.<sup>9</sup> Of particular significance is the fact that appellant's treating physician, Dr. Bailey, expressed agreement with Dr. Marble's opinion. Notwithstanding this concurrence of opinions, appellant continued working on a part-time basis until shortly after his treating physician released him to return to his full-time, regular duties on April 29, 1998. In light of Dr. Bailey's concurrence with Dr. Marble's January 21, 1998 assessment, there is nothing in the record to explain appellant's apparent inability to resume full-time, light-duty work on or about January 21, 1998. Consequently, the Office has met its burden of proof and therefore, appellant is not entitled to compensation beyond January 21, 1998.<sup>10</sup>

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<sup>9</sup> Dr. Marble further recommended initiating a graduated program to return appellant to his full-time, regular duties over a period of four to six weeks. He, however did not indicate that appellant's inability to immediately resume his regular duties was in any way attributable to his work injury.

<sup>10</sup> See *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician's opinion was thorough, well rationalized, and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

The decision of the Office of Workers' Compensation Programs dated July 1, 1998 is, hereby, affirmed.

Dated, Washington, D.C.  
June 10, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member