

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TOMMIE L. KENNEDY, JR. and U.S. POSTAL SERVICE,  
POST OFFICE, Milwaukee, Wis.

*Docket No. 98-2617; Submitted on the Record;  
Issued June 28, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation and medical benefits effective September 3, 1997.

On September 11, 1987 appellant, then a 38-year-old mail carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured his back when he slipped and fell off a porch while moving quickly in wet shoes. The Office accepted the claim for post-traumatic myositis with iliolumbar sprain and placed appellant on the periodic rolls for temporary total disability.<sup>1</sup>

On July 29, 1997 the Office issued a notice of proposed termination of compensation and medical benefits based upon the opinion of appellant's treating physician, Dr. Mark M. Benson,<sup>2</sup> that appellant's employment-related condition had resolved. On September 3, 1997 the Office terminated appellant's compensation and medical benefits effective September 3, 1997 on the basis that the medical evidence of record established that the accepted employment-related condition had resolved. On August 14, 1998 the Office affirmed the September 3, 1997 decision, terminating benefits. The hearing representative noted that subsequent to the termination, appellant submitted the reports of Drs. Michael R. Major<sup>3</sup> and E.B. Zussman, which were insufficient to support that appellant was entitled to compensation as neither physician provided an opinion linking appellant's disability with his accepted employment injury.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the Office

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<sup>1</sup> The employing establishment terminated appellant's employment effective September 26, 1987, due to unsatisfactory work performance during his probationary period.

<sup>2</sup> A Board-certified orthopedic surgeon.

<sup>3</sup> A Board-certified orthopedic surgeon.

hearing representative, dated and finalized on August 14, 1998, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.<sup>4</sup> If the Office, however, meets its burden of proof and properly terminated compensation, the burden for reinstating compensation benefits shifts to appellant.<sup>5</sup>

The Board concurs with the Office's finding that there is no objective evidence that appellant's myositis with iliolumbar sprain continued to disable him after September 3, 1997. In response to an Office letter inquiry as to appellant's work capabilities, Dr. Benson,<sup>6</sup> appellant's attending physician,<sup>7</sup> opined that appellant's iliolumbar sprain due to his employment injury had completely resolved. He also stated that appellant's work restrictions were due to his lumbar disc arthritis which was unrelated to his accepted employment injury and that appellant had no permanent disability due to his accepted employment injury. The Office properly concluded based upon Dr. Benson's opinion and the lack of any medical evidence to support continuing disability, that the Office met its burden to terminate appellant's compensation benefits.

The Board concurs with the hearing representative's determination that appellant did not meet his burden to establish that he had any continuing employment-related disability based the various reports<sup>8</sup> from Dr. Zussman and an April 21, 1998 report, from Dr. Major. In an April 21, 1998 report, Dr. Major diagnosed lumbar spondylosis and opined that it was possible that appellant permanently injured his back in 1987. Dr. Major further stated that he could not "offer a probable causation between his back injury and any current disability" as the injury occurred 10 years ago. Dr. Zussman, in his report dated April 9, 1998, noted that he initially saw appellant on December 11, 1987 at which time he diagnosed iliolumbar sprain.<sup>9</sup> Dr. Zussman indicated that appellant was given physical therapy and that he was seen again on April 11, 1988 at which time the diagnosis was upgraded to chronic low back pain. Neither Dr. Major nor Dr. Zussman have provided a rationalized opinion relating appellant's current condition or disability to his accepted employment injury. Dr. Zussman referred to his treatment of appellant

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<sup>4</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>5</sup> See *Virginia Davis-Banks*, 44 ECAB 222 (1992); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

<sup>6</sup> A Board-certified orthopedic surgeon.

<sup>7</sup> Appellant in a letter dated August 27, 1997 stated that Dr. Benson was not his treating physician. At the hearing, appellant reiterated that Dr. Benson was not his treating physician, but that he saw Dr. Benson yearly for evaluation purposes.

<sup>8</sup> The reports were dated for the years 1987 and 1988 and April 9, 1998.

<sup>9</sup> Appellant also submitted reports from Dr. Zussman dated April 11, 25, May 9, 24 and June 7, 1988. These reports are not relevant to the issue of whether appellant has any current continuing disability due to his employment injury as they are not recent evidence.

in 1987 and 1988 and offered no opinion as to whether appellant's current disability is causally related to his accepted employment injury. Thus, his opinion is insufficient to support causal relationship. Dr. Major's statement that it was possible that appellant permanently injured his back in 1987 is not a firm opinion. The Board has long found that a speculative opinion is of limited medical probative value and, thus, as well as insufficient to meet appellant's burden as the opinion is speculative as to the causal relationship, if any, between appellant's current disability and the accepted employment injury.<sup>10</sup> Therefore, as the evidence submitted at the hearing does not contain a clear rationalized medical opinion supporting causal relationship between appellant's medical condition and the September 11, 1987 employment accident, it is insufficient to overcome the weight of the evidence and the hearing representative correctly found that appellant failed to meet his burden of proof.<sup>11</sup>

The decision of the Office of Workers' Compensation Programs' hearings representative dated August 14, 1998 and the Office decision dated September 3, 1997 are hereby affirmed.

Dated, Washington, D.C.  
June 28, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>10</sup> See *Shirley L. Burreston*, 34 ECAB 1154 (1983).

<sup>11</sup> *Juanita H. Christoph*, 40 ECAB 354 (1988).