

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN CLAXTON and U.S. POSTAL SERVICE,  
POST OFFICE, St. Louis, MO

*Docket No. 99-932; Submitted on the Record;  
Issued October 2, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly rescinded its acceptance that appellant had a herniated disc at L3; and (2) whether the Office properly terminated appellant's compensation benefits effective March 29, 1998.

On July 28, 1975 appellant, then a 42-year-old mailhandler, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that on July 18, 1975 she injured her back at work. The Office accepted that she sustained an employment-related chronic lumbar strain and herniated disc at L3. She has not worked since September 1975. Following further development, by letter dated February 3, 1998, the Office proposed to terminate appellant's compensation benefits, based on the opinions of Dr. James P. Emanuel, who had provided a medical evaluation for the Office and Dr. William P. Thorpe,<sup>1</sup> who had served as a second opinion physician. By letter dated February 13, 1998, appellant disagreed with the proposed termination. In a decision dated March 11, 1998, the Office terminated her medical and compensation benefits, effective March 29, 1998. The Office also rescinded acceptance of the herniated disc at L3.

On March 17, 1998 appellant requested a hearing and submitted a May 6, 1983 report from Dr. Lee T. Ford. At the hearing, held on September 22, 1998, appellant testified regarding her condition and also contended that Drs. Emanuel and Thorpe were prejudiced because they were provided with appellant's medical record. In a December 4, 1998 decision, an Office hearing representative affirmed the prior decision. The instant appeal follows.

The Board finds that the Office properly rescinded the acceptance of appellant's claim.

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<sup>1</sup> Drs. Emanuel and Thorpe are Board-certified orthopedic surgeons. Both were provided with the medical record, a set of questions and a statement of accepted facts.

Once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where the Office later decides that it erroneously accepted a claim. To justify rescission of a claim, the Office must establish that its prior acceptance was erroneous based on new or different evidence of through new legal argument or rationale.<sup>2</sup> Merely reviewing the evidence of record and arriving at a different conclusion is not sufficient for the Office to meet its burden of proof.<sup>3</sup> Furthermore, in situations where there are 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 on a proper factual background, must be given special weight.<sup>4</sup>

The Board notes that it is a long-established Office policy to submit the entire medical record for referral physicians to review.<sup>5</sup> In the present case, in a report dated July 15, 1997, Dr. Emanuel advised that appellant did not sustain a herniated disc at L3-4, stating that in his review of the medical record he found no objective evidence that proved that appellant sustained a herniated disc at L3-4. Dr. Emanuel noted that the computerized tomography myelogram revealed only a slight bulging of the posterior border of L3-4, which he interpreted as a diffuse uniform degenerative change. Dr. Emanuel further stated that a review of Dr. Ford's operative report dated February 9, 1983 indicated findings of slight degeneration and posterior bulging and noted that Dr. Ford did not report a herniated disc. He further stated that x-rays in 1983 suggested a degenerative spondylolisthesis at L4-5 with very mild narrowing at L3-4, very similar to x-rays that were taken in his office at the time of his examination. Dr. Emanuel concluded, "It is my feeling that ... because of [appellant's] obesity [and] the fact that she showed signs of early degenerative changes in her axial spine, that the injury she reported July of 1975 was not sufficient to cause [a] herniated disc in her lumbar spine but may have aggravated some preexistent degenerative changes." In a report dated January 7, 1998, Dr. Thorpe also opined that appellant had not sustained a herniated disc at L3-4, noting x-ray and discography findings. He diagnosed degenerative arthritis of her cervical, thoracic and lumbar spines.

The Board finds that the Office obtained sufficient new evidence and argument to justify the rescission of its acceptance of appellant's claim for a herniated disc at L3-4 based on the opinions of Drs. Emanuel and Thorpe. Because these opinions are well reasoned and based on an accurate medical background, the Board finds that they carry sufficient probative value to justify the Office's decision to rescind its acceptance of a herniated disc at L3-4.

The Board further finds that the Office met its burden to terminate appellant's compensation benefits.

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<sup>2</sup> *Josie P. Waters*, 45 ECAB 513 (1994).

<sup>3</sup> *George E. Reilly*, 44 ECAB 458 (1993).

<sup>4</sup> *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.9(a) (March 1995).

In his July 15, 1997 report, Dr. Emanuel advised that, while appellant's underlying degenerative condition was aggravated by the July 18, 1975 employment injury, this would have resolved within three months and any condition after that time was related to the degenerative condition itself. Dr. Thorpe concurred that appellant's current condition was not caused by the 1975 work injury. The Board finds that the weight of the evidence rests with the comprehensive reports submitted by these physicians and the Office properly found that appellant had no employment-related disability on or after March 29, 1998 which met its burden of proof to terminate her compensation benefits on that date.

The decision of the Office of Workers' Compensation Programs dated December 4, 1998 is hereby affirmed.

Dated, Washington, DC  
October 2, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member