

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PEGGY C. PITT and U.S. POSTAL SERVICE,  
POST OFFICE, Monsey, NY

*Docket No. 00-990; Submitted on the Record;  
Issued January 23, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the grounds that she had no further condition or disability causally related to her July 14, 1997 employment injury; and (2) whether the Office met its burden of proof to terminate appellant's entitlement to medical benefits.

On July 14, 1997 appellant, then a 63-year-old automation specialist, filed a claim for a traumatic injury occurring on that date in the performance of duty. The Office accepted appellant's claim for contusions of the low back, right knee and right foot. Appellant stopped work on July 17, 1997 and returned to limited-duty employment for eight hours per day on August 11, 1997.

Following her injury, appellant received treatment from Dr. Cheryl J. Rubin, a Board-certified orthopedic surgeon.<sup>1</sup> In a report dated February 3, 1998, Dr. Rubin discussed appellant's history of injury and found that she had "symptoms from a post-traumatic contusion and local myositis. [Appellant] may be developing some local scar tissue and even some local painful fatty necrosis as a result of the contusion." She requested physical therapy for appellant, which the Office authorized. Dr. Rubin submitted monthly office visit notes and form reports. In a treatment noted dated August 10, 1998, she discussed appellant's complaints of pain in her back going down her leg. On physical examination, Dr. Rubin noted: "There is tenderness in the lumbar paraspinal region, in the right S1 joint and buttocks. The leg itself shows no significant skin changes at this time, but she is awful tender over the medial side of her knee."

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<sup>1</sup> In form reports dated July 14, 1997, a physician found that appellant had no objective signs of injury, diagnosed a soft tissue injury and found that appellant could resume limited-duty employment. In a report dated July 26, 1998, Dr. James B. Israel, a Board-certified internist, diagnosed a hematoma and found that appellant might not be able to work eight hours per day. He referred appellant to Dr. Rubin.

By letter dated October 14, 1998, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Kenneth Falvo, a Board-certified orthopedic surgeon, for a second opinion evaluation. On December 10, 1998 the Office issued appellant, a proposed notice of termination on the grounds that the weight of the medical evidence, as represented by the report of Dr. Falvo, established that her condition had resolved effective October 22, 1998, the date of Dr. Falvo's report.

In a decision dated January 15, 1999, the Office finalized its termination of appellant's compensation on the grounds that the weight of the medical evidence established that she had no further residuals of her accepted employment injury of contusions of the low back, right knee and right foot. The Office further terminated appellant's authorization for medical benefits on the grounds that she had no continuing condition due to her July 14, 1997 employment injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that the weight of the medical evidence established that she had no further condition or disability causally related to her July 14, 1997 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.<sup>2</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup>

The Board finds that the Office met its burden of proof to terminate appellant's compensation based on its finding that the opinion of the Office referral physician, Dr. Falvo, constituted the weight of the medical evidence. In a report dated October 22, 1998, he discussed appellant's history of injury and reviewed the medical evidence of record, including the results of objective testing. On physical examination, Dr. Falvo listed essentially normal findings. He noted that appellant's attending physician, Dr. Rubin, recommended that she wear a lumbar corset. Dr. Falvo diagnosed a resolved contusion and sprain of the lumbar spine, a healed contusion of the right knee and a healed right foot contusion. He opined that appellant needed no further physical therapy and stated:

"Based on my examination today and based upon my review of the available medical records, it is my opinion that the claimant is able to return to her usual occupation as a mail clerk without restrictions. She should be allowed to wear her lumbar support that she feels provides significant relief of some lower back discomfort."<sup>4</sup>

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<sup>2</sup> *David W. Green*, 43 ECAB 883 (1992).

<sup>3</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>4</sup> While Dr. Falvo indicated that appellant should be allowed to wear a lumbar support when working, it appears that he based this finding on that fact that she obtained relief from her subjective complaints.

In an accompanying work restriction evaluation, Dr. Falvo found that appellant could work for eight hours per day without restrictions.

The Board has carefully reviewed the opinion of Dr. Falvo and finds that it has reliability, probative value and convincing quality with respect to the conclusion reached regarding whether appellant has any residual condition or disability due to her accepted employment injury. He provided a thorough review of the factual and medical background of appellant's claim and accurately summarized the relevant medical evidence. Moreover, Dr. Falvo provided a proper analysis of the factual and medical history and findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.<sup>5</sup>

The remaining evidence of record submitted prior to the Office's termination of compensation is insufficient to establish that appellant had continuing disability due to her employment injury. In response to the Office's notice of proposed termination of benefits, appellant submitted a disability certificate dated January 6, 1999 from Dr. Rubin, who diagnosed a contusion of the back and noted that she should rule out a herniated nucleus pulposus. She found that appellant should work limited duty from January 8 to February 8, 1999. Dr. Rubin, however, did not explain why residuals of appellant's accepted employment injury persisted such that she should work limited-duty employment. Medical reports not containing rationale are entitled to little probative value.<sup>6</sup>

Appellant also submitted a note from Dr. Rubin, in which she indicated that appellant required six weeks of physical therapy two to three times per week. Dr. Rubin did not provide a rationale for her recommendation that appellant receive further physical therapy. Consequently, Dr. Rubin's recommendation is of diminished probative value.<sup>7</sup>

The Board further finds that the Office properly terminated appellant's authorization for medical treatment.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>8</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>9</sup> The Office met this burden through the report of Dr. Falvo, who found that appellant had no residual condition caused by her employment injury.

The decision of the Office of Workers' Compensation Programs dated January 15, 1999 is hereby affirmed.

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<sup>5</sup> See *Melvina Jackson*, 38 ECAB 443 (1987).

<sup>6</sup> *Carolyn F. Allen*, 47 ECAB 240 (1995).

<sup>7</sup> *Id.*

<sup>8</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>9</sup> *Id.*

Dated, Washington, DC  
January 23, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member