

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of SIGMUND BARTOLI and U.S. POSTAL SERVICE,  
POST OFFICE, Southeastern, PA

*Docket No. 01-164; Submitted on the Record;  
Issued October 24, 2001*

---

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective July 3, 2000.

On January 2, 1999 appellant, then a 57-year-old letter carrier, injured his back as a result of his lifting and carrying duties. He stopped work on January 2, 1999 and returned to a light-duty position on August 6, 1999. The Office accepted the claim for lumbosacral strain. Appellant was paid appropriate compensation.

Appellant submitted a magnetic resonance imaging (MRI) scan dated January 11, 1999; and treatment notes from Dr. Gregory J. Lignelli, a Board-certified neurologist, from January 21 to February 15, 1999. The MRI scan revealed disc space degenerative changes throughout the lower lumbar spine with multiple levels of disc bulging and disc space desiccation at L3-4, L4-5 and L5-S1. The treatment notes from Dr. Lignelli noted a history of appellant's condition beginning January 2, 1999 and noted appellant's symptoms of low back pain radiating into the right sciatic distribution. He diagnosed appellant with lumbosacral spine disease with a secondary lumbosacral strain which occurred in the course of his work. Dr. Lignelli indicated that appellant's symptoms would resolve with rest and medication.

Appellant continued submitting treatment notes documenting his symptoms and intermittent disability.

On April 21, 1999 the Office referred appellant for a second opinion to Dr. Donald L. Myers, a Board-certified neurologist.

In a medical report dated July 7, 1999, Dr. Myers reviewed appellant's history of injury and symptoms of right leg pain and back pain. He indicated that appellant was totally disabled from the time of his injury on January 2 to April 1, 1999. Dr. Myers noted that appellant's condition had improved and he was suitable for part-time clerical work.

On September 17, 1999 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated a recurrence on August 31, 1999, noting that his pain had intensified in the lower

back since the returning to employment on August 6, 1999. Appellant stopped work on August 31, 1999 and returned on September 10, 1999 to a light-duty position for four hours per day; and on December 13, 1999 appellant returned to work on light duty for eight hours per day. The Office accepted appellant's claim for recurrence of disability and paid appropriate compensation.

Appellant continued submitting reports from Dr. Lignelli indicating that appellant remained symptomatic. Dr. Lignelli's report's of October 11, 1999 indicated appellant suffered from lumbar spondylitis which was aggravated by walking and carrying a heavy load. He noted appellant's pain had not remitted. Dr. Lignelli further noted appellant experienced degenerative disease of the lumbar spine however, these changes were not caused by appellant's employment, but the pain complex was aggravated by appellant's employment.

On April 14, 2000 the Office referred appellant for a second opinion to Dr. Steven J. Valentino, a Board-certified orthopedic surgeon.

In a report dated May 9, 2000, Dr. Valentino indicated that he reviewed the records provided to him and performed a physical examination of the appellant. He noted a history of appellant's condition. Dr. Valentino noted that upon examination the spine revealed normal spinal curves; cervicothoracic and thoracolumbar flexibility was complete, intact and painless; extension, side bending and rotation were normal; neurological examination was normal; and the lower extremity exam revealed full range of motion of the hips, knees, ankles and feet. Dr. Valentino diagnosed appellant with a resolving work-related low back injury of January 2, 1999. He concluded that appellant had preexistent lumbar degenerative disc changes that were age related and not related to his employment history. Dr. Valentino noted that appellant had fully recovered from his work-related injury of January 2, 1999 without residuals. He noted that appellant had reached maximum medical improvement and indicated that there was no need for ongoing supervised medical care or treatment. Dr. Valentino indicated that appellant's history of lumbar degenerative disc disease was not medically connected to his work injury by direct cause, aggravation, precipitation or acceleration. He further noted that a limited period of sedentary full-time employment would be reasonable to treat appellant's lumbar strain; however, no period of total disability could be supported in this case. Dr. Valentino indicated that there was no evidence that appellant's work-related condition sustained on January 2, 1999 was active or causing objective findings.

On May 26, 2000 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Valentino's May 9, 2000 report established no continuing disability as a result of the January 2, 1999 employment injury.

Appellant submitted a June 19, 2000 report from Dr. Sharon Davidheiser, a Board-certified internist and a treating physician. Dr. Davidheiser noted a six-year history of treating appellant and indicated that in 1999 appellant developed severe back pain. She noted that appellant returned to work light duty and had done well in this capacity. Dr. Davidheiser indicated that if appellant would return to his previous position his back problem would be exacerbated. She noted that appellant could resume full activity in his current position. Dr. Davidheiser further noted that appellant could not perform bending or heavy lifting as this "could exacerbate his current condition." She recommended that appellant work his current capacity with no lifting greater than 20 pounds.

By decision dated July 3, 2000, the Office terminated appellant's benefits effective July 3, 2000 on the grounds the weight of the medical evidence established that appellant had no continuing disability resulting from his January 2, 1999 employment injury.

The Board finds that the Office has met its burden of proof to terminate benefits effective July 3, 2000.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has a disability causally related to his or her 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>2</sup>

The Office accepted appellant's claim for a lumbosacral strain, and paid appropriate compensation. In April 2000 the Office referred appellant for a second opinion to Dr. Valentino. In his report dated May 9, 2000 Dr. Valentino diagnosed appellant with resolving work-related low back injury of January 2, 1999. He concluded that appellant had a preexistent lumbar degenerative disc changes that were age related and not related to his employment history. Dr. Valentino noted that appellant had fully recovered from his work-related injury of January 2, 1999 without residuals. He indicated appellant's history of lumbar degenerative disc disease was not medically connected to his work injury. Dr. Valentino further noted that no period of total disability could be supported in this case. He indicated that there was no evidence that appellant's work-related condition sustained on January 2, 1999 was active or causing objective findings.

Appellant submitted numerous reports from his treating physicians, particularly Dr. Lignelli, whose reports of October 11, 1999 indicated appellant suffered from lumbar spondylitis which was aggravated by walking and carrying a heavy load. He noted appellant's pain had not remitted. The Office never accepted that appellant sustained lumbar spondylitis as a result of his January 2, 1999 work injury and there is no rationalized medical evidence explaining how lumbar spondylitis would have been caused or aggravated by the accepted lumbar strain. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>3</sup> Further, reports from other physicians, prior to the termination of compensation, did not specifically support that appellant had a continuing work-related condition.

The Board finds that the opinion of Dr. Valentino is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and established that appellant's work-related condition has ceased. He indicated that appellant did not suffer residuals from the condition of lumbar strain. Dr. Valentino noted that the condition was resolved.

---

<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *See Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

After issuance of the pretermination notice, appellant submitted a report from Dr. Davidheiser which noted that appellant returned to work light duty after his work injury and had done well in this capacity. She noted that appellant could resume full activity in his current position. Dr. Davidheiser indicated that if appellant would return to his previous position his back problem would be exacerbated. She further noted that appellant could not perform bending or heavy lifting as this “could exacerbate his current condition.” The Board finds that Dr. Davidheiser’s restrictions were prophylactic in nature and that fear of future injury is not compensable under the Act.<sup>4</sup> She did not otherwise explain the medical reasons by which the accepted condition continued. Therefore, this report is insufficient to overcome that of Dr. Valentino, or to create a medical conflict.<sup>5</sup>

The Board finds that Dr. Valentino’s opinion constitutes the weight of the medical evidence and is sufficient to justify the Office’s termination of benefits. For these reasons, the Office met its burden of proof in terminating appellant’s compensation benefits.

For these reasons, the Office met its burden of proof in terminating appellant’s compensation benefits.<sup>6</sup>

The decision of the Office of Workers’ Compensation Programs dated July 3, 2000 is hereby affirmed.

Dated, Washington, DC  
October 24, 2001

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>4</sup> See *Mary Geary*, 43 ECAB 300, 309 (1991); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant’s fear of a recurrence of disability upon return to work is not a basis for compensation).

<sup>5</sup> 5 U.S.C. § 8123(a) provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.

<sup>6</sup> With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c).