United States Department of Labor
Employees' Compensation Appeals Board

FATU FUAUU, Appellant	)	
and	)	**Docket No. 03-1030**
	)	**Issued: January 22, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Tacoma, WA, Employer	)	

Appearances:
Fatu Fuauu, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

In a February 6, 2003 letter received by the Board on March 12, 2003, appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 5, 2002. The record also contains a January 17, 2003 Office decision which is properly within one year of the filing of appellant's appeal. Accordingly, the Board has jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation and medical benefits effective March 5, 2002 on the grounds that his work-related conditions had resolved; and (2) whether appellant has any continuing disability causally related to his accepted employment injury after March 5, 2002.

FACTUAL HISTORY

On July 28, 2001 appellant, then a 43-year-old distribution clerk, filed a notice of traumatic injury alleging that on that day he felt a pain in his right knee and sharp pain in his lower back, which ran down both legs while lifting a bag of mail off the roller table. He stopped work the same day.[1] On October 19, 2001 the Office accepted appellant's claim for a lumbar strain and he received appropriate continuation of pay and compensation.

Appellant was initially treated by Dr. Carlos E. Moravek, Board-certified in physical medicine and rehabilitation, whose impression was multiple levels of lumbar stenosis, lumbar radiculopathy, lumbar disc herniation, lumbar paraspinal muscle strain/sprain and deconditioning. He referred appellant to Dr. John M. Blair, a Board-certified orthopedic surgeon, specializing in the spine, for an evaluation of lumbar stenosis and consideration for possible surgical decompression.

In a September 14, 2001 report, Dr. Blair reported the history of injury and appellant's complaints of recurrent back and bilateral leg pain. He made findings on examination and noted that the May 5, 2000 magnetic resonance imaging (MRI) scan revealed lumbar disc degeneration and spinal stenosis at L4-5. In an October 8, 2001 report, Dr. Blair advised that, although appellant had spinal stenosis on his MRI at the L4-5 level, his primary symptoms were related to lumbar strain, a soft-tissue injury which did not require surgical intervention. Dr. Blair performed a lumbar discography at L3-4 and L4-5 on November 5, 2001.

On November 27, 2001 the Office referred appellant, together with a statement of accepted facts, a set of questions and a copy of the case record, to Dr. Charles J. Larson, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a December 15, 2001 report, Dr. Larson noted appellant's history of injury and treatment and presented examination findings. Diagnoses included, low back pain, with an obscure etiology, but on a more probable than not basis, not primarily related to the July 28, 2001 work incident; temporary aggravation of preexisting low back pain with spinal strain, resolved and history of lumbar spinal stenosis, preexisting and not permanently aggravated by the events of July 28, 2001. Dr. Larson opined that appellant did not continue to suffer residuals from the accepted condition of lumbar strain. He stated that, by history alone, it would appear that appellant has degenerative spinal stenosis, but there were no x-rays or other confirmatory studies to confirm this opinion. Dr. Larson stated that appellant has a preexisting condition with a long history of back problems which might have temporarily flared up and been aggravated by the July 28, 2001 incident, but had a subsequent return to his preexisting condition. He opined that a chronic recurrent lumbosacral strain associated with an acute event would be expected to return to its preexisting condition in a period of six weeks. Dr. Larson further opined that appellant's prognosis was excellent, no additional medical care was required and any physical restrictions would be attributed to appellant's preexisting condition which was not permanently aggravated by the July 28, 2001 work incident. In a Form OWCP-5c dated December 15, 2001, he released appellant to full-time work without restrictions.

[1] The record reflects that appellant returned to work on August 10, 2001, but was unable to perform his duty. He returned to Dr. Moravek the same day and was provided with a total work release until his appointment with Dr. Blair. Appellant has not returned to work since his September 14, 2001 appointment with Dr. Blair.

On January 10, 2002 Dr. Blair indicated that he agreed with the findings and conclusions set forth in the second opinion report of Dr. Larson dated December 15, 2001. In a January 4, 2002 treatment note, he indicated that appellant's work release was extended to February 15, 2002 to allow for the completion of physical therapy.

On January 29, 2002 the Office issued a proposed notice of termination of compensation. The Office advised appellant that his compensation for wage-loss and medical benefits was being terminated because he no longer had any continuing injury-related disability from the lumbar strain and that the preexisting condition of degenerative spinal stenosis had returned to the normal progression of the disease. The Office indicated that the weight of the medical evidence, as demonstrated by the opinion of Dr. Larson, showed that appellant's work injury had resolved. He was given 30 days to submit additional evidence or argument.

By letter dated February 11, 2002, appellant expressed disagreement with the proposed termination of compensation. He stated that the July 28, 2001 accident aggravated the pain in his right knee as well as his back. A January 31, 2002 electromyography (EMG)/nerve conduction study (NCS) of both lower extremities revealed multiple posterior rami abnormalities, suggestive of severe degenerative disease with no signs of peripheral polyneuropathy. A February 5, 2003 progress report from Dr. Rostom D. Rivera, a Board-certified family practitioner, and a February 8, 2002 progress report from Dr. Blair revealed that appellant continued to suffer from ongoing lower back and leg pain. In a February 14, 2002 note, Dr. Blair ordered appellant off work until March 15, 2002 for his back injury and he underwent physical therapy.

By decision dated March 5, 2002, the Office finalized its proposed termination of benefits. The Office indicated that the medical evidence of record, as indicated by Dr. Larson's opinion, supported that the lumbar strain experienced on July 28, 2001 was a temporary aggravation of a preexisting degenerative spinal stenosis and that the accepted condition of lumbar strain had resolved.

The record indicates that Dr. Blair discharged appellant from rehabilitation on March 5, 2002 and released him to limited-duty work on April 22, 2002. Appellant returned to limited duty on April 25, 2002, worked about four hours and filed a recurrence claim on April 30, 2002 stating that he was unable to work.[2]

In a March 28, 2002 letter, appellant disagreed with the Office's decision and requested a hearing, which took place on October 21, 2002. Additional evidence was submitted. An April 4, 2002 MRI scan report noted an annular tear along with disc protrusion at L4-5 causing moderate central canal stenosis. An April 26, 2002 urgent care report contained an assessment of an acute exacerbation of chronic lower back pain. The report noted that appellant had returned to his usual work duties and that there was no recent trauma, falls or lifting injuries. In reports dated April 16 and 30, 2002, Dr. Rivera diagnosed lumbar radiculopathy, lumbar disc herniation at L4-5 and a lumbar strain/sprain due to a recent aggravation after returning to work. In a May 8, 2002 attending physician's report, Form CA-20 and in a June 17, 2002 report, Dr. Rivera noted that appellant was injured on April 25, 2002 while tossing mail and that he had a lifting injury on

[2] With regard to appellant's recurrence claim, there is no final decision issued by the Office for the Board to review. Therefore, the Board will not address this issue on appeal. 20 C.F.R. § 501.2(c).

July 28, 2001 at work. Dr. Rivera diagnosed a strain/sprain of the lower back and herniation of the L4-5 disc as being caused or aggravated by the employment injury. Dr. Rivera further stated that it was not clear when appellant could return to work. It was noted that the employing establishment had sent him home on May 2, 2002 as there was no work available for his disabilities and physical limitations. The June 17, 2002 report further noted that appellant was scheduled for back surgery in August 2002. In a separate June 17, 2002 progress report, he diagnosed lumbosacral strain, degenerative disease lower back, arthritic shoulders and carpal tunnel syndrome (CTS). In an August 25, 2002 note, Dr. Rivera advised that appellant was unemployable because of degenerative disc disease with unreadable and bilateral CTS. An employing establishment physician advised in examinations of April 22 and September 26, 2002 that appellant had lumbar radiculopathy, lumbar disc herniation, lumbar sacral sprain/strain, severe degenerative disc disease of the back, severe arthritis of both knees and bilateral CTS. Copies of physical therapy and treatment notes were also submitted.

By decision dated January 17, 2003, an Office hearing representative affirmed the March 5, 2002 decision. The hearing representative indicated that Dr. Larson's opinion constituted the weight of the medical evidence.

LEGAL PRECEDENT- Issue 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[3] 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 disability has ceased or that it is no longer related to the employment.[4] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[5] 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.[6]

ANALYSIS- Issue 1

In his report dated December 15, 2001, Dr. Larson, who provided a second opinion examination for the Office, noted his findings on examination and his review of the record and advised that appellant had no continuing disability from his accepted employment injury, was capable of performing his usual employment and that any physical restrictions would be attributed to appellant's preexisting condition of lumbar spinal stenosis which appeared to be degenerative and not permanently aggravated by the event of July 28, 2001. He specifically advised that a chronic recurrent lumbosacral strain associated with an acute event would be expected to return to its preexisting condition in a period of six weeks. Dr. Larson further stated that appellant had a long history of back problems which might have temporarily flared up and

[3] *Lawrence D. Price,* 47 ECAB 120 (1995).

[4] *Id.; see also Patricia A. Keller,* 45 ECAB 278 (1993).

[5] *Furman G. Peake,* 41 ECAB 361, 364 (1990).

[6] *Id.*

been aggravated by the July 28, 2001 incident, but that he subsequently returned to his preexisting condition of lumbar spinal stenosis. There is no medical evidence contradicting Dr. Larson's opinion. In fact, on January 10, 2002 Dr. Blair, appellant's attending physician, indicated that he agreed with Dr. Larson's findings and conclusions. The contemporaneous medical evidence consisting of the EMG/NCS and reports from Drs. Rivera and Blair fails to offer an opinion on the cause of appellant's ongoing pain. Furthermore, neither physician provides a discussion regarding the significance of the January 31, 2002 EMG/NCS.

The Board thus finds that the weight of the medical opinion evidence is represented by Dr. Larson, who submitted a thorough medical opinion based upon a complete factual and medical history.[7] His detailed and well-reasoned report established that appellant ceased to have any disability or residuals causally related to his accepted employment injury. Accordingly, the Office properly terminated compensation and medical benefits effective March 5, 2002.

LEGAL PRECEDENT- Issue 2

If the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he had disability causally related to his accepted employment injury.[8] To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes, a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. [9]

ANALYSIS- Issue 2

The Board further finds that appellant has not established that he has any continuing disability causally related to his accepted employment injury after March 5, 2002. In his May 8, 2002 attending physician's report, Dr. Rivera indicated that appellant suffered a new injury on April 25, 2002 and noted that the employing establishment sent him home on May 2, 2002 as there was no work available for his disabilities and physical limitations. His May 8, 2002 report and subsequent reports presumes that appellant is disabled as a result of the April 25, 2002 injury and is thus, irrelevant to the present claim. Furthermore, no physician rendered an opinion as to the cause of the conditions found on the April 4, 2002 MRI scan report,

[7] *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[8] *George Servetas*, 43 ECAB 424, 430 (1992).

[9] *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

which involved an annular tear and disc protrusion at L4-5 causing moderate central canal stenosis or mentioned such report. As such, the Board finds that the evidence submitted is insufficient to meet appellant's burden of proof to establish that he had any disability subsequent to March 5, 2002 causally related to the July 28, 2001 employment injury. Appellant has not provided the necessary rationalized medical opinion to establish that he has a continuing condition or disability causally related to his employment. As he has not submitted such evidence, appellant has failed to meet his burden of proof and the Office properly denied appellant's claim for continuing disability and medical residuals after March 5, 2002.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits on March 5, 2002. The Board further finds that appellant has failed to establish that he has a continuing condition or disability causally related to his employment injury of July 28, 2001 after March 5, 2002.

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member