

FACTUAL HISTORY

The Office accepted that on or before June 26, 2002, appellant, then a 49-year-old letter carrier, sustained a lumbar sprain in the performance of duty due to repetitive twisting and bending.

Appellant stopped work on July 20, 2002 and returned to work in a light-duty capacity on November 2, 2002. As the employing establishment did not have work available within appellant's restrictions, he stopped work on March 30, 2003 and did not return. Appellant received compensation on the daily rolls from September 21, 2002 through January 2004.

Appellant first sought treatment from Dr. Vijay R. Keerikatte, a Board-certified internist, who held appellant off work July 10 to 19, 2002. Appellant was then followed by Dr. Warren Yu, an attending Board-certified orthopedic surgeon. In a July 16, 2002 report, Dr. Yu noted a history of injury and treatment. On examination, Dr. Yu found moderate right-sided lumbosacral tenderness and decreased sensation "on the lateral aspect of his right leg and foot into the dorsum." He diagnosed a Grade 1 L4-5 spondylolisthesis and mild stenosis causing right L5 radiculopathy. Dr. Yu held appellant off work from July 22 to November 1, 2002 due to continued lumbar pain with right-sided radiculopathy, then released him to restricted duty. In January 7, 2003 reports, Dr. Yu diagnosed an L4-5 disc protrusion and renewed appellant's work restrictions.¹ In March 27, 2003 reports, Dr. Yu noted a worsening of appellant's symptoms such that he could not tolerate more than two hours of standing or walking. On examination, Dr. Yu found a limited range of lumbar motion and a "slight palpable step-off in the lower lumbosacral spine." He diagnosed a Grade 1 anterior listhesis at L4-5 and recommended surgical stabilization. Appellant requested that the Office authorize this procedure.

To obtain additional information regarding the nature and extent of appellant's work-related condition, the Office referred him, a statement of accepted facts and the medical record, to Dr. Robert F. Draper, a Board-certified orthopedic surgeon, for a second opinion examination. In a May 28, 2003 report, Dr. Draper provided a history of injury and treatment and reviewed the medical record. On examination, Dr. Draper found no abnormality other than restricted lumbar motion. Dr. Draper diagnosed a lumbar strain, preexisting degenerative lumbar disc disease from L4-S1, an L4-5 disc bulge, "[p]reexisting partial lumbarization of the first sacral segment" and "[p]reexisting spondylolisthesis at L4-5 associated with degenerative changes." He explained that only the lumbar strain was work related and that the other spinal conditions were due to aging. However, Dr. Draper opined that the degenerative conditions "may have been exacerbated by lifting" and the accepted lumbar sprain. He noted that the degenerative conditions and spondylolisthesis "may have been slightly aggravated by the on-the-job factors" and that the aggravation was "continuing but should be temporary," ceasing "on or about December 31, 2003." Dr. Draper also opined that appellant did not require an L4-5 decompression and fusion and that the procedure would be related only to the preexisting conditions. He found appellant capable of full-time duty with lifting limited to 40 pounds.

¹ In a January 31, 2003 report, Dr. Philip L. Schneider, an attending Board-certified orthopedic surgeon, diagnosed an L4-5 spondylolisthesis and lateral recess stenosis. Dr. Schneider recommended surgical decompression and fusion.

By decision dated June 17, 2003, the Office denied authorization of the requested decompression and fusion at L4-5, based on Dr. Draper's opinion that the procedure was related only to the preexisting spinal conditions.

On July 3, 2003 appellant requested a review of the written record, contending that his L4-5 spondylolisthesis was work related. He submitted additional reports from Dr. Yu. In June 24 and July 24, 2003 reports, Dr. Yu found appellant's pain and sensory symptoms unchanged and prescribed work restrictions. He noted a worsening of appellant's symptoms as of October 17, 2003 and recommended additional restrictions.

By notice dated December 30, 2003, the Office advised appellant that it proposed to terminate his wage loss and medical compensation benefits on the grounds that his work-related condition had ceased, based on Dr. Draper's opinion as the weight of the medical evidence. The Office found that Dr. Draper's report established that his accepted medical condition of lumbar strain had ceased, or was no longer injury related, because he was currently being treated for preexisting L4-5 spondylolisthesis not related to his work injury.

In response, appellant submitted a December 9, 2003 letter from Dr. Yu, stating that he was unable to perform restricted duty as a casing carrier. He stated, "[Appellant] was not able to perform the lifting, carrying, or twisting necessary for the job and developed back pain shortly after he began working." Dr. Yu opined that the casing carrier position was unsuitable for his restrictions and current spinal pathology.

By decision dated February 4, 2004, the Office terminated appellant's compensation benefits effective January 30, 2004 on the grounds that the accepted condition lumbar strain had ceased. The Office found that appellant did not submit additional evidence following the December 30, 2003 notice of proposed termination.

Appellant requested a review of the written record in a March 2, 2004 letter. He contended that he continued to have residuals of the accepted lumbar strain. Appellant submitted additional evidence.² In January 15, 2004 reports, Dr. Yu noted appellant's continuing "symptoms of back pain and claudication" and renewed previous work restrictions.

In a January 27, 2004 report, Dr. Yu noted that after an accepted 1996 quadriceps tear, appellant experienced intermittent back pain that resolved without treatment. He developed persistent "back pain and right leg numbness into the foot in 2001 and 2002," aggravated by work activities. Radiographic studies on July 16, 2002 demonstrated degenerative dessication at L4-5 with anterior spondylolisthesis and moderate disc protrusion, worse on the right. Conservative measures failed to relieve his symptoms. Dr. Yu opined that, based on appellant's history and medical records, "his spondylolisthesis and degeneration of the L4-5 segment and current symptoms [were] causally related to his job duties, which include lifting, twisting, bending and long-term standing for periods of eight hours a day."

² Appellant also submitted an April 1, 2004 letter from Dr. Yu, duplicating statements made in his December 9, 2003 letter. He also submitted a March 5, 2004 light-duty job offer from the employing establishment.

By decision dated and finalized June 15, 2004, the Office affirmed the February 4, 2004 decision, finding that Dr. Draper's opinion was sufficient to establish that appellant's work-related condition and any aggravation of his preexisting conditions had ceased. The hearing representative found, however, that Dr. Yu's January 27, 2004 opinion was sufficient to create a conflict of medical opinion with Dr. Draper regarding whether any work-related aggravation of his previous conditions had ceased. The hearing representative remanded the case to the Office for referral to an impartial medical examiner to resolve the conflict of medical opinion.

On June 10, 2004 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Herbert H. Joseph, a Board-certified orthopedic surgeon, for an impartial medical examination. In an August 12, 2004 report, Dr. Joseph provided a history of injury and treatment and reviewed the medical record. On examination, Dr. Joseph found tenderness to palpation throughout the lumbar area and a mildly positive Patrick's sign. He diagnosed a low back strain and a spondylolisthesis, L4 on L5. Dr. Joseph opined that appellant had no objective residuals of the accepted lumbar strain. He commented that the L4-5 spondylolisthesis preexisted the accepted lumbar strain. Dr. Joseph opined that appellant required no further medical treatment and that he was capable of performing full-duty work.

By decision dated September 24, 2004, the Office denied appellant's claim for continuing wage-loss compensation and medical benefits on the grounds that the "weight of the medical evidence of record establishe[d] that [he had] no continuing employment-related condition or disability as a result of the injury of June 26, 2002." The Office found that Dr. Joseph's medical opinion represented the weight of medical evidence with respect to continuing injury-related disability.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.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

³ *Bernadine P. Taylor*, 54 ECAB ____ (Docket No. 02-263, issued January 15, 2003).

⁴ *Id.*

⁵ *Roger G. Payne*, 55 ECAB ____ (Docket No. 03-1719, issued May 7, 2004); *Furman G. Peake*, 41 ECAB 361 (1990).

⁶ *Pamela K. Guesford*, 53 ECAB 726 (2002).

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a lumbar sprain on or before June 26, 2002. Appellant was followed by Dr. Yu, an attending Board-certified orthopedic surgeon. He submitted reports from July 2002 through March 2003 diagnosing lumbar pain with right-sided radiculopathy due to degenerative disc disease with an L4-5 spondylolisthesis.

The Office referred appellant to Dr. Draper, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Draper submitted a May 28, 2003 report finding that lifting, the accepted lumbar sprain and other on-the-job factors had aggravated appellant's preexisting degenerative lumbar conditions. He specified that the aggravation was "continuing but should be temporary," ceasing on or about December 31, 2003. Thus, Dr. Draper opined that the accepted lumbar sprain precipitated a continuing aggravation of appellant's preexisting degenerative lumbar disease. He stated that the aggravation had not ceased and that he could only provide an estimate as to when it would.

Despite Dr. Draper's opinion that the residuals of the accepted lumbar sprain had not ceased, the Office terminated appellant's wage-loss and medical compensation benefits by decision dated February 4, 2004, finding that appellant's accepted lumbar strain condition had resolved. In its June 15, 2004 decision, the Office affirmed the February 4, 2004 decision, again finding that Dr. Draper's opinion was sufficient to establish that appellant's work-related condition and any aggravation of his preexisting conditions had ceased. Dr. Draper did not find that the accepted lumbar sprain had resolved, and stated that it precipitated an ongoing aggravation of appellant's preexisting lumbar degenerative disc disease that had not yet resolved. Thus, the Board finds that the Office's February 4, 2004 termination was in error, as Dr. Draper's report did not establish that all work-related residuals of the accepted lumbar sprain had ceased. Therefore, the Office's June 15, 2004 decision is reversed and the case remanded to the Office for appropriate reinstatement of appellant's wage-loss and medical benefits.

As the Office's June 15, 2004 decision is reversed, the second issue regarding whether appellant established a continuing disability following the termination of his benefits is moot.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 24, 2004 is reversed. The Office's June 15, 2004 decision is set aside as moot.

Issued: October 25, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board