

**United States Department of Labor
Employees' Compensation Appeals Board**

M.O., Appellant

and

**U.S. POSTAL SERVICE,
Kalamazoo, MI, Employer**

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**Docket No. 06-1904
Issued: January 16, 2007**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2006 appellant filed a timely appeal from the July 21, 2006 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the termination of her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether the Office properly terminated appellant's compensation and medical benefits effective October 17, 2005.

FACTUAL HISTORY

On May 21, 2004 appellant, then a 44-year-old letter carrier, was injured when she tripped and fell on stairs while in the performance of duty. She was released to light duty for four hours a day on May 24, 2004 by her physician, Dr. Ann M. Auburn, Board-certified in family medicine. On July 23, 2004 the Office accepted the claim for cervical and lumbar sprains. It paid appellant appropriate compensation for injury-related disability for work.

Appellant's physician, Dr. Auburn, continued to treat appellant and advised that she could only work limited duty.

By letter dated October 14, 2004, the Office referred appellant for a second opinion, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Charles Xeller, a Board-certified orthopedic surgeon.

In a report dated December 3, 2004, Dr. Xeller reviewed appellant's history of injury and treatment and conducted a physical examination. He reported that she continued to have residual low back spasms stemming from the accepted work injury. Dr. Xeller concluded that appellant was able to return to her full duties within four weeks.

In a December 9, 2004 report, Dr. Auburn opined that appellant was unable to work at limited duty for more than six hours a day. In a separate report dated December 9, 2004, she opined that appellant would reach maximum medical improvement and return to an eight-hour day by May 2005.

By letter dated January 4, 2005, the Office provided Dr. Auburn with a copy of the report of Dr. Xeller and requested her opinion regarding appellant's ability to return to full-time work. In a January 15, 2005 report, Dr. Auburn reviewed Dr. Xeller's report. She opined that appellant had continued problems in the low back and advised continuing with her current restrictions and a trial period of work for seven hours a day.

On April 6, 2005 Dr. Auburn released appellant to limited duty for eight hours a day.

On May 11, 2005 the Office referred appellant, together with a statement of accepted facts and the medical record to Dr. Perry Greene, a Board-certified orthopedic surgeon, for an impartial medical evaluation. It found a conflict in medical opinion between Dr. Auburn and Dr. Xeller regarding appellant's accepted condition and work restrictions.¹

In a June 14, 2005 report, Dr. Greene addressed appellant's history of injury and treatment. He concluded that her low back pain was a preexisting condition and not due to the May 21, 2004 work injury. Dr. Greene reported that appellant had no residuals from the work injury.

By letter dated August 2, 2005, the Office requested that Dr. Greene provide his opinion with regard to whether appellant continued to experience residuals of her May 21, 2004 employment injury and if so whether any of the accepted conditions had resolved. It requested that he outline any objective findings, if present. The Office also requested that Dr. Greene provide his opinion regarding whether appellant was precluded from performing her date-of-injury duties as a letter carrier and whether she required any work restrictions or continuing medical treatment.

In a supplemental report dated August 16, 2005, Dr. Greene noted that appellant's history of back problems began in May 2000 and that she was in a "state of disability to a greater or

¹ In a May 26, 2005 letter, the Office advised appellant that the examination was rescheduled.

lesser degree since March of 1990.” He advised that her problems predated the May 21, 2004 employment incident and had not resolved. Since appellant was symptomatic prior to her May 21, 2004 employment injury, Dr. Greene opined that the May 21, 2004 employment injury did not cause any further injuries or progression of her underlying symptoms. He stated that appellant no longer had residuals from the accepted employment injury and that the accepted sprains had resolved. Dr. Greene found that there was “no reason why she cannot work eight hours a day.” He opined that any restrictions would be temporary and recommended work hardening as he did not believe that appellant could lift excessive weights such as 70 pounds or walk 14 miles a day. Furthermore, he advised that no further medical treatment was warranted in relation to the employment injury.

On August 31, 2005 the Office issued a notice of proposed termination of compensation on the basis that the weight of the medical evidence, as represented by the report of Dr. Greene, the impartial medical examiner, established that her residuals of the work injury of May 21, 2004 had ceased. Appellant was allotted 30 days to respond to the Office’s proposed decision.

The Office received progress notes from Dr. Auburn who advised that appellant could only perform limited-duty work for eight hours a day.

By decision dated October 17, 2005, the Office terminated appellant’s compensation benefits effective that same date. She was advised that the supplemental medical evidence was insufficient to overcome the weight of medical evidence afforded to the impartial medical examiner.

On November 9, 2005 appellant, through counsel, requested a hearing, which was held on April 25, 2006. On May 22, 2006 the employing establishment submitted comments regarding the hearing.

By decision dated July 21, 2006, the Office hearing representative affirmed the October 17, 2005 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² 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.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ To terminate authorization for medical treatment,

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

The Federal Employees' Compensation Act⁶ provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁷ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

ANALYSIS

The Office found a conflict of medical opinion arose regarding the nature and extent of continuing residuals of the May 21, 2004 work injury. Dr. Auburn, appellant's physician Board-certified in family medicine, stated that appellant required work restrictions due to the accepted injury. Dr. Xeller, a Board-certified orthopedic surgeon and second opinion physician, opined that she could return to full-duty work.⁹ Therefore, the Office properly referred appellant to Dr. Greene, an impartial medical examiner Board-certified in orthopedic surgery.

The Board finds that Dr. Greene's June 14 and August 16, 2005 reports are sufficiently well rationalized and based upon a proper factual background such that his opinion is entitled to special weight in establishing that the residuals of appellant's employment injury had ceased. Dr. Greene provided an extensive review of appellant's medical history, reported examination findings and determined that there were no objective findings to correspond with appellant's subjective complaints. He found no objective evidence of residuals related to the accepted strains of the cervical and lumbar spine. Dr. Greene answered questions posed by the Office and reiterated that, while appellant had complaints, these were related to her preexisting back condition, which predated her accepted employment injury. He advised that the injury did not cause any further injuries or progression of her underlying symptoms. Dr. Greene's examination and review of medical records provided no objective basis on which to attribute appellant's ongoing symptoms or disability to the accepted employment injury. The Board finds that the opinion of the impartial medical examiner is well rationalized and constitutes the weight of medical opinion.

⁵ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).

⁷ 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁸ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁹ As previously noted, appellant's treating physician, reported that she could only work limited duty and that her disability was the direct result of her May 21, 2004 employment injury, while Dr. Xeller, the second opinion physician, indicated that appellant could return to her full duties four weeks from December 3, 2004.

When an impartial medical specialist is asked to resolve a conflict in medical evidence, his opinion, if sufficiently well rationalized and based on a proper factual background, will be given special weight. The Board finds that Dr. Greene's report represents the weight of the medical evidence and establishes that there are no ongoing residuals of the May 21, 2004 work injury.

Subsequent to the evaluation by Dr. Greene and prior to the termination of benefits, the Office received additional progress reports from Dr. Auburn. Dr. Auburn merely reiterated her previously stated findings and conclusions regarding appellant's condition. As she had been on one side of the conflict in the medical opinion that the impartial specialist resolved, her additional reports are insufficient to overcome the special weight accorded to Dr. Greene or to create a new medical conflict.¹⁰

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective October 17, 2005.

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2006 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Issued: January 16, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *Barbara J. Warren*, 51 ECAB 413 (2000); *Alice J. Tysinger*, 51 ECAB 638 (2000).