

)	
M.K., Appellant)	
)	
and)	Docket No. 07-1171
)	Issued: October 17, 2007
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, Employer)	
)	

Case Submitted on the Record

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On March 27, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated March 8, 2007 terminating his compensation and medical benefits effective March 17, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of this claim.

The issue is whether the Office met its burden of proof to terminate appellant's compensation and medical benefits as of March 17, 2007.

On July 1, 2003 appellant, then a 42-year-old clerk, filed an occupational disease claim alleging a musculoskeletal strain as a result of his federal employment. By letter dated October 7, 2003, the Office accepted appellant's claim for musculoskeletal strain. Appropriate compensation and medical benefits were paid. Appellant stopped work on June 24, 2003 and returned to restricted duty on July 1, 2003.

In a medical report dated June 17, 2005, Dr. Alexander W. Kmicikewyck, appellant's treating Board-certified internist, noted that appellant suffered a severe musculoskeletal strain on June 23, 2003. He noted, "[r]epetitive motion and use of limbs, namely, back, chest, shoulders, arms, elbows, wrists and knuckles combined with constant stress may result in nonalignment of bone structure. The repeated act of primarily throwing letters all day is the direct cause of the injury and chronic condition." Dr. Kmicikewyck noted that appellant experienced permanent injury to the left knee. He noted: "Pain and tightness to the chest with raised areas on the chest indicate a severe musculoskeletal strain resulting from repetitive motion of the limbs, back, chest, shoulders, elbows and wrist resulting in this chronic condition with chronic swelling." Dr. Kmicikewyck noted that a magnetic resonance imaging (MRI) scan of May 20, 2005 revealed a C6-7 small broad-based central protrusion and decreased signal intensity of the intervertebral disc from desiccation. He noted no significant osteophyte formation and no central or formal stenosis.

On May 10, 2006 the Office referred appellant to Dr. Steven J. Mash, a Board-certified orthopedic surgeon, for a second opinion. In a report dated June 7, 2006, Dr. Mash noted that appellant had multiple musculoskeletal complaints, none of which were explained by objective findings or underlying diagnostic testing. He did not believe that his current conditions were residuals of injuries sustained from his accepted work injury. Dr. Kmicikewyck opined that appellant could return to regular-duty work without restrictions.

In a June 19, 2006 medical report, Dr. Kmicikewyck noted that appellant continued to have difficulty in the upper body and was limited in his ability to work. Appellant had tightness of the muscles, pain, inflammation of joints and inability to sleep due to pain and swelling. Dr. Kmicikewyck noted that appellant's symptoms would be reduced commensurate with reduction in work. He stated that a recurrence of injury was inevitable if appellant was placed on full duties and forced to work all weekends. Dr. Kmicikewyck noted that appellant had temporary and permanent partial disability for the chest and body due to his musculoskeletal strain and knee injuries. He also noted a broad-band small disc protrusion and decreased signal intensity of the intervertebral disc from desiccation. Dr. Kmicikewyck noted no significant osteophyte formation and no central or formal stenosis.

The Office found a conflict between Dr. Kmicikewyck and Dr. Mash with regard to whether appellant had any residuals from his accepted injury. By letter dated July 13, 2006, the Office referred appellant to Dr. Mukund Komanduri, a Board-certified orthopedic surgeon, for an impartial medical examination. In a medical report dated August 29, 2006, Dr. Komanduri opined that appellant had no identifiable musculoskeletal deficits. He stated:

"At this time, [appellant] has no medical evidence of any ongoing injury of any kind. No work restrictions are appropriate and he should be released to work[-]
]full duty without restriction at this time."

Dr. Komanduri noted that, although multiple current diagnoses of alleged shoulder pain, neck pain, knee pain and chest wall pain were made, these were primarily based on appellant's subjective complaints. He noted no objective findings and opined that appellant had no ongoing injury of any kind. Dr. Komanduri concluded that appellant did not require further work restrictions and was released to work full time without restriction. He found that, due to

malinger, no restrictions were considered reasonable or necessary. Dr. Komanduri opined that appellant malingered during his functional capacity evaluation and fabricated his capacity for work. He noted that Dr. Kmicikewyck's records "simply overstate subjective pain complaints and try to formulate these subjective findings as actual diagnoses." Dr. Komanduri noted that, even if appellant had suffered from all the soft tissue strains that he described, muscular strains were time limited. He stated, "[appellant's] failure to improve, even in a small amount, helps to confirm that his complaints are nonorganic and potentially fabricated."

In a November 17, 2006 report, Dr. Kmicikewyck indicated that appellant continued to have difficulty in his upper body and was limited in his ability to work. He found appellant in pain with headaches, inability to sleep and tightness in his chest. Dr. Kmicikewyck noted severe musculoskeletal strain from repetitive motion of the limbs, back, chest, shoulders, elbows, wrist, inflammation with a chronic condition and chronic swelling. He listed appellant's diagnosis and musculoskeletal strain syndrome with combined fibromyalgia and opined that appellant was totally disabled for work.

On February 1, 2007 the Office proposed terminating appellant's compensation and medical benefits based on the report of the impartial medical examiner. No additional evidence was timely submitted. By decision dated March 8, 2007, the Office terminated appellant's compensation and medical benefits effective March 17, 2007.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing medical opinion evidence based on a proper factual and medical background.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁴ 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.⁵

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving

¹ *Barry Neutach*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

² *Id.*

³ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁶

ANALYSIS

In the instant case, the Office accepted appellant's claim for musculoskeletal strain. Dr. Kmicikewyck noted in a June 17, 2005 report that appellant suffered a severe musculoskeletal strain as a result of repeated activities, such as throwing letters all day. Appellant continued to have difficulty in his upper body and was limited in his ability to work. Dr. Mash, the second opinion physician, opined in a June 7, 2006 report that appellant did not have any residuals from his accepted work injury. He found that he could return to regular-duty work without restrictions. In a report dated June 19, 2006, Dr. Kmicikewyck reiterated that appellant continued to have difficulty in his upper body and was unable to work. In order to resolve the conflict between Dr. Kmicikewyck and Dr. Mash, the Office referred appellant to Dr. Komanduri for an impartial medical examination. In a report dated August 29, 2006, Dr. Komanduri opined that appellant had no medical evidence of any ongoing injury of any kind and that no work restrictions were appropriate and that there was no evidence of temporary total disability.

The Board finds that the Office properly relied on the impartial medical examiner's report in determining that appellant's accepted employment injury had resolved. The opinion of Dr. Komanduri was sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but he reviewed his medical records. Dr. Komanduri noted that no objective findings supported appellant's subjective complaints. He stated that appellant was malingering and noted that Dr. Kmicikewyck overstated appellant's subjective complaints. Dr. Komanduri further indicated that, even if appellant had suffered all the soft tissue strains that had been diagnosed, muscular strains were time limited and that appellant's failure to improve, even in a small amount, confirmed that his complaints were nonorganic and potentially fabricated. Accordingly, as the opinion of an impartial medical specialist is sufficiently well rationalized and based on a proper factual background, it must be given special weight.⁷

The November 17, 2006 report of Dr. Kmicikewyck, submitted following the impartial medical specialist's examination, reiterated his opinion which created the conflict in medical opinion. Thus, it is insufficient to overcome the special weight of Dr. Komanduri's report or to create a new conflict.⁸

Appellant submitted a lengthy letter with his appeal. Initially, he requested to consolidate this case with a claim for a left knee injury filed on February 13, 2003. The Board notes that on September 11, 2007 it issued a decision affirming the Office's decision denying merit review in that case.⁹ As that case involved an injury to appellant's left knee and this case involved a

⁶ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁷ *Id.*

⁸ *Howard Y. Miyashiro*, 43 ECAB 1101 (1992).

⁹ *M.K.*, Docket No. 07-1084 (issued September 11, 2007).

musculoskeletal strain, the cases involve separate injuries and are appropriately addressed in separate decisions. The Board notes that its jurisdiction is limited to final decisions issued within one year of the date of appellant's filing of his appeal.¹⁰ Therefore, the sole issue on appeal is whether the Office properly terminated appellant's compensation and medical benefits effective March 17, 2001. Therefore, the majority of his contentions on appeal are not relevant to the issue currently before the Board.¹¹ Appellant's contentions that the impartial medical examiner failed to consider certain medical reports are without merit. He contends that Dr. Komanduri failed to consider certain emergency room records. However, the Board notes that the Office accepted appellant's claim for musculoskeletal strain and the question to be addressed was whether his accepted strain had resolved. As noted, the impartial medical examiner found that appellant no longer had any continuing residuals from his accepted musculoskeletal strain. The Office properly accorded Dr. Komanduri's report special weight and terminated appellant's benefits as of March 17, 2007.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation and medical benefits effective March 17, 2007.

¹⁰ 20 C.F.R. § 501.3(d)(2).

¹¹ Appellant contends that his case should have been accepted for fibromyalgia and for aggravation of his left knee injury, that the Office did not properly spend approved funds on his vocational rehabilitation, that the employing establishment failed to follow his work restrictions, that the employing establishment caused stress by making appellant work on weekends which resulted in nonalignment of bone structure and that the Office did not allow him to bid on a limited-duty position.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 8, 2007 is affirmed.

Issued: October 17, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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