

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY A. GUINN and U.S. POSTAL SERVICE,  
POST OFFICE, Waycross, Ga.

*Docket No. 98-2625; Submitted on the Record;  
Issued June 24, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective August 16, 1997.

On April 19, 1993 appellant, then a 45-year-old rural mail carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his degenerative joint disease, sclerosis of both hip joints, large spur on the right hip were caused by his employment. On August 9, 1995 the Office accepted the claim for aggravation, degenerative joint disease, right hip; sciatica and mechanical low back pain and paid compensation for wage loss beginning October 31, 1994. Appellant retired on October 31, 1994.<sup>1</sup>

In a letter dated December 27, 1996, the Office requested Dr. William Ginsburg, appellant's attending rheumatologist, to provide a current medical opinion on the diagnosis of the condition being treated, its relationship to appellant's federal employment, whether aggravation of the accepted condition had ceased and included a work tolerance limitation form to be completed.

In a work capacity evaluation (Form OWCP-5c) dated December 31, 1996, Dr. Ginsburg indicated appellant was capable of working eight hours provided he limit his kneeling, standing, bending, twisting, reaching and lifting. He also stated that appellant could perform standing, walking and sitting intermittently.

In a letter dated January 2, 1997, Dr. Ginsburg indicated that appellant had been treated for degenerative arthritis of the right hip and mechanical back pain which had been aggravated by his job as a rural postal carrier. He opined that the aggravation ceased when appellant

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<sup>1</sup> On May 1, 1996 the Office advised appellant that he would have to make an election between the receipt of loss of wage-earning capacity compensation and disability retirement compensation. On May 4, 1996 appellant elected to receive loss of wage-earning capacity compensation.

stopped working as a rural postal carrier, but noted that “other physical activity could further aggravate his symptoms as well.”

On February 12, 1997 the employing establishment offered appellant the position of general clerk (modified) which had been approved by Dr. Ginsburg. Appellant accepted and returned to work on April 14, 1997.

In a notice of proposed termination of compensation dated June 18, 1997, the Office informed appellant that it proposed to terminate his compensation and medical benefits because the medical evidence, as represented by Dr. Ginsburg, indicated that any aggravation of his degenerative joint disease had ceased when he stopped his job as a rural postal carrier. The Office advised appellant to submit additional medical evidence in support of his continued disability within 30 days. Appellant did not submit any evidence in response to the Office’s proposed decision.<sup>2</sup>

By decision dated July 23, 1997, the Office terminated appellant’s compensation benefits effective August 16, 1997.

A hearing was held on March 4, 1998 at which time appellant, represented by counsel, was allowed to testify and submit evidence.<sup>3</sup>

In a report dated February 24, 1998, Dr. Ginsburg diagnosed degenerative arthritis of the right hip and mechanical low back pain and noted that appellant continues to have limitations due to these conditions. He opined that appellant’s ceasing to work as a rural letter carrier provided some benefit in that his condition was no longer aggravated.

In a decision dated May 19, 1998, the hearing representative affirmed the July 23, 1997 Office decision terminating appellant’s compensation benefits. In an accompanying memorandum, the hearing representative determined, based upon Dr. Ginsburg’s opinion, that appellant did not have any continuing injury-related residuals. The hearing representative thus affirmed the Office’s decision terminating benefits.

The Board finds that the Office properly terminated appellant’s compensation effective August 16, 1997.

Under the Federal Employees’ Compensation Act,<sup>4</sup> when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>5</sup> When the aggravation is temporary and leaves no

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<sup>2</sup> The record indicates that appellant returned to light-duty work on April 14, 1997.

<sup>3</sup> Appellant filed a claim for compensation (Form CA-7) on April 25, 1997. On August 22, 1997 appellant filed a recurrence claim.

<sup>4</sup> 5 U.S.C. §§ 8101-8193 (1974).

<sup>5</sup> *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

permanent residuals, compensation is not payable for periods after the aggravation has ceased,<sup>6</sup> even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.<sup>7</sup>

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>8</sup> Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>9</sup>

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.<sup>10</sup> The Office's burden includes the necessity of furnishing a rationalized medical opinion evidence based on a proper factual and medical background.<sup>11</sup>

In the instant case, the Office based its decision to terminate benefits on the January 2, 1997 report of Dr. Ginsburg. In his report, Dr. Ginsburg stated that any aggravation of appellant's accepted condition had ceased when appellant was no longer employed as a rural letter carrier. The Office thus properly terminated appellant's compensation as his treating physician opined that appellant's temporary aggravation had ceased and that appellant was no longer disabled due to his accepted employment injury.

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<sup>6</sup> *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

<sup>7</sup> *John Watkins*, 47 ECAB 597 (1996); *Marion Thornton*, 46 ECAB 899 (1995).

<sup>8</sup> *William Kandel*, 43 ECAB 1011, 1020 (1992).

<sup>9</sup> *Carl D. Johnson*, 46 ECAB 804 (1995).

<sup>10</sup> *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

<sup>11</sup> *Mary Lou Barragy*, 46 ECAB 781 (1995).

The decision of the Office of Workers' Compensation Programs dated May 17, 1998 is hereby affirmed.

Dated, Washington, D.C.  
June 24, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member