

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL B. LIEN and U.S. POSTAL SERVICE,  
POST OFFICE, Long Beach, CA

*Docket No. 01-519; Submitted on the Record;  
Issued July 18, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective June 29, 1999 on the grounds that he no longer had any disability or residuals due to his employment injury.

On October 8, 1996 appellant, then a 31-year-old letter carrier, was injured in the performance of duty while carrying a parcel weighing approximately 65 to 70 pounds up a flight of stairs. The Office accepted the claim for a lumbosacral strain and an L4-5 disc herniation. Appellant was off work for two days and began working limited duty effective October 10, 1996.

Appellant came under the care of Dr. Leslie W. Metcalf, a Board-certified orthopedic surgeon, on December 6, 1996. Dr. Metcalf initially diagnosed a lumbosacral strain for which he prescribed conservative treatment and continued light-duty work. He, however, recommended that appellant have a magnetic resonance imaging (MRI) scan to rule out discogenic disease.

An MRI scan performed on January 15, 1997 showed a three millimeter central posterior disc protrusion with a slight cephalad component to the protrusion, posterior to the inferior aspect of L5. It was noted that the protrusion at L5 caused only a minimal extradural indentation on the ventral surface of the thecal sac.

Appellant underwent a fitness-for-duty evaluation with Dr. Geoffrey M. Miller, a Board-certified orthopedic surgeon, on July 11, 1997. Dr. Miller diagnosed "chronic lumbosacral sprain, industrial, October 8, 1996, with incidental disc herniation -- no objective residual." He found no objective evidence to corroborate appellant's complaints of continuing back pain and suggested that appellant was exaggerating his symptoms to remain on light duty. Dr. Miller opined that appellant's low back sprain should have completely resolved and that appellant should be returned to regular duty no later than January 1, 1997.

In an August 25, 1997 report, Dr. M. Jay Jazayeri, a Board-certified orthopedic surgeon, reviewed the MRI scan of January 15, 1997 and diagnosed a lumbosacral sprain with right L5-S1

disc herniation.<sup>1</sup> He later expanded his diagnosis to include spinal stenosis and prescribe a course of steroid injections to relieve appellant's complaints of lower back pain with right leg radiation and left leg parathesia.

Appellant underwent electrodiagnostic studies on October 8, 1998 which revealed the "possibility of a right L5 radiculopathy" and the "possibility of mild compression of the left median nerve and mild to moderate compression of the left ulnar nerve at the wrist" depending on correlation with appellant's clinical picture.

In a report dated January 14, 1999, Dr. Jazayeri advised that appellant's work injury had resulted in a lower back sprain with minimal disc protrusion at L5-S1. He noted that appellant had received extensive treatment including physical therapy and epidural injections, but that appellant refused more aggressive pain management therapy and was not considered to be a good surgical candidate. Appellant was found to be capable of returning to work so long as he was precluded from bending, stooping, lifting and carrying objects weighing more than 10 pounds. Dr. Jazayeri also stated that appellant should be limited to sitting for one hour at a time with the allowance of five minutes of standing in between.

In a February 12, 1999 report, Dr. Jazayeri noted that appellant's January 14, 1999 MRI scan results showed degenerative disc disease at L5-S1 with associated disc desiccation. He stated that appellant had been advised to "try to live with this condition" otherwise appellant's only other option would be surgery for arthrodesis at L5-S1.

An April 1, 1999 MRI scan subsequently showed L5-S1 disc desiccation and narrowing without protrusion or bulge.

The Office referred appellant for a second opinion evaluation with Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon, on April 12, 1999. In his report of the same date, Dr. Dorsey noted appellant's symptoms of low back pain with bilateral leg weakness. He described appellant's history of injury and reviewed a copy of the medical record. Physical findings were essentially normal except for a reported 30 degrees flexion with the normal range being 90 degrees. Dr. Dorsey opined that appellant had no objective findings for any significant lumbar spinal condition and no objective basis for the reported pain in the lower legs. He further stated:

"There is no continuing medical residual of the patient's work injury or accepted condition. The patient, in my opinion, would have, at most, suffered a lumbar musculoligamentous sprain/strain. The known natural history of resolution of such a sprain/strain is complete resolution within 30 days. The patient shows no evidence of any other phenomenon occurring."

In an OWCP-5 work evaluation form dated April 22, 1999, Dr. Dorsey indicated that appellant could work regular duty for eight hours per day with no restrictions.

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<sup>1</sup> Dr. Jazayeri became appellant's treating physician on referral from Dr. Metcalf.

On May 27, 1999 the Office issued a notice of proposed termination of compensation finding that the weight of the medical evidence residing with Dr. Dorsey's opinion established that appellant no longer had any residuals or ongoing disability due to his accepted work injury.

In a June 7, 1999 letter, appellant alleged that he continued to have instability in the lower back and his left lower extremity.

In a June 18, 1999 report, Dr. Jazayeri stated that appellant complained of difficulty standing and sitting for long periods of time, and that he had developed numbness in his hands, for which he referred appellant to a rheumatologist. He noted that appellant's examination remained unchanged.

In a May 24, 1999 report, Dr. Jazayeri noted that appellant's examination remained unchanged and he requested authorization from the Office to have appellant evaluated by a rheumatologist to rule out any rheumatological problems.

In a decision dated June 29, 1999, the Office terminated appellant's wage-loss compensation and medical benefits.

Appellant requested a hearing, which was held on December 13, 1999.

In a February 22, 2000 decision, an Office hearing representative affirmed the Office's June 29, 1999 decision.

Appellant requested reconsideration on August 28, 2000 and submitted new medical evidence.

In a report dated May 1, 2000, Dr. Robert Ghaten, a Board-certified orthopedic surgeon, indicated that appellant was examined to ascertain his fitness for duty. Dr. Ghaten reviewed the medical record and noted appellant's subjective complaints and physical findings. He diagnosed that appellant had a herniated disc at L5-S1 and relative spinal stenosis based on an MRI scan performed on April 8, 2000. Dr. Ghaten questioned whether Dr. Dorsey had performed Lasague's, Braggard's and Cram tests as they were not documented in his report. Based on Dr. Ghaten's examination, appellant was found to have positive Lasague's and Braggard's tests at 50 degrees bilaterally. He recommended that appellant take anti-inflammatory medication or undergo an epidural block to alleviate his continuing symptoms of back pain. Dr. Ghaten concluded that appellant was fit for duty providing that he is allowed to change positions as required, including sitting, standing and walking. He further noted that appellant could not stand more than 30 minutes at a time, nor could appellant lift more than 20 to 25 pounds.

In a decision dated August 28, 2000, the Office denied modification of its prior decision. The Office specifically noted that the Office had only accepted the claim for a disc herniation at L4-5. Although Dr. Ghaten provided a new diagnosis of a disc herniation at L5-S1, the Office found that the physician did not provide a reasoned medical opinion addressing the relationship of appellant's diagnosed condition and the accepted work injury of October 8, 1996.

The Board finds that the Office properly terminated appellant's compensation benefits effective June 29, 1999.

Once the Office accepts a claim, it has the burden of proof of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.<sup>2</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>3</sup> 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.

In this case, the Office accepted that appellant sustained a lumbosacral strain and disc herniation on October 8, 1996 in the performance of duty while carrying a large parcel up a flight of stairs. Appellant has been working limited duty since October 10, 1996 and was receiving medical benefits until his compensation was terminated on June 29, 1996.

The Board finds that the Office properly terminated appellant's compensation based on Dr. Dorsey's opinion that appellant has no residuals or disability due to the accepted work injury. He specifically opined that appellant sustained only a temporary strain due to his work injury and found that appellant had no disability or residuals due to the October 8, 1996 lifting incident. Dr. Dorsey found no objective evidence of a lumbar condition and opined that appellant could work eight hours per day without restriction

Although appellant's treating physician, Dr. Jazayeri, opined that appellant had continuing residuals, he stated in his most recent February 12, 1999 report that appellant suffered from degenerative disc disease at L5-S1. The Office, however, has only accepted the claim for a lumbosacral strain and disc herniation at L4-5.

Dr. Ghaten also diagnosed that appellant had a disc herniation at L5-S1, but he did not offer any explanation as to how appellant's newly diagnosed disc herniation is causally related to the October 8, 1996 work injury. Both Drs. Jazayeri and Ghaten's work restrictions were attributed to the L5-S1 disc condition and would not establish that appellant has any continuing disability or residuals due to his accepted work-related injuries.

Because the opinion of Dr. Dorsey is the only reasoned medical opinion addressing appellant's capacity for work and the extent of his residual disability, the Office properly terminated appellant's compensation based on his report.<sup>4</sup>

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<sup>2</sup> *Frank J. Mela, Jr.*, 41 ECAB 115 (1989); *Mary E. Jones*, 40 ECAB 1125 (1989).

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>4</sup> The weight of the medical evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and the medical history, the care of analysis manifested and the medical rationale expressed in support of the opinion. *Anna C. Leanza*, 48 ECAB 115 (1996).

The decisions of the Office of Workers' Compensation Programs dated August 28, 2000 and June 29, 1999 are hereby affirmed.

Dated, Washington, DC  
July 18, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member