

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

KIMBERLY A. BROWN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
South Suburban, IL, Employer**

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**Docket No. 04-1234
Issued: August 24, 2004**

Appearances:
Kimberly A. Brown, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On February 5, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated February 6, 2003 terminating compensation. Under 20 C.F.R. §§ 501.2(c), 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden to terminate appellant's compensation benefits.

FACTUAL HISTORY

This is the second appeal in this case. Appellant, a 38-year-old mail processor, filed a claim for compensation benefits on March 6, 1999 alleging that she injured her back when she slipped and fell to the floor. The Office accepted her claim for lumbosacral strain. By decision dated February 28, 2001, the Office disallowed appellant's claim for continued partial disability on and after November 22, 2000 based on the weight of the second opinion physician, Dr. Julie M. Wehner, a Board-certified orthopedic surgeon.

In an October 25, 2002 decision,¹ the Board reversed the Office's decision. The Board found that there was a conflict in the medical evidence between Dr. Wehner and Dr. Lolita Smith, an internist and the attending physician, regarding whether appellant had any residuals from her accepted condition and whether she was capable of returning to her full-time duties. The complete facts of this case are set forth in the Board's October 25, 2002 decision and are herein incorporated by reference. Appellant's entitlement to disability compensation was restored.

In order to determine whether appellant had any residuals from her work-related condition, the Office referred her, together with a statement of accepted facts and the case record to Dr. John J. Dwyer, a Board-certified orthopedic surgery, for an impartial medical evaluation. In a report dated December 30, 2002, he stated that appellant had no objective evidence of disability or any residuals from her low back condition. Dr. Dwyer stated:

“[Appellant] shows some symptomatic limitation of range of motion and outcry during the exam[ination] compatible with a chronic pain syndrome, but the historic picture related in the evaluation is not compatible with that diagnoses. However, on the basis of this exam[ination] she is able to continue in her normal occupational duties as a postal clerk for the employing establishment. [Appellant] is certainly able to perform occupational duties of lifting up to 30 to 35 pounds and this is compatible with a postal clerk. Heavy lifting would be precluded because of the symptomatic picture, but there is no objective criteria to absolutely preclude that heavy lifting.”

Dr. Dwyer advised that there was at most a tenuous causal relationship between the March 6, 1999 work injury and appellant's current condition and that absent any intervening episode it was unusual that such an episode would cause persistent symptomatology.

By decision dated February 6, 2003, the Office terminated appellant's compensation, finding that Dr. Dwyer's impartial opinion represented the weight of the medical evidence.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

¹ Docket No. 02-1029 (issued October 25, 2002).

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

ANALYSIS

The Office based its decision to terminate appellant's compensation on the July 26, 2002 report of Dr. Dwyer, the independent medical examiner. He advised that appellant could return to her usual job as a postal clerk and had no objective evidence of disability or any residuals from her low back condition. Dr. Dwyer stated that there was no more than a tenuous causal relationship between the March 6, 1999 employment injury and appellant's current condition and that absent any intervening episode it was unusual that such an episode would cause persistent symptomatology.

The Board holds that the Office properly found that Dr. Dwyer's referee opinion negating a causal relationship between appellant's claimed current condition and disability and her accepted March 6, 1999 employment injury and that she no longer has any residuals from her employment injuries was sufficiently probative, rationalized and based upon a proper factual background. Therefore, the Office acted correctly in according his opinion the special weight of an impartial medical examiner.⁴ Accordingly, the Board finds that Dr. Dwyer's opinion constituted sufficient medical rationale to support the Office's February 6, 2003 decision terminating appellant's compensation. The Board, therefore, affirms the Office's February 6, 2003 termination decision.⁵

CONCLUSION

Under the circumstances described above, the Board finds that the Office met its burden to terminate appellant's compensation benefits.

⁴ Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper actual background, is entitled to special weight. *Gary R. Seiber*, 46 ECAB 215 (1994); *Aubrey Belnavis*, 37 ECAB 206 (1985).

⁵ The Board notes that appellant submitted additional evidence to the record following the February 6, 2003 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member