

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

TALMADGE L. FOREMAN, Appellant)	
)	
and)	Docket No. 03-1356
)	Issued: March 7, 2005
U.S. POSTAL SERVICE, POST OFFICE, Montgomery, AL, Employer)	
)	

Appearances: Oral Argument November 3, 2004
Talmadge L. Foreman, pro se
Miriam D. Ozur, Esq., for the Director

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 7, 2003 appellant filed a timely appeal of the March 28, 2003 merit decision of the Office of Workers' Compensation Programs, which affirmed an April 16, 2002 decision terminating his compensation benefits effective that day. 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 is whether the Office met its burden of proof in terminating appellant's compensation benefits effective April 16, 2002.¹

¹ Appellant contended at oral argument that the issue in this case was whether he was entitled to wage-loss compensation and medical benefits based on a back injury which he alleged he sustained on August 19, 1996, from the time he stopped work for the federal government to the time he began a full-time job. He testified at a prior oral hearing before the Office that he stopped work in June 1999 and returned to full-time employment on May 20, 2002. In a letter dated July 9, 2000, appellant stated that he stopped work on July 14, 1999.

FACTUAL HISTORY

On August 21, 1996 appellant, a 33-year-old mail handler, filed a claim for traumatic injury stating that on August 19, 1996, while picking up mail off the floor of a mail truck, he felt a sharp pain in the small of his back and inner left thigh. The Office accepted his claim for a left groin strain and hernia and paid appropriate benefits, including intermittent periods of compensation for wage loss.

In a Form CA-17 duty status report, dated February 20, 1997, Dr. Rachelle Janush, appellant's treating osteopath and a specialist in physical medicine and rehabilitation, diagnosed acute spasms in the left adductor muscle group and checked "yes," indicating the condition was causally related to the August 19, 1996 work-related injury. On March 14, 1997 she stated that appellant remained symptomatic with left groin spasm and noted that his left adductor muscle spasms were improving. On April 1, 1997 Dr. Janush stated that appellant's left groin spasms were not as severe as before and that his left adductor spasms had improved with therapy. In a report dated April 22, 1997, she stated that appellant had reached maximum medical improvement on that date, as his acute adductor spasms were resolving. In a duty status report dated that day, Dr. Janush checked a box "yes," indicating that appellant's adductor condition was caused by the August 19, 1996 work injury. She released him to return to regular full-time duty effective that date. In a report dated June 10, 1997, Dr. Janush noted that she initially examined appellant on February 20, 1997 for an acute spasm of the left lower extremity of the adductor muscle complex. She stated that he continued to have pain and spasms and that she, therefore, requested authorization to refer him to a urologist to determine the etiology of his continued complaints of pain and spasms to rule out the effects of the hernia repair.

On August 5, 1997 appellant filed a claim for wage loss for February 3 to 15, 27 and 28 and for April 8, 1997.²

On February 25, 1999 Dr. Joseph E. Davis, Jr., a urologist, stated that he could not determine the cause of appellant's symptomology and recommended referral to a pain clinic. In a report dated April 29, 1999, Dr. Robert Carraway, a general surgeon and second opinion physician, stated that appellant had low back and left groin pain, but that he did not have a hernia. He recommended additional computerized tomography (CT) scans and a magnetic resonance imaging (MRI) scan to determine any change in earlier bulging disc.

By decision dated April 14, 2000, the Office denied appellant's claim for disability on and after April 22, 1997 based on the report of Dr. Davis. Appellant requested an oral hearing. On September 13, 2000 a hearing representative set aside the Office's April 14, 2000 decision and remanded the case to the Office to determine whether appellant had continuing residuals of the August 19, 1996 work-related injury on or after April 22, 1997. Pursuant to the remand, the Office referred him to a second opinion physician, Dr. Gordon J. Kirschberg, Board-certified in psychiatry and neurology, who stated in a report dated February 13, 2001, that appellant had no

² The Office initially denied this claim on November 25, 1997 but, on October 9, 1998 a hearing representative vacated that decision and remanded the case for further development including whether appellant had any work-related disability on or after April 22, 1997. On September 27, 1999 the Office paid compensation for total disability from February 3 to 15, 1997.

medical residuals of his August 1996 work-related injury. He specifically noted that appellant's subjective complaints of back pain were not causally related to the accepted injury of left groin strain and hernia.

On February 22, 2001 the Office denied appellant's claim for compensation from April 22, 1997 finding that he no longer had a work-related disability based on Dr. Kirschberg's report. This decision was set aside and the case remanded to the Office by a hearing representative on September 25, 2001. The hearing representative directed the Office to request a clarifying report from Dr. Kirschberg regarding whether he reviewed all the medical records in appellant's file and to include a rationalized medical opinion supporting his conclusion that he had no continuing disability based on his work-related injury after April 22, 1997.

Dr. Kirschberg did not reply to the Office's November 8, 2001 request for clarification. The Office thereafter referred appellant on January 17, 2002 to a new second opinion physician, Dr. Hisham Hakim, Board-certified in psychiatry and neurology, together with his medical records, a statement of accepted facts and a list of specific questions. In a report dated February 4, 2002, Dr. Hakim stated that he examined appellant that day, noted a familiarity with his history of injury, reviewed a summary of diagnostic tests and noted findings. He advised that, while appellant had lumbar radiculopathy, this predated the employment injury and was not otherwise employment related. Dr. Hakim found that appellant was status post hernia repair and groin strain which had healed with a "complete recovery" and that appellant was able to perform moderate to heavy duty jobs. In a supplemental report dated April 5, 2002, Dr. Hakim stated that appellant's November 21, 1996 hernia repair was successful, that there were no abnormalities on examination and that there were no residual impairments from the groin strain.

By decision dated April 16, 2002, the Office denied the claim for compensation and terminated appellant's benefits effective that day on the grounds that the evidence failed to establish that he had any residuals of his August 19, 1996 work-related injury. The Office relied on the second opinion of Dr. Hakim, who found that appellant had recovered from his 1996 injury and had no disability after April 22, 1997. On April 24, 2002 he requested an oral hearing.

By decision dated March 28, 2003, a hearing representative affirmed the April 16, 2002 decision.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office's burden of proof in terminating compensation includes the necessity

³ *Jorge E. Sotomayor*, 52 ECAB 105 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001).

of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

ANALYSIS

The Office accepted that appellant sustained a left groin and hernia strain on August 19, 1996 and awarded appropriate benefits. In a decision dated April 16, 2002 and affirmed by a hearing representative on March 28, 2003, the Office terminated appellant's benefits effective that day, finding that the weight of the evidence was represented by the opinion of the Office second opinion physician, Dr. Hakim, who established that appellant had no further employment-related disability of his left groin and hernia attributable to his August 19, 1996 work-related injury.

The Board has carefully reviewed the opinion of Dr. Hakim and notes that it has reliability, probative value and convincing quality with respect to the conclusions reached regarding the relevant issue of the present case. He noted normal neurological, cranial and manual muscle testing; he also found two by four deep tendon reflexes in the triceps, knees and ankles, with symmetrical biceps and bilateral toes. Dr. Hakim found mild tenderness in the left groin area and pain with external and internal hip rotation and abduction. He diagnosed lumbar radiculopathy based on a positive electromyogram evaluation but noted no causal relationship with the work-related injury due to the age of the injury. Dr. Hakim noted that the nerve conduction studies were normal and opined that the cause of his condition was mild musculoskeletal problems in the adductor group. He added that appellant was status-post hernia repair and groin strain which had healed completely and had no physical condition which could be causing his subjective complaints of pain. Dr. Hakim indicated that examination was essentially normal and that he could attribute no continuing condition to the accepted employment injuries. He explained that, based on appellant's history and his physical examination, his work-related injuries had healed with no residual impairments and that he could return to work with no restrictions.⁶

Further, there is no current medical evidence indicating that appellant has any residuals of his August 19, 1996 employment injury. Instead, the most current medical evidence establishes that his accepted conditions resolved without residual.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective April 16, 2002.

⁵ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁶ In referring to Dr. Hakim's report in its decision, the Office incorrectly stated that it was Dr. Kirschberg's report. The Office noted that the physician believed that appellant's symptoms were musculoskeletal, a reference which is drawn directly from Dr. Hakim's February 11, 2002 report.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 28, 2003 is affirmed.

Issued: March 7, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member