

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

S.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sacramento, CA, Employer**

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**Docket No. 08-1920
Issued: January 22, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On June 27, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 5, 2007 and May 6, 2008 merit decisions concerning the termination of her compensation and the Office's June 4, 2008 decision denying her claim for consequential injuries. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation effective October 5, 2007 on the grounds that she had no residuals after that date of her accepted employment injuries, lumbar sprain and intervertebral lumbar disc disorder; and (2) whether appellant met her burden of proof to establish that she sustained a gastrointestinal or hip condition due to her accepted employment injuries.

FACTUAL HISTORY

In late 2006 the Office accepted that appellant, then a 36-year-old mail carrier, sustained a lumbar sprain and intervertebral lumbar disc disorder due to her exposure over an extended period to repetitive jolting and jarring while driving a rural mail vehicle. Appellant stopped work on September 28, 2006 and the Office paid her compensation for periods of partial and total disability. She periodically performed light-duty work for the employing establishment.

In several brief reports dated between October and December 2006, Dr. Curtis Rogers, an attending Board-certified orthopedic surgeon, indicated that appellant had a lumbosacral sprain and lumbar discogenic disease with myelopathy and posited that she could continue with light-duty work.¹ In a January 31, 2007 report, he indicated that appellant had seen an orthopedic surgeon who did not recommend surgery but noted that she complained of intolerable pain. Dr. Rogers diagnosed thoracolumbar strain and lumbosacral strain with some discogenic features and recommended work restrictions. In a February 8, 2007 report, he indicated that appellant had thoracolumbar and lumbosacral strains and spasms with some myelopathy symptoms, discogenic disease symptoms especially going down the right leg and some significant sacral pain.

A February 27, 2007 emergency room record noted that appellant complained of severe abdominal pain radiating to her back. The record contained a diagnosis of anemia secondary to possible gastrointestinal bleeding. On March 1, 2007 Dr. Isaac Furaji, an attending Board-certified gastroenterologist, performed an upper endoscopy with biopsies which found a small hiatal hernia, an ulcer and evidence of prior gastric bypass. In an April 3, 2007 report, he indicated that appellant had a gastric ulcer induced by nonsteroidal anti-inflammatory drugs including Diclofenac and Ibuprofen.

In a March 15, 2007 report, Dr. David Rollins, an attending Board-certified orthopedic surgeon, stated that appellant reported persistent low back radiating into the right leg more than the left with tingling of the right third, fourth, and fifth toes and tingling of her bilateral fourth and fifth fingers. He diagnosed lumbar strain and stated the magnetic resonance imaging testing results did not appear to coincide with any of her symptoms. Dr. Rollins stated that appellant was temporarily totally disabled pending a neurosurgical evaluation.

In an April 2, 2007 report, Dr. John Emery III, an attending Board-certified neurosurgeon, stated that the findings of diagnostic testing were unremarkable and that appellant did not have radiculopathy, myelopathy, pseudoclaudication or a picture consistent with discogenic pain. In an April 6, 2007 report, Dr. Rollins stated that appellant had a lumbar strain and could return to limited-duty work with no stooping or bending and no lifting, pulling, or pushing over 10 pounds.

¹ The record contains diagnostic testing from January 2007 showing that appellant had spondylolisthesis at L5-S1. Dr. Rogers initially prescribed Vicodin, Ibuprofen and Flexeril for appellant's pain, but in December 2006 he switched her medication to Diclofenac and in January 2007 he placed her on Trazodone and Endocet or Percocet for her pain.

In a June 20, 2007 report, Dr. Aubrey Swartz, a Board-certified orthopedic surgeon who served as an Office referral physician, described appellant's medical history, including diagnostic testing. He stated that magnetic resonance imaging and bone scan testing were both unremarkable. Dr. Swartz indicated that on examination appellant had no back spasms but did have tenderness. He opined that appellant had no disc herniation and only had Grade 1 spondylolisthesis and apophyseal joint degenerative changes at L5-S1 which were preexisting. Dr. Swartz advised that examination findings in 2006 and January 2007 were essentially objectively negative. He opined that appellant's work caused only a temporary aggravation of the spondylolisthesis and that such aggravation ceased no later than December 8, 2006. Dr. Swartz completed a work restriction form, indicating some restrictions with regard to operating a motor vehicle and pushing, pulling and lifting, but stated that these restrictions were on the basis of the preexisting spondylolisthesis.

In a September 5, 2007 letter, the Office advised appellant that it proposed to terminate her compensation, both for wage loss and medical benefits, on the basis of Dr. Swartz's report. It advised appellant that she had 30 days to provide evidence if she contested that proposed termination. In an October 2, 2007 letter, appellant disagreed with the proposed termination and stated that she was providing medical evidence about her stomach problems resulting from Dr. Rogers's treatment. She submitted a September 6, 2007 report in which Dr. Rollins indicated that she continued to have back problems.

In an October 5, 2007 decision, the Office terminated appellant's compensation effective October 5, 2007 on the grounds that she had no residuals after that date of her accepted employment injuries, lumbar sprain and intervertebral lumbar disc disorder. It based its termination on Dr. Swartz's report.

Appellant requested a hearing before an Office hearing representative. At the hearing held on February 28, 2008 she testified that she did not currently have a back condition but instead had gastrointestinal and hip conditions that she contended were consequential to her accepted back condition. Appellant explained that she had a gastrointestinal condition with three surgeries caused by drugs prescribed by Dr. Rogers for her back condition and she had a hip condition caused by physical therapy prescribed for her back condition. She claimed that her hip condition was now affecting her sciatic nerve.

In an April 11, 2008 report, Dr. Scott C. Hennes, an attending family practitioner, indicated that he was concerned about her bleeding gastric ulcer. He stated:

“[Appellant] has a history of gastric bypass surgery and was put on anti-inflammatories including Diclofenac. She presented to my office in February of 2007 with profound anemia of 5.1. [Appellant] was directly admitted to the hospital on February 27, 2007. An endoscopy by Dr. Furaji was done which showed a gastric ulcer. [Appellant] received multiple transfusions to improve her hemoglobin. Fortunately, she is stable. My concern is that [appellant] was given anti-inflammatories in a post gastric bypass patient is contraindicated and believe this needs to be addressed by the Board in this lady's management. She will be on continuous Proton Pump inhibitors and has been advised to avoid anti-inflammatories completely.”

In a June 4, 2008 decision, the Office denied appellant's consequential injury claim on the grounds that she did submit sufficient rationalized medical evidence to show that she sustained a gastrointestinal or hip condition due to her accepted employment injuries.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Compensation Act,² once the Office has accepted a claim it has the burden of justifying termination or modification of compensation 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 includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

ANALYSIS -- ISSUE 1

The Office accepted that appellant, then a 36-year-old mail carrier, sustained a lumbar sprain and intervertebral lumbar disc disorder due to her exposure over an extended period to repetitive jolting and jarring while driving a rural mail vehicle. It terminated appellant's compensation effective October 5, 2007 based on a June 20, 2007 report of Dr. Swartz, a Board-certified orthopedic surgeon who served as an Office referral physician.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Swartz. The June 20, 2007 report of Dr. Swartz establishes that appellant had no disability due to her accepted employment injuries after October 5, 2007.

Dr. Swartz stated that magnetic resonance imaging and bone scan testing were both unremarkable and, on examination, appellant had no back spasms but did exhibit tenderness. He opined that appellant had no disc herniation and only had Grade 1 spondylolisthesis and apophyseal joint degenerative changes at L5-S1 which were preexisting condition. Dr. Swartz further indicated that examination findings in 2006 and January 2007 were essentially objectively negative.

The Board has carefully reviewed the opinion of Dr. Swartz and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Swartz provided a thorough factual and medical history and accurately summarized the relevant medical evidence.⁶ He provided medical rationale for his opinion by explaining that appellant's work caused only a temporary aggravation of her spondylolisthesis and that such aggravation ceased no later than December 8, 2006. Dr. Swartz

² 5 U.S.C. §§ 8101-8193.

³ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁴ *Id.*

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

explained that appellant's continuing need for work restrictions was due to her preexisting spondylolisthesis and not her work-related injuries.

The record contains reports from 2007 of Dr. Rollins and Dr. Rogers, two attending Board-certified orthopedic surgeons, which indicate that appellant continued to have back complaints. Some of these reports contained a diagnosis of lumbar sprain. However, these reports are of limited probative value on the relevant issue of the present case in that they do not provide a fully rationalized medical opinion that appellant continued to have residuals of her accepted employment injuries.⁷ For these reasons, the Office properly relied on the opinion of Dr. Swartz to terminate appellant's compensation.

LEGAL PRECEDENT -- ISSUE 2

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.⁸

ANALYSIS -- ISSUE 2

Appellant alleged that she sustained gastrointestinal and hip conditions due to her accepted employment injuries. She claimed that she had a gastrointestinal condition caused by drugs prescribed by Dr. Rogers for her back condition and that she had a hip condition caused by physical therapy prescribed for her back condition.

The record contains a February 27, 2007 emergency room record indicating that appellant complained of severe abdominal pain radiating to her back. The record contained a diagnosis of anemia secondary to possible gastrointestinal bleeding. On March 1, 2007 Dr. Furaji, an attending Board-certified gastroenterologist, performed an upper endoscopy with biopsies which found a small hiatal hernia, an ulcer and evidence of prior gastric bypass. In an April 3, 2007 report, Dr. Furaji indicated that appellant had a gastric ulcer induced by nonsteroidal anti-inflammatory drugs including Diclofenac and Ibuprofen. In an April 11, 2008 report, Dr. Hennes, an attending family practitioner, expressed concern about the effects of anti-inflammatory drugs, including Diclofenac, on appellant's stomach.

The Board notes that, although these reports suggest a connection between anti-inflammatory drugs prescribed for appellant's back condition and her gastrointestinal problems, the record lacks a rationalized medical report establishing such a connection. Dr. Furaji merely stated that appellant had a gastric ulcer induced by nonsteroidal anti-inflammatory drugs including Diclofenac and Ibuprofen. He did not describe appellant's longstanding gastrointestinal problems in any detail or explain how they were related to such drugs. Such rationale is especially necessary as appellant underwent several gastrointestinal surgeries prior to

⁷ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

⁸ *John R. Knox*, 42 ECAB 193, 196 (1990).

suffering the accepted employment injuries. Appellant did not submit any medical evidence linking her hip problems to the accepted employment injuries. For these reasons, the Office properly denied appellant's claim for consequential injuries.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective October 5, 2007 on the grounds that she had no residuals after that date of her accepted employment injuries, lumbar sprain and intervertebral lumbar disc disorder. The Board further finds that appellant did not meet her burden of proof to establish that she sustained a gastrointestinal or hip condition due to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 4 and May 6, 2008 and October 5, 2007 decisions are affirmed.

Issued: January 22, 2009
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