

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

W.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Garden City, NY, Employer**

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**Docket No. 08-2469
Issued: July 9, 2009**

Appearances:

*Jeffrey F. Pam, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 15, 2008 appellant filed a timely appeal from a September 4, 2008 merit decision of the Office of Workers' Compensation Programs terminating medical benefits for treatment of his lumbar spine condition. 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 properly terminated appellant's medical benefits for his lumbar spine condition effective September 4, 2008.

FACTUAL HISTORY

This is the second time this case has come before the Board. In the prior appeal, the Board, by decision dated October 21, 2002, after finding a conflict in the medical opinion evidence of record as to whether appellant sustained an injury as a result of an employment incident on September 28, 1995, set aside the November 13, 2000 and July 23, 2001 decisions of

the Office and remanded the case for further development and proceedings.¹ The findings of fact and the conclusions of law from the prior decisions are hereby incorporated by reference.

Following the Board's October 21, 2002 decision, the Office further developed appellant's claim, which included examination by Dr. Donald I. Goldman, an orthopedic surgeon and the Office's referee physician. Dr. Goldman concluded that appellant's original accepted condition,² head contusion, had resolved and was not causing disabling residuals. He noted that there was a preexisting discogenic spondylosis of the cervical spine that was aggravated by his September 28, 1995 employment-related injury.

Based on Dr. Goldman's opinion, the Office, by decision dated January 7, 2003, expanded appellant's accepted condition from contusion of the head to include disc herniations at C4-5 and C6-7 as well as permanent aggravation of preexisting discogenic spondylosis.

Appellant underwent medical treatment. By note dated March 25, 2003, Dr. Baburao Doddapaneni, a Board-certified anesthesiologist, prescribed a hydroculator pad for the lumbar spine. By letter dated March 28, 2003, the Office authorized payment for a hydroculator pad for the lumbar spine.

In a medical note dated December 15, 2005, Dr. Gregory Perrier, an orthopedic surgeon, prescribed a lumbar corset brace.

The record includes unsigned medical reports from Fayetteville Pain Center for the period July 2009 to July 2008. The treatment recommended, bilateral lumbar transforaminal injections, was authorized and paid by the Office.

By decision dated August 30, 2006, the Office proposed to terminate appellant's medical benefits for the lumbar spine because it found that he received medical benefits for treatment of his lumbar spine, a condition that the Office had not accepted. It found that his lumbar spine condition, based upon the evidence of record, was not due to his accepted injury and that payment for such expenses was erroneously authorized. Therefore, the Office proposed to terminate appellant's medical benefits for his lumbar spine condition as it was not compensable.

By letter dated August 7, 2008, the Office advised appellant that the evidence of record was insufficient to establish that his lumbar condition was due to his accepted injury. It notified him that it would defer issuing a final decision concerning termination of his medical benefits, allowing appellant a chance to respond.

Appellant disagreed and submitted a computerized bill status report, dated July 31, 2008, showing that the Office paid for his epidural injection treatments of July 8, 2006. The report proffered a diagnosis of lumbosacral neuritis. Appellant submitted an incomplete traumatic injury claim (Form CA-1) as well as a personal note dated August 25, 2008.

¹ Docket No. 02-266 (issued October 21, 2002).

² Appellant's claim was also accepted for: brain stem contusion without open wound; displacement of the cervical intervertebral disc without myelopathy; and cervical spondylosis with myelopathy.

Appellant submitted a report from Fayetteville Pain Center dated January 25, 2008. The first line of the report stated that the report had not been signed and might be incomplete. Moreover, this report bore a stamp stating that it had not been reviewed by a physician.

Appellant submitted a duplicate copy of a December 5, 2002 work capacity evaluation signed by Dr. Goldman, who asserted that appellant sustained a cervical disc herniation as well as cervical discogenic, spondylosis and aggravated trauma. Dr. Goldman reported that he sustained low back pain that radiated down into his legs. He asserted that appellant was unable to work.

Appellant submitted copies of personal statements alleging harassment and racial discrimination on the part of the employing establishment. These statements were attachments to a complaint filed with the Equal Employment Opportunity Commission that was not part of the record.

By decision dated September 4, 2008, the Office terminated appellant's claim for medical benefits for his lumbar spine condition effective September 4, 2008.³

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴

ANALYSIS

The Office accepted appellant's September 28, 1995 employment injury for: brain stem contusion without open wound; displacement of the cervical intervertebral disc without myelopathy; cervical spondylosis with myelopathy, disc herniations at C4-5 and C6-7 as well as permanent aggravation of preexisting cervical discogenic spondylosis. It, therefore, has the burden to justify the termination of compensation for those accepted conditions. The Office must establish that appellant no longer has residuals of any employment-related condition, which require further medical treatment related to the September 28, 1995 employment injury before terminating medical benefits for the accepted conditions.

This burden of proof, however, does not extend to terminating medical benefits pertaining to appellant's lumbar spine because the Office has not accepted that his September 28,

³ On appeal, appellant submitted additional medical evidence consisting of a work capacity evaluation dated August 18, 2008 signed by a physician whose signature is illegible. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). See *J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision). As this work capacity evaluation was not part of the record when the Office issued either of its previous decisions, the Board may not consider it for the first time as part of appellant's appeal.

⁴ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Anna M. Blaine*, 26 ECAB 351, 353-54 (1975); see *Fred Foster*, 1 ECAB 127, 132-33 (1948).

1995 employment injury caused or aggravated a lumbar condition.⁵ It did authorize medical treatment, consisting of a hydroculator pad for his lumbar spine and multiple foraminal epidural injections in appellant's lumbar spine, but it never adjudicated whether the medical evidence established that the September 28, 1995 incident at work caused or aggravated a lumbar spine condition. The Board has consistently held that gratuitous payment of compensation⁶ by the Office does not, in and of itself, constitute acceptance of a particular condition or disability in the absence of evidence from the Office indicating that a particular condition or disability has been accepted as work related.⁷ In *Sophia Maxim (Edward Gerard Maxim)*,⁸ the Board stated:

“It is axiomatic that the [Office] has no obligation to provide surgery, medical appliances and services for a condition not related to the employment.... Gratuitous authorizations of periodic examinations ... emergency surgery and follow-up care do not constitute an acceptance that the condition for which such services were extended was causally related to the employment.... Nor does authorization of such medical services for a condition found to be unrelated to the employment create a liability on the [Office] to furnish further benefits either by way of medical care or by way of payment of compensation to the employee or his beneficiaries in the event of his death due to the condition for which he received gratuitous treatment. Causal relation must be established in each case for the employee or his beneficiary to be eligible to receive compensation benefits, medical or monetary.”⁹

Thus, the Office's gratuitous and erroneous payment for treatment, equipment and procedures pertaining to appellant's lumbar spine, in and of itself, is not sufficient to establish his alleged lumbar condition is causally related to the September 28, 1995 employment injury.

⁵ Appellant argues that the Office should have accepted something more than contusion and a cervical spine condition. If he wants the Office to formally accept that the September 28, 1995 incident at work caused or aggravated a lumbar spine condition, he has the burden to submit a medical opinion firmly establishing that diagnosis. The care with which the physician presents his medical rationale will be critical to establishing the element of causal relationship. See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

⁶ 5 U.S.C. § 8101(12) defines “compensation” as including: “the money allowance payable to an employee or his dependents and any other benefits paid for from the Employee's Compensation Fund...” Therefore, compensation includes not only money paid for work-related disability but also includes payments for medical expenses.

⁷ See *Gary L. Whitmore*, 43 ECAB 441 (1992); *James F. Aue*, 25 ECAB 151 (1974).

⁸ 10 ECAB 61, 68 (1958).

⁹ *Id.* See also *Helen B. Plouse (Harry H. Plouse)*, 20 ECAB 111, 114 (1968) (where the Board found that the fact that the Office paid medical expenses for nonwork-related conditions did not “create a liability on its part to furnish further benefits either by way of medical care or compensation”).

Where an employee claims that, a condition not accepted or approved by the Office was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.¹⁰ Regarding whether appellant has any lumbar condition causally related to his accepted condition, the Office correctly found that he failed to submit probative medical evidence explaining how the alleged lumbar condition was causally related to the September 28, 1995 work injury. As part of this burden, the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current condition is causally related to the accepted employment-related condition¹¹ and supports that conclusion with sound medical reasoning.¹²

Therefore, the Board finds that the Office properly terminated appellant's medical benefits for lumbar spine, a condition that was never accepted, because he had not satisfied his burden to establish causal relationship.

The medical evidence appellant submitted regarding his lumbar condition consisted of unsigned medical reports from the Fayetteville Pain Center. These reports bore a stamp indicating that they had not been reviewed by a physician and many of them contained an opening line stating that they were not signed and may be incomplete. An unsigned report has no probative medical value as the author cannot be identified as a physician.¹³ Moreover, unsigned medical reports lacking a physician's medical opinion concerning causal relationship between a diagnosed condition and appellant's accepted employment-related injury are of less than no probative value.¹⁴

As appellant has submitted no competent and probative rationalized medical evidence in support of his claim that treatment of his lumbar spine is causally related to his September 28, 1995 employment injury,¹⁵ he has failed to demonstrate that the termination of medical benefits on September 4, 2008 was not justified.

¹⁰ *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.

¹¹ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

¹² *Lourdes Davila*, 45 ECAB 139, 142 (1993).

¹³ *Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁴ *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *Franklin D. Haislah*, 52 ECAB 457 (2001); *see also Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹⁵ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

CONCLUSION

The Board finds that the Office properly terminated appellant's medical benefits for lumbar spine effective September 4, 2008.

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board