

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

Y.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Plainfield, NJ, Employer**

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**Docket No. 10-1930
Issued: July 13, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 20, 2010 appellant filed a timely appeal from a January 29, 2010 decision of the Office of Workers' Compensation Programs denying modification of an April 29, 2008 decision terminating his compensation and medical benefits for his accepted work injury. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to justify termination of appellant's compensation benefits for his accepted injury effective May 10, 2008; and (2) whether appellant established that he had any continuing disability or residuals relating to his accepted conditions after May 10, 2008.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On November 29, 2004 appellant, then a 46-year-old part-time flexible letter carrier, filed a traumatic injury claim alleging that, on the same day, a wheel came off a mail hamper and struck him in the left knee. The Office accepted left knee contusion and expanded the claim to include lumbar strain and sprain. Appellant stopped work on November 29, 2004.

Appellant was treated by Dr. Allan D. Tiedrich, a Board-certified orthopedist, from December 1, 2004 to March 2, 2005, for a left knee and lumbar spine injury which occurred on November 29, 2004 while at work. Dr. Tiedrich diagnosed sprain and strain of the dorsal and lumbar spine and left lower extremity and opined that appellant remained totally disabled. A February 15, 2005 magnetic resonance imaging (MRI) scan of the lumbar spine revealed no evidence of focal posterior disc herniation, bilateral facet hypertrophy at L3-4, L4-5 and marked facet joints disease on the right side at L5-S1. Appellant was treated by Dr. Sharon C. Worosilo, a Board-certified anesthesiologist, for lower lumbar spine pain related to a work injury on November 29, 2004. Dr. Worosilo diagnosed lumbar facet joint syndrome and performed facet joint injections.

On April 11, 2005 the Office referred appellant to Dr. David Rubinfeld, a Board-certified orthopedist, for a second opinion. In a May 7, 2005 report, Dr. Rubinfeld indicated that he reviewed the records provided and examined appellant. He diagnosed lumbosacral sprain and degenerative disease of the lumbosacral spine. Dr. Rubinfeld noted examination of the left knee revealed normal range of motion, no tenderness, effusion or instability and no ligamentous laxity. Examination of the cervical spine revealed no abnormalities and examination of the thoracolumbar spine revealed limited range of motion, equal reflexes, no tenderness or spasm noted, normal muscle strength and intact sensation in the upper and lower extremities. Dr. Rubinfeld opined that appellant's current complaints were related to preexisting degenerative disease of the lumbosacral spine and that the delay in appellant's recovery was due to his preexisting degenerative disc disease. He advised appellant could return to his normal occupation as a letter carrier without restrictions due to his work accident and that no further treatment was required for his work-related injury.

Appellant continued to submit reports from Dr. Tiedrich dated August 17, 2005 to September 13, 2006, who diagnosed severe lumbosacral facet syndrome and requested authorization for facet injections. In reports dated January 10 to March 12, 2007, Dr. Tiedrich noted appellant's continued complaints of low back pain radiating into the lower extremities. He noted an electromyogram dated March 12, 2007 revealed no abnormalities. Dr. Tiedrich opined that appellant was totally disabled.

The Office found that a conflict of medical opinion existed between Dr. Tiedrich, who indicated that appellant sustained residuals of his work-related injuries and was totally disabled and Dr. Rubinfeld, who determined that appellant's work-related conditions of left knee contusion and lumbar sprain and strain had resolved and appellant could return to his preinjury position as a letter carrier without restrictions related to his work injury.

To resolve the conflict the Office, on May 8, 2007, referred appellant to a referee physician, Dr. Robert Dennis, a Board-certified orthopedist. In a May 24, 2007 report,

Dr. Dennis noted reviewing the record, including the history of appellant's work injury and examining appellant. Examination of the cervical spine revealed no spasm or fibrosis and normal range of motion. Dr. Dennis also reported a normal neurological examination of the upper and lower extremities, normal sensory testing of the nerve roots and dermatomes and normal muscle strength. Examination of the lumbar spine revealed no spasm, normal range of motion consistent with appellant's age and was not indicative of any ongoing clinical post-traumatic pathology. Dr. Patel noted that the lumbar spine examination began during casual observation. He stated that, as appellant "demonstrated, identified and described verbally what he could not do, he actually performed the activities, as he indicated he could not." Left knee examination revealed full painless range of motion, no effusion and no tenderness. Dr. Patel diagnosed lumbar sprain resolved, left leg contusion resolved and preexisting, unaltered and persistent degenerative changes of the lumbar spine that were not effected by appellant's work injury.

Dr. Dennis opined that appellant did not have disabling residuals of the accepted condition of lumbar strain noting that the soft tissue conditions of the lumbar sprain resolved and the miniscule findings were consistent with mild and preexisting degenerative changes of the lumbar spine consistent with appellant's age and not with a traumatic condition. He noted some magnification of subjective complaints that were in excess of objective findings. Dr. Dennis noted that his opinion was based on the "benign and very variable physical examination, which is even inconsistent with [appellant's] subjective complaints and is certainly not consistent with his objective findings, which are essentially normal for his age." He opined that appellant reached maximum medical improvement and could return to work full time, regular duties as a letter carrier. Dr. Dennis did not recommend any further treatment and noted physical therapy or epidural injections were not warranted.

Appellant submitted a June 5 and September 5, 2007 report from Dr. Tiedrich, who diagnosed right-sided L5-S1 radiculitis and noted that appellant's condition was progressing without treatment. Dr. Tiedrich recommended steroid injections and noted that appellant continued to be disabled from work.

On September 26, 2007 the Office issued a notice of proposed termination of all compensation benefits on the grounds that Dr. Dennis' report dated May 24, 2007 established no residuals of the work-related left knee contusion and lumbar strain and sprain.

In an October 10, 2007 statement, appellant asserted that he had continued residuals of his work-related condition and was totally disabled. He submitted reports from Dr. Tiedrich dated September 26 to October 31, 2007, who diagnosed degenerative arthritis of the lumbosacral spine with facet and mechanical low back pain predominantly at L5-S1. Dr. Tiedrich noted findings upon examination of muscle spasm, trigger points and limited range of motion of the lumbar spine and opined that appellant's prognosis was guarded. An MRI scan of the lumbar spine dated October 11, 2007 revealed moderate disc bulging at L4-5 and L5-S1 impressing on the anterior thecal sac with no significant central canal stenosis noted.

By compensation order dated April 29, 2008, the Office terminated appellant's compensation benefits effective May 10, 2008 for the accepted conditions of left knee contusion and lumbar strain and sprain on the grounds that the weight of the medical evidence established that he had no continuing disability or residuals of the accepted employment injuries.

On May 20, 2008 appellant requested a telephonic oral hearing which was held on September 17, 2008. He submitted reports from Dr. Tiedrich, dated February 27 to September 24, 2008, who diagnosed bulging annuli at L4-5 and L5-S1 with thecal sac impression and facet joint disease. In a May 7, 2008 report, Dr. Tiedrich noted that appellant had no history of injuries or treatment of the low back before the November 29, 2004 injury. He noted that although appellant had preexisting radiographic degenerative changes in the lumbar spine he was totally asymptomatic before the November 29, 2004 work injury and opined his condition was work related. Dr. Tiedrich opined that appellant was totally disabled.

In a decision dated December 15, 2008, the hearing representative affirmed the April 29, 2008 Office decision.

On November 19, 2009 appellant requested reconsideration. He submitted an October 26, 2009 report from Dr. Tiedrich who opined that the accident of November 29, 2004 exacerbated a preexisting, degenerative asymptomatic condition in the lumbosacral spine which led to significant permanent progressive disability in appellant's lumbosacral spine. Dr. Tiedrich noted that appellant remained totally disabled.

In a January 29, 2010 decision, the Office denied modification of the April 29, 2008 Office decision.

LEGAL PRECEDENT -- ISSUE 1

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ 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.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁵

² 5 U.S.C. § 8102(a).

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁵ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for left knee contusion and lumbar strain and sprain. It reviewed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Tiedrich, a Board-certified orthopedist, who indicated that appellant sustained residuals of his work-related injuries and was totally disabled and could not return to his preinjury position, and Dr. Rubinfeld, an Office referral physician, who determined that appellant's work-related conditions of left knee contusion and lumbar sprain and strain had resolved and appellant had no residuals due to the work injury but due to preexisting degenerative disease and could return to his preinjury position as a letter carrier without restrictions related to his work injury. Consequently, the Office referred appellant to Dr. Dennis to resolve the conflict.

The Board finds that, under the circumstances of this case, the opinion of Dr. Dennis is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related left knee contusion and lumbar sprain and strain has ceased. 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 factual background, is entitled to special weight.⁶

In his report of May 24, 2007, Dr. Dennis reviewed appellant's history, reported findings and noted that appellant exhibited no objective complaints or definite work-related abnormality in his condition. He diagnosed resolved lumbar sprain, left leg contusion and preexisting, unaltered and persistent degenerative changes of the lumbar spine which were not effected by appellant's work injury. Dr. Dennis advised that based on the objective examination appellant did not have disabling residuals of the accepted condition of lumbar strain noting that the soft tissue conditions of the lumbar sprain resolved and the miniscule findings were consistent with mild degenerative changes of the lumbar spine consistent with appellant's age and not with traumatic condition. He noted evidence of symptom magnification and explained how his casual observation of appellant during examination was inconsistent with appellant's subjective complaints. Dr. Dennis advised that examination was essentially normal for a person of appellant's age and that any continuing condition or symptoms were attributable to mild and preexisting degenerative changes of the lumbar spine. He found that appellant could return to work as a letter carrier without restrictions related to the work injury. Dr. Dennis opined that appellant returned to his preinjury state and did not require additional treatment for the work-related injury.

Thereafter, appellant submitted reports from Dr. Tiedrich dated June 5 to October 31, 2007, who diagnosed degenerative arthritis of the lumbosacral spine with facet, mechanical low back pain predominantly at the L5-S1 level and bulging annuli at L4-5 and L5-S1 with thecal sac impression. Dr. Tiedrich noted that appellant continued to be disabled from work. Similarly, in reports dated February 27 to September 24, 2008, he diagnosed bulging annuli at L4-5 and L5-S1 with thecal sac impression and facet joint disease. However, Dr. Tiedrich did not specifically

⁶ *Solomon Polen*, 51 ECAB 341 (2000). See 5 U.S.C. § 8123(a).

address how any continuing condition or medical restrictions and disability were causally related to the accepted employment injuries. Additionally, he was on one side of the conflict that Dr. Dennis resolved and this report is insufficient to overcome that of Dr. Dennis or to create a new medical conflict.⁷

In a May 7, 2008 report, Dr. Tiedrich noted that appellant had preexisting radiographic degenerative changes in the lumbar spine; however, appellant was totally asymptomatic prior to the November 29, 2004 work injury and opined that his condition was work related and he remained totally disabled. He related appellant's continuing back condition and disability to the employment injury; however, his rationale for doing so was that appellant had no back problems prior to the employment injury. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.⁸ No other medical evidence contemporaneous with the termination of benefits supported that appellant had ongoing residuals of his accepted left knee contusion and lumbar sprain and strain.

The Board finds Dr. Dennis had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Dennis is a specialist in the appropriate field. At the time benefits were terminated he clearly opined that appellant had absolutely no work-related reason for disability. Dr. Dennis' opinion as set forth in his report of May 24, 2007 is found to be probative evidence and reliable. The Board finds that Dr. Dennis' opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits for the accepted conditions of left knee contusion and lumbar sprain and strain has ceased.

LEGAL PRECEDENT -- ISSUE 2

If the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he had continuing disability causally related to his accepted employment injury.⁹ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its

⁷ See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Tiedrich's report did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

⁸ *Kimper Lee*, 45 ECAB 565 (1994).

⁹ *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that he has any continuing residuals of his work-related left knee contusion and lumbar strain and sprain on or after May 10, 2008.

After the hearing representative's decision appellant submitted an October 26, 2009 report from Dr. Tiedrich, who opined that the accident of November 29, 2004 exacerbated appellant's preexisting, degenerative condition of the lumbosacral spine which led to progressive disability in appellant's lumbosacral spine. However, Dr. Tiedrich provides only a conclusory statement on causal relationship without providing medical reasoning or rationale to support his opinion. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹¹ Additionally, as noted, Dr. Tiedrich's reports do not otherwise provide new findings or medical rationale to support his conclusion on causal relationship and to establish that any continuing condition or disability was causally related to the November 29, 2004 work injury. He was on one side of the conflict that Dr. Dennis resolved and this report is insufficient to overcome that of Dr. Dennis or to create a new medical conflict.¹²

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between his current condition and his accepted work-related injury of November 29, 2004. Consequently, appellant did not establish that he had any employment-related condition or disability after May 10, 2008.

On appeal, appellant disputes Dr. Dennis' findings and asserts that he remains disabled due to the work injury. However, as explained, Dr. Dennis' report represents the weight of the medical evidence and establishes that appellant's accepted conditions resolved.

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective May 10, 2008 and that appellant failed to establish that he had any continuing disability due to his accepted condition after May 10, 2008.

¹⁰ See *Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

¹¹ See *Theron J. Barham*, 34 ECAB 1070 (1983).

¹² See *Michael Hughes*, *supra* note 7. The Board notes that Dr. Tiedrich's report did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2010 is affirmed.

Issued: July 13, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board