

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALLACE D. LUDWICK and U.S. POSTAL SERVICE,
POST OFFICE, Beaumont, Tex.

*Docket No. 96-641; Submitted on the Record;
Issued April 22, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on November 28, 1995.

The Board has duly reviewed the case record and concludes that the Office met its burden of proof to terminate compensation benefits.

This case is on appeal to the Board for a second time. The Office accepted that appellant sustained a lumbosacral strain and a herniated disc at L4-5. Appellant began receiving compensation for temporary total disability effective June 29, 1972. He began working as a deputy performing light work as of January 1, 1978 and in 1981 the Office determined that the job represented appellant's wage-earning capacity. By decision dated April 8, 1995, the Office terminated appellant's compensation effective May 12, 1985, because he had refused an offer of suitable alternate employment. In *Wallace D. Ludwick*, 38 ECAB 176 (1986), the Board reversed the Office's decision, finding that appellant was entitled to refuse the Office's job offer, because the position of deputy he was working fairly and reasonably represented his wage-earning capacity. By decision dated November 28, 1995, the Office terminated benefits as of that date on the grounds that the weight of the medical evidence established that the accepted conditions had resolved.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

¹ *Patricia M. Mitchell*, 48 ECAB ____ (Docket No. 95-384, issued February 27, 1987); *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

The Office in terminating appellant's compensation benefits, relied mainly upon the medical reports of Dr. Donald H. Nowlin, a Board-certified orthopedic surgeon and appellant's treating physician. In his most recent report dated October 20, 1995, Dr. Nowlin considered appellant's history of injury, performed a physical examination and reviewed x-rays of the lumbar spine dated October 4, 1995. He diagnosed resolved lumbar strain and chronic degenerative intervertebral disc disease of the lumbar spine, especially at L4-5 and L5-S1. He stated that he found no objective evidence that appellant's lumbar strain caused by his May 16, 1972 employment injury was active or disabling. Dr. Nowlin stated that a lumbar strain is a soft tissue injury which would heal within three months of the patient's injury. He felt that appellant's strain healed many years ago and was not currently present or active. Dr. Nowlin stated that appellant's disability was not due to the lumbar strain or herniated disc, but due to the severe degenerative disc disease. He opined that appellant could not return to his usual job as a rural carrier because of the advanced degenerative disc disease. Dr. Nowlin has numerous reports, in the record dating back to December 7, 1973 and in each of them he diagnosed degenerative disc disease, but did not attribute that condition to appellant's employment. In his report dated June 19, 1973, Dr. H.E. McKay, a general practitioner, opined that appellant had herniation of nucleus pulposus at the L4-5 interspace level based on a lumbar myelogram and that appellant required restrictions.

In the present case, Dr. Nowlin's opinion dated October 20, 1995, that appellant recovered from his herniated disc and lumbar strain and is disabled due to his degenerative disc disease, constitutes the weight of the evidence. There is no contrary evidence in the record. Dr. McKay's June 19, 1973 report, does not address whether appellant had degenerative disc disease and his report is not recent. Dr. Nowlin's opinion was based on appellant's history of injury, a physical examination and diagnostic tests and is well rationalized. He treated appellant for over 20 years. As the weight of the medical evidence on this issue, Dr. Nowlin's October 20, 1995 opinion justifies the Office's November 28, 1995 decision terminating benefits.

The decision of the Office of Workers' Compensation Programs dated November 28, 1995 is affirmed.

Dated, Washington, D.C.
April 22, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member