

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WALLACE B. PAGE and U.S. POSTAL SERVICE,  
POST OFFICE, NEW YORK, N.Y.

*Docket No. 96-2433; Submitted on the Record;  
Issued October 8, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's benefits effective July 21, 1996.

On July 2, 1982 appellant, then a 51-year-old postal clerk, filed a claim alleging that he injured the right side of his back that day when he picked up a mail bag in the course of his federal employment. Appellant subsequently filed a claim alleging he sustained a new injury on November 1, 1982. The Office accepted the claim for a sprain of the right mid back and determined the injury occurred on October 31, 1982. Appellant did not work during the periods November 1 through 3; November 15 through 24, 1982; and January 25 through February 6, 1983. Appellant stopped work on March 24, 1983 and has not returned.

On February 21, 1991 Dr. E.D. Davis, appellant's treating physician and a Board-certified orthopedic surgeon, conducted a physical examination and reviewed x-rays of appellant's lumbar spine. He diagnosed a decompensated low back due to arthritic changes with superimposed trauma. Dr. Davis opined that the condition was causally related to his employment injury.

On March 18, 1992 the Office referred appellant, along with a statement of accepted facts to Dr. Marc E. Harr, a Board-certified orthopedic surgeon, for a second opinion examination.

On April 22, 1992 Dr. Harr reviewed appellant's history and objective testing and conducted a physical examination. Dr. Harr diagnosed degenerative osteoarthritis of the thoracolumbar spine. He related the condition to degenerative disease of the thoracic and lumbar spine aggravated by obesity and stated that he did not find a traumatic cause for appellant's complaints. Dr. Harr was unable to relate the degenerative disease to appellant's accepted employment injury in 1982.

The Office subsequently found that a conflict in medical opinion existed between the opinions of Drs. Davis and Harr and referred appellant to Dr. Thurman Gillespy, a Board-certified orthopedic surgeon, to perform a referee examination. Dr. Gillespy rendered an opinion on December 16, 1992, indicating that appellant's condition was unrelated to his October 1982 accepted employment injury. In a decision dated April 15, 1993, the Office terminated appellant's compensation based on the opinion of the referee specialist, Dr. Gillespy. On appeal, the Board reversed the Office's decision on the basis that Dr. Gillespy could not serve as an impartial specialist because he previously examined appellant in his role as a referral physician.<sup>1</sup>

The Office subsequently referred appellant to Dr. Paul J. Maluso, a Board-certified orthopedic surgeon, to provide a referee examination. On June 30, 1995 Dr. Maluso recorded the history of appellant's 1982 work injury and the resulting treatment appellant received. Dr. Maluso noted appellant's symptoms and conducted a physical examination. He also reviewed appellant's x-rays and noted that the thoracolumbar spine showed no evidence of acute fracture or dislocation. Dr. Maluso opined that there were no objective findings of a current lumbar sprain. He also stated appellant could return to his regular work. Finally, he reported that there was evidence of degenerative changes of appellant's entire spine consistent with ankylosing spondylitis, but that it was not work related.

On January 31, 1996 Dr. Maluso clarified his report by concluding that there were no disability or residuals resulting from the accepted employment injury. He stated that any current disability was unrelated to the 1982 work injury. He stated that appellant was not disabled due to a thoracic sprain from 1982 and that appellant could work without restriction.

On June 5, 1996 the Office issued a notice of proposed termination of compensation on the basis that appellant ceased to have an employment-related condition. The Office indicated that it relied on the opinion of Dr. Maluso, the referee specialist, in reaching its decision. Appellant was given 30 days to submit additional evidence or argument.

Appellant did not submit any medical evidence in response, but sent a letter refuting Dr. Maluso's opinion.

In a decision dated July 12, 1996, the Office terminated compensation effective July 21, 1996 based on the opinion of Dr. Maluso, which if determined was the weight of the evidence and established that appellant's disability resulting from his October 31, 1982 injury had ceased.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective July 21, 1996.

Once the Office has accepted a claim and pays compensation, it has the burden or proof 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 disability has ceased or that it is no longer

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<sup>1</sup> *Wallace B. Page*, 46 ECAB 227 (1994).

related to the employment.<sup>2</sup> Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which no longer requires further medical treatment.<sup>4</sup>

In the present case, the Office accepted appellant's claim for a sprain of the right mid back and authorized appropriate compensation benefits. Subsequently, appellant's treating physician, Dr. Davis, a Board-certified orthopedic surgeon, examined appellant and diagnosed a decompensated low back due to arthritic changes with superimposed trauma. He opined that this condition was causally related to appellant's October 31, 1982 accepted employment injury. Dr. Harr, a Board-certified orthopedic surgeon, however, found that he was unable to relate appellant's condition, degenerative arthritis of the thoracolumbar spine, to the accepted employment injury. Because of the conflict between these two reports, the Office eventually referred appellant to Dr. Maluso, a Board-certified orthopedic surgeon, for an impartial medical examination pursuant to section 8123 of the Federal Employees' Compensation Act.<sup>5</sup>

In situations where there are opposing medical reports of virtually equal weight and the case is referred to an impartial specialist, the opinion of such specialist will be given special weight if the opinion is based on proper factual background and well rationalized.<sup>6</sup> Dr. Maluso opined that there were no residuals resulting from the October 31, 1982 accepted injury. Dr. Maluso reviewed appellant's entire history and performed a complete physical examination. He also reviewed x-rays and based on these objective findings he indicated that there was no evidence of a lumbar sprain or any residuals resulting from the 1982 injury. Because Dr. Maluso's opinion was based on a proper factual background and medical rationale, his opinion, as the opinion of the impartial medical specialist, constitutes the weight of the evidence. The Board, therefore, finds that the Office met its burden to terminate appellant's compensation benefits effective July 21, 1996.

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<sup>2</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. § 8128 *et seq.*

<sup>6</sup> *See Jack R. Smith*, 41 ECAB 691 (1990).

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 12, 1996 is affirmed.

Dated, Washington, D.C.  
October 8, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member