

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN R. LEAVOR and U.S. POSTAL SERVICE,
POST OFFICE, Charleroi, Pa.

*Docket No. 97-2360; Submitted on the Record;
Issued June 3, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective March 22, 1996.

In the present case, appellant, a letter carrier, filed a claim alleging that he sustained injury when he slipped and fell on steps while in the performance of duty on January 10, 1994. The Office accepted the claim for a lumbosacral sprain; appellant returned to part-time, light-duty work in June 1994 and eventually began working in a full-time light-duty position on December 21, 1995.

In a letter dated February 22, 1996, the Office advised appellant that it proposed to terminate his compensation on the grounds that the medical evidence demonstrated that the effects of the January 10, 1994 employment injury had ceased. The Office advised appellant that he must submit evidence or argument within 30 days. By decision dated March 22, 1996, the Office terminated appellant's compensation. Following a January 30, 1997 hearing, an Office hearing representative affirmed the termination by decision dated April 15, 1997.

The Board has reviewed the record and finds that the Office met its burden of proof in this case.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.²

As noted above, the record indicates that appellant did return to full time light-duty employment with the employing establishment on December 21, 1995. Although the March 22, 1996 decision indicated that compensation for wage loss was being terminated, if appellant was receiving the same pay in the light-duty position as in his date-of-injury position, he would not have been entitled to continuing compensation for wage loss after December 21, 1995. In any case, the March 22, 1996 decision does represent an adverse decision as it does clearly terminate.

The Office found a conflict in the medical evidence under 5 U.S.C. § 8123(a) between the attending osteopath, Dr. John C. Eisley, and Dr. Yanchus, the orthopedic surgeon serving as a second opinion referral physician.³ Dr. Eisley had continued to submit reports indicating that appellant had a continuing employment-related condition, while Dr. Yanchus stated in an August 14, 1995 report that appellant's employment-related condition had ceased.

To resolve the conflict, the Office referred appellant, along with medical records and a statement of accepted facts, to Dr. Laing. In a report dated December 27, 1995, Dr. Laing provided a history and results on examination. Dr. Laing stated that by history appellant had suffered soft tissue as a result of the January 10, 1994 employment injury. He concluded: "At the time of this examination there is no objective evidence of any abnormalities or residuals of that injury. The examinee has completely recovered from his injury of January 10, 1994, and is capable of performing his duties as a collector/delivery man for the [employing establishment], without limitation or restriction."

The Board finds that Dr. Laing provided a reasoned opinion based on a complete background that appellant's employment-related condition had resolved. It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴ The Board finds that Dr. Laing's opinion is entitled to special weight and it represents the weight of the medical evidence. The Office therefore has met its burden of proof in terminating medical benefits in this case.

² *Furman G. Peake*, 41 ECAB 361 (1990).

³ Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

The decision of the Office of Workers' Compensation Programs dated April 15, 1997 is affirmed.

Dated, Washington, D.C.
June 3, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member