

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HENRY C. MILLER and U.S. POSTAL SERVICE,  
POST OFFICE, St. Paul, Minn.

*Docket No. 97-2159; Submitted on the Record;  
Issued May 6, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

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

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated and finalized on March 28, 1997, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

The decision of the Office of Workers' Compensation Programs dated March 28, 1997 is hereby affirmed.

Dated, Washington, D.C.  
May 6, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott

Memorandum: To the Board

From: AKG

RE: Henry Miller, Docket No. 97-2159

I am recommending that the Board adopt the decision of the Office hearing representative. Essentially, the facts of the case establish that appellant, a custodian, had a long history of non-work related back injuries dating back to his teenage years. The Office accepted that appellant sustained a lumbar strain on June 29, 1992 while moving a large piece of equipment. Appellant returned to work on October 18, 1992 for four hours a day, limited duty; stopped work again on January 18, 1995 and did not return. The hearing representative detailed the medical evidence submitted during 1992 and 1993 which indicated that appellant had degenerative disc disease from L2-S1, but no evidence of herniated disc. Appellant's treating physician Dr. Gilbertson submitted occasional progress notes to the record noting that appellant had generalized pain complaints. Dr. Gilbertson did not identify any objective findings on examiatio, and did not offer any explanation of whether appellant's "pain complaints" were related to the accepted injury. The Office then referred appellant to Dr. Fielden for a second opinion evaluation. Dr. Fielden opined in a comprehensive report that appellant did have degenerative spine condition, however, he also opined that appellant's accepted employment injury had only caused a lumbar sprain, which had resolved. Dr. Fielden also noted that there was no clinical or radiological evidence that the accepted injury had caused any change in appellant's long-standing underlying back condition.

As the medical evidence from Dr. Gilbertson is of such poor quality and does not even relate that appellant's accepted condition continues, the Office properly relied upon Dr. Fielden's report to terminate compensation benefits. Finally, I note that while the medical reports of record do elude to psychiatric treatment for depression, appellant has not alleged that he had developed an emotional condition from the accepted injury, and he has not submitted any evidence form his treating psychiatrist to establish that he has any condition causally related to the accepted injury. It appears from the record that appellant also has long standing chemical dependency issues which maybe are the cause of his current psychiatric treatment.

As the hearing representative thoroughly reviewed the medical evidence of record, and properly outlined the law, no further purpose would be served by a d&o in this case.