

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAURICE D. HOPKINS and U.S. POSTAL SERVICE,
POST OFFICE, Chester, PA

*Docket No. 99-2286; Submitted on the Record;
Issued February 23, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

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

On September 4, 1997 appellant, then a 26-year-old distribution window clerk, sustained a lumbosacral sprain in the performance of duty.

In a form report dated April 29, 1998, Dr. Marc S. Zimmerman, an orthopedic surgeon, stated that appellant was able to return to work as of April 23, 1998 with restrictions.

In a note dated July 10, 1998, indicated that electrodiagnostic testing revealed a right L5-S1 radiculopathy. No cause was given for the condition.

A functional capacity evaluation report dated August 5, 1998, indicated that the report was only conditionally valid because appellant terminated certain activities early due to a perception that he would experience pain or discomfort if he continued and also noted that he was not feeling well due to a cold.

In a report dated August 14, 1998, Dr. Steven Mandel, a neurologist of professorial rank, provided findings on examination and noted that appellant had a "totally normal clinical neurological exam[ination]."

In a report dated August 26, 1998, Dr. Joseph Mangel, a Board-certified internist, provided findings on examination and indicated that appellant could not return to his previous job duties without further treatment.

A magnetic resonance imaging (MRI) scan dated August 25, 1998 was reported as normal.

In a report dated September 8, 1998, Dr. Pasquale A. Colavita, a physiatrist, provided findings on examination but stated that it was difficult to make a complete physical examination due to appellant's multiple complaints of pain.

In a disability certificate dated October 12, 1998, Dr. Mangel stated that appellant could return to light duty as of October 13, 1998 with restrictions. He provided no findings on examination.

In a report dated November 5, 1998, Dr. Mangel stated that appellant should be on restricted duty due to a lumbosacral sprain/strain and he provided a list of work restrictions. He provided no findings on examination.

By letter dated November 12, 1998, the Office referred appellant to Dr. Donald Leatherwood, II, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether appellant had any remaining residuals from his September 4, 1997 employment injury.

In a report dated December 14, 1998, Dr. Leatherwood advised that he had reviewed copies of appellant's medical records and he provided a history of appellant's condition and findings on examination. He also indicated that he had reviewed reports of objective test. Dr. Leatherwood stated:

"After reviewing [appellant's] history, examination and data available today, it is my opinion that at the time of his work[-]related injury he appears to have suffered a lumbosacral sprain/strain by history.... As of today, I believe that he is fully and completely recovered from his work[-]related injuries and has no ongoing orthopedic pathology related to the lumbar spine. I release him to any and all activities he engaged in prior to his work[-]related injuries, without limitations."

In a form report dated December 23, 1998, Dr. Mangel indicated that appellant could work with certain restrictions but he provided no findings on examination.

By letter dated February 5, 1999, the Office advised appellant that it proposed to terminate his compensation benefits on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Leatherwood, established that he no longer had any disability causally related to his September 4, 1997 employment injury.

By letter dated March 4, 1999, appellant stated his disagreement with the proposed termination of compensation benefits. He asserted that he was capable of performing only light-duty work.

By decision dated March 17, 1999, the Office terminated appellant's compensation benefits.

Subsequent to the Office's March 17, 1999 decision, appellant submitted additional evidence. In a report dated December 1, 1998, Dr. Mangel stated that appellant should be on

restrictive duty due to a diagnosis of lumbosacral sprain/strain and he provided a list of work restrictions. He provided no findings on examination.

In a report dated March 2, 1999, Dr. Colavita related that he had examined appellant on that date and he provided findings on examination. He stated that electrodiagnostic testing in conjunction with appellant's history and physical examination revealed electrical evidence suggestive of a bilateral chronic radiculopathy at the L5-S1 nerve root levels as well as evidence suggestive of acute radiculopathy at the left L4 nerve root distribution. Dr. Colavita recommended a home exercise program and stated that he would restrict work duties to a modified level that avoided pushing, pulling, lifting or squatting.

In a form report dated March 11, 1999, Dr. Mangel indicated that appellant was only able to perform limited duty. He provided no findings on examination.

In a report dated May 12, 1999, an Office medical adviser stated that appellant's employment injury, a lumbar sprain, had resolved at the time of Dr. Leatherwood's examination as sprains normally resolve within three weeks to three months. He stated that there was no evidence of a herniated nucleus pulposus or other structural problem. Dr. Leatherwood noted that, although the July 10, 1998 electromyogram and nerve conduction study revealed right radiculopathy at L5-S1 and March 2, 1999 testing by Dr. Colavita showed bilateral L5-S1 radiculopathy and acute left L4 radiculopathy, these changes were progressive and not the result of the September 4, 1997 employment injury. He noted that Dr. Leatherwood had considered these tests before formulating his opinion.

By decision dated June 28, 1999, the Office denied modification of its March 17, 1999 decision.¹

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

It is well established that 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 is no longer related to the employment.²

In a report dated August 14, 1998, Dr. Mandel, a neurologist of professorial rank, provided findings on examination and noted that appellant had a "totally normal clinical neurological exam[ination]." An MRI scan dated August 25, 1998 was reported as normal.

¹ The Board notes that additional evidence was submitted subsequent to issuance of the Office's June 28, 1999 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² *See Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

In a report dated December 14, 1998, Dr. Leatherwood, a Board-certified orthopedic surgeon and Office referral physician, advised that he had reviewed copies of appellant's medical records and Dr. Leatherwood provided a history of appellant's condition and findings on examination. He also indicated that he had reviewed the reports of objective tests. Dr. Leatherwood stated:

“After reviewing [appellant's] history, examination and data available today, it is my opinion that at the time of his work[-]related injury he appears to have suffered a lumbosacral sprain/strain by history.... As of today, I believe that he is fully and completely recovered from his work[-]related injuries and has no ongoing orthopedic pathology related to the lumbar spine. I release him to any and all activities he engaged in prior to his work[-]related injuries, without limitations.”

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The Board finds that the Office properly terminated appellant's compensation benefits based upon the thorough report of Dr. Leatherwood who opined that appellant's employment injury had resolved.

The reports of appellant's physicians are not sufficient to overcome the report of Dr. Leatherwood. In a report dated August 26, 1998, Dr. Mangel, a Board-certified internist, provided findings on examination and indicated that appellant could not return to his previous job duties without further treatment. However, he provided no rationalized explanation as to why appellant could not perform his job. In reports and a disability certificate dated October 12, November 5, December 1 and 23, 1998 and March 11, 1999, Dr. Mangel stated that appellant could perform light duty with restrictions but he provided no findings on examination to support his opinion, nor any rationalized explanation as to how appellant's physical limitations were causally related to his September 4, 1997 employment injury.

In a report dated September 8, 1998, Dr. Colavita, a physiatrist, provided findings on examination but stated that it was difficult to make a complete physical examination due to appellant's multiple complaints of pain. In a report dated March 2, 1999, he stated that electrodiagnostic testing revealed electrical evidence suggestive of a bilateral chronic radiculopathy at the L5-S1 nerve root levels as well as evidence suggestive of acute radiculopathy at the left L4 nerve root distribution. Dr. Colavita provided findings on examination and recommended certain work restrictions. However, he provided no rationalized medical opinion explaining how appellant's condition and physical limitations were causally related to his September 4, 1997 employment injury.

The June 28 and March 17, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
February 23, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member