

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of OWEN W. JACKSON and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, FL

*Docket No. 99-2509; Submitted on the Record;  
Issued July 3, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective January 2, 1999 on the grounds that he had no further disability causally related to his June 13, 1994 and July 31, 1995 employment injuries.

On June 13, 1994 appellant, then a 57-year-old part-time flexible letter carrier, filed a claim for a traumatic injury occurring on that date in the performance of duty. The Office accepted the claim, assigned file number A6-599682, for a contusion of the back and elbow, and a sprain of the neck and lumbar region.

Appellant returned to full-time limited-duty employment on November 23, 1994.

On July 31, 1995 appellant, then a city carrier, filed a claim for a traumatic injury on that date to his lower back. The Office accepted the claim, assigned file number A6-0631543, for low back strain.

By letter dated August 17, 1995, the Office referred appellant to Dr. Frank K. Kriz, a Board-certified orthopedic surgeon, for a second opinion evaluation. With the referral, the Office included the case record from file number A6-599682 and a statement of accepted facts describing the June 13, 1994 employment injury.

By decision dated January 5, 1996, the Office terminated appellant's compensation benefits effective that date on the grounds that the weight of the evidence established that he had no further employment-related condition or disability. The Office based its termination of benefits on the September 20, 1995 opinion of Dr. Kriz.

In a letter dated February 2, 1996, appellant requested a hearing before an Office hearing representative. By decision dated April 15, 1997, the hearing representative set aside the Office's January 5, 1996 decision. The hearing representative found that as Dr. Kriz did not

have information regarding appellant's July 31, 1995 employment injury his report was insufficient to support the Office's termination of appellant's compensation. The hearing representative remanded the case for the Office to prepare a complete statement of accepted facts and refer appellant back to Dr. Kriz for an opinion on whether he had any residual condition or disability due to his June 13, 1994 and July 31, 1995 employment injuries.

By letter dated September 21, 1998, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Kriz for a second opinion evaluation. Based on Dr. Kriz' October 14, 1998 report, on November 25, 1998 the Office informed appellant that it proposed to terminate his compensation benefits. By decision dated December 29, 1998, the Office terminated appellant's compensation effective January 2, 1999 on the grounds that he had no further disability causally related to his June 13, 1994 and July 31, 1995 employment injuries.

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

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>2</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup>

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective January 2, 1999 based on its finding that the well-rationalized opinion of the Office referral physician, Dr. Kriz, constituted the weight of the medical evidence. In a report dated October 14, 1998, Dr. Kriz discussed appellant's history of injury, physical complaints, the results of objective tests and listed findings on physical examination. He diagnosed a soft tissue strain of the neck and low back and a right elbow contusion due to the June 13, 1994 employment injury, a low back strain of the soft tissue due to the July 31, 1995 injury, bilateral carpal tunnel syndrome and long-standing degenerative arthritis of both knees. Dr. Kriz stated:

“The current objective examination findings and diagnoses as related to the employment factors described in the statement of accepted facts reveal normal examination of the cervical and lumbosacral spine regions and normal or negative neurologic examination of the upper and lower extremities with no evidence of nerve root impingement or neuropathy. There are no right elbow complaints nor positive objective physical findings. There is full range of motion with no evidence of residual injury associated with the June 13, 1994 injury.”

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<sup>1</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>2</sup> *Id.*

<sup>3</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

“There is no positive objective examination findings to document a residual injury of either the June 13, 1994 or July 31, 1995 dates of injury. The sprain of the neck and back and the contusion of the right elbow have resolved.... The objective findings related to the neck, back and cervical and lumbar neuro structures were normal and reveal no evidence of residual or permanent injury associated with the accidents dates. My opinion at that time and remains that [appellant] was fit to return to his employment. The medical documentation included the normal EMG/NCV [electromyogram/nerve conduction study] by Dr. Parado and the MRI [magnetic resonance imaging study] of November 3, 1994 [and] at this time my opinion is recomfirmed upon review of the second lumbar MRI [study] of November 22, 1995 and reviewing the third lumbar MRI [study] of April 16, 1998 with no evidence of disc herniation or significant spinal stenosis.”

The Board has carefully reviewed the opinion of Dr. Kriz and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue in the present case. He provided a through factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Kriz provided a proper analysis of the factual and medical history and findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant’s condition which comported with this analysis.<sup>4</sup> He included medical rationale for his opinion by explaining that the findings upon examination and diagnostic testing did not show any objective residuals of appellant’s employment injuries. Dr. Kriz stated, “As to the accepted anatomic body regions that were injured, *i.e.*, the cervical and lumbar regions and right elbow, [appellant] is fit to return to work.” He found that appellant was unable to perform his employment due to his degenerative arthritis of the knees which he opined had “no causal relationship to the June 13, 1994 or July 31, 1995 dates of injury.”

The remaining evidence of record prior to the Office’s termination of compensation is insufficient to support that appellant had continuing disability due to his employment injury.

In a report dated October 27, 1997, Dr. William J. Quartuccio, a Board-certified anesthesiologist, noted appellant’s history of a July 31, 1995 injury to his low back. He diagnosed a “disc bulge at L4-5 with resultant bilateral lower extremity radicular symptoms” based on a November 29, 1995 nerve conduction study. Dr. Quartuccio, however, did not address the cause of the diagnosed condition and thus his opinion is of diminished probative value.

In an office visit note dated September 1, 1998, Dr. Edward N. Feldman, an orthopedic surgeon and appellant’s attending physician, noted appellant’s complaints of low back pain and found his physical condition unchanged. In an office visit note dated October 13, 1998, Dr. Feldman diagnosed mild spinal stenosis at L4-5; degenerative disc disease with disc bulge at L4-5 and L5-S1, lumbar radiculopathy, chronic lumbar sprain, and a protruding disc at L5-S1 with left nerve root impingement. He stated, “the objective findings and subjective complaints

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<sup>4</sup> See *Melvina Jackson*, 38 ECAB 443 (1987).

are causally related to the work-related accident of July 31, 1995 and are permanent.” The Board notes that the Office did not accept appellant’s claim for any of the diagnosed conditions other than lumbosacral sprain and thus appellant has the burden of proof in establishing that the condition is causally related to employment factors.<sup>5</sup> As Dr. Feldman’s reports contain no findings on physical examination or rationale in support of his conclusion, they are of little probative value.<sup>6</sup>

In response to the Office’s proposed termination of compensation, appellant submitted a report from Dr. Frank Mazzarelli, a chiropractor. Dr. Mazarrelli diagnosed chronic cervical, thoracic and lumbar spine syndrome and lumbar disc pathology with radiulopathy by history. Section 8101(2) of the Act includes chiropractors as physicians only to the extent that their reimbursable service is limited to manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>7</sup> As Dr. Mazarrelli did not diagnose a subluxation by x-ray he is not considered a qualified physician as defined by section 8101(2) and his report is of no probative value.<sup>8</sup>

The Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits effective January 2, 1999.

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<sup>5</sup> See *Charlene R. Herrera*, 44 ECAB 361 (1993).

<sup>6</sup> *Carolyn F. Allen*, 47 ECAB 240 (1995) (Medical reports not containing rationale on causal relation are entitled to little probative value).

<sup>7</sup> 5 U.S.C. § 8101(2).

<sup>8</sup> *Richard A. Reece*, 42 ECAB 829 (1991).

The decision of the Office of Workers' Compensation Programs dated December 29, 1998 is hereby affirmed.

Dated, Washington, D.C.  
July 3, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member