

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILL WHITE, JR. and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Reno, NV

*Docket No. 98-1434; Submitted on the Record;  
Issued October 10, 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 properly terminated appellant's compensation as of October 12, 1997.

The Board has duly reviewed the case record in this appeal and finds that the Office properly terminated appellant's compensation on the grounds that appellant no longer had any disability on or after October 12, 1997 causally related to his June 3, 1985 employment injury.

On July 28, 1986 appellant, then a 41-year-old mailhandler, filed a traumatic injury claim (Form CA-1) assigned number A13-0806754 alleging that on June 3, 1985 he injured his lower back while in the performance of duty. The Office accepted appellant's claim for a lumbosacral sprain. Appellant worked intermittently between June 4, 1985 and January 8, 1988. Appellant stopped work on January 9, 1988 and has not returned to work.

By letter dated November 17, 1994, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Dennis P. Gordon, a Board-certified orthopedic surgeon, for a second opinion examination. By letter of the same date, the Office advised Dr. Gordon of the referral.

Dr. Gordon submitted a December 8, 1994 medical report finding that back sprains do not last 10 years. He submitted a December 19, 1994 supplemental medical report reiterating that there was a discrepancy between appellant's symptoms, and his physical and objective findings.

The Office received a January 12, 1995 medical report from Dr. Steven A. Glyman, a Board-certified neurologist and appellant's treating physician, finding that appellant had chronic back problems that prevented him from being gainfully employed.

By letter dated April 21, 1995, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Reynold L. Rimoldi, an

orthopedic surgeon, for an impartial medical examination to resolve the conflict in the medical evidence. By letter of the same date, the Office advised Dr. Rimoldi of the referral.

Dr. Rimoldi submitted a May 19, 1995 medical report finding that appellant's need for medical treatment and residual disability were a direct result of his September 6, 1984 employment injury.<sup>1</sup> By letter dated June 21, 1995, the Office requested that Dr. Rimoldi clarify his report and address the specific questions regarding appellant's June 3, 1985 employment injury. He did not respond.

By letter dated January 22, 1997, the Office subsequently referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Richard C. Rosenberg, a Board-certified orthopedic surgeon. By letter of the same date, the Office advised Dr. Rosenberg of the referral.

Dr. Rosenberg submitted a February 25, 1997 medical report finding that appellant's employment-related disability regarding his September 6, 1984 employment injury resolved in March or April 1985 and that appellant's continuing disability was due to his nonemployment-related preexisting back condition. In a supplemental medical report dated June 11, 1997, which was in response to the Office's May 22, 1997 request to clarify whether appellant had any residuals of his 1985 employment injury, Dr. Rosenberg opined that appellant did not continue to have any residuals of his June 3, 1985 employment injury.

In a notice of proposed termination of compensation dated June 27, 1997, the Office advised appellant that it proposed to terminate his compensation based on Dr. Rosenberg's medical opinion. The Office also advised appellant to submit additional medical evidence supportive of his continued disability within 30 days.

By decision dated September 23, 1997, the Office terminated appellant's compensation on or after October 12, 1997 on the grounds that Dr. Rosenberg's medical opinion established that appellant was no longer disabled due to his June 3, 1985 employment injury. In a September 30, 1997 letter, appellant requested an oral hearing before an Office representative. By letter dated October 8, 1997, appellant submitted additional medical evidence.

In an October 24, 1997 letter, the Office advised appellant that it had received the evidence he submitted to President Clinton. The Office then advised appellant that an oral hearing could not be scheduled promptly. In a November 5, 1997 letter response, appellant advised the Office that he wished to change his previous request to a request for a review of the written record.

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<sup>1</sup> On June 5, 1985 appellant filed a traumatic injury claim for a September 6, 1984 back injury assigned number A13-769760. By decision dated September 4, 1985, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between his back condition and the September 6, 1985 injury. By letter dated September 30, 1985, appellant appealed to the Board. In a March 31, 1986 decision, the Board remanded the case to the Office. In a May 1, 1986 letter, the Office accepted appellant's claim for low back strain.

In a March 5, 1998 decision, the hearing representative affirmed the Office's September 23, 1997 decision.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.<sup>2</sup> 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 related to the employment.<sup>3</sup>

In terminating appellant's compensation, the Office relied on the medical opinion of Dr. Rosenberg, a Board-certified orthopedic surgeon. In a February 25, 1997 medical report, he provided a history of appellant's employment, September 1984 and June 3, 1985 employment injuries, medical treatment and complaints. Dr. Rosenberg further provided his findings on physical examination and a review of medical records. He diagnosed chronic lumbar strain, mild lumbar disc degeneration and signs of chronic right-sided L5 radiculopathy without any signs of a herniated disc. Dr. Rosenberg stated that it was important to note that appellant had a preexisting degenerative condition, which was ongoing since the 1970s and was a source of disability prior to his work-related injury of September 1984. He further stated it appeared that lacking this employment injury, appellant's lower back condition would have proceeded at the same rate that it did with the injury. Dr. Rosenberg noted that the diagnosis of chronic lumbar strain was fairly well established and that, based on imaging studies, there was no evidence of a herniated disc. He then noted that appellant had signs of weakness in the right lower extremity which he believed was a sign of chronic right-sided lumbar radiculopathy, but stated no imaging studies collaborated this finding of lumbar radiculopathy. Dr. Rosenberg opined that appellant's September 1984 injury consisted of an aggravation of a preexisting condition. He stated that, based on his review of appellant's records, this aggravation of a preexisting condition lasted six months and opined that this led to a period of approximately six months of disability. Dr. Rosenberg then noted at that time, appellant had subjective factors of disability consisting of constant slight to moderate pain in the lumbosacral region. He also noted that appellant's prognosis was poor. Regarding appellant's September 1984 employment injury, Dr. Rosenberg opined that the injury led to a period of six months of total disability which terminated in approximately March or April 1985. He further opined that appellant's continuing disability was due to his nonemployment-related preexisting back condition. In addition, Dr. Rosenberg opined that appellant was totally disabled from his regular job based on his review of appellant's job description, but that appellant was able to perform light-duty work with certain physical restrictions.

In a June 11, 1997 supplemental medical report, Dr. Rosenberg stated that he had reviewed his previous medical report and opined that appellant did not continue to have residuals from his second employment injury of June 3, 1985.

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<sup>2</sup> *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 16 (1987).

<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

The Board has carefully reviewed the reports of Dr. Rosenberg and finds that they constitute the weight of the medical evidence on the relevant issue of the present case inasmuch as they contain medical rationale in support of his conclusion that appellant was no longer disabled due to his June 3, 1985 employment injury. The report of Dr. Rosenberg established that appellant ceased to have residuals of his June 3, 1985 employment injury on or after October 12, 1997. The Office met its burden of proof to terminate appellant's compensation.

The March 5, 1998 and September 23, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
October 10, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member