

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANKLIN NICOLOUDAKIS and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Trenton, NJ

*Docket No. 00-1429; Submitted on the Record;  
Issued April 12, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective September 20, 1999 on the grounds that appellant no longer had any residuals of his February 8, 1993 employment injury.

The Board has duly reviewed the case record in this appeal and finds that the Office properly terminated appellant's compensation benefits effective September 20, 1999 on the grounds that appellant no longer had any residuals of his February 8, 1993 employment injury.

On February 8, 1993 appellant, then a 35-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a back injury while in the performance of duty.

By letter dated September 16, 1993, the Office accepted appellant's claim for thoracic and lumbosacral strains.

By letter dated October 14, 1998, the Office referred appellant, along with a statement of accepted facts, a list of specific questions and medical records to Dr. Dante E. Sesin, an orthopedic surgeon. By letter of the same date, the Office advised Dr. Sesin of the referral.

Dr. Sesin submitted an October 22, 1998 medical report providing a diagnosis of myositis of the upper and lower spine and normal findings on physical examination. He stated that appellant did not require any additional medical treatment.

Dr. Sesin submitted a December 9, 1998 supplemental report finding that appellant had chronic myositis of the cervical and lumbar spine, which was a preexisting condition that was aggravated by his February 8, 1993 employment injury. He stated that appellant's complaints did not preclude him from performing the duties of a distribution clerk.

In a February 8, 1999 note, the Office advised Dr. Sestin to provide an additional report clarifying, *inter alia*, whether appellant had any residuals of his accepted employment-related conditions.

In response, Dr. Sestin submitted a February 15, 1999 supplemental report indicating that appellant did not have any signs of thoracic and lumbosacral strains and that appellant could perform the duties of a distribution clerk.

In a notice of proposed termination of compensation dated May 22, 1999, the Office advised appellant that it proposed to terminate his compensation based on Dr. Sestin's medical opinion. The Office also advised him to submit additional medical evidence supportive of his continued disability within 30 days.

In response, appellant submitted a June 10, 1999 medical report of Dr. Michael R. Dash, a Board-certified internist and appellant's treating physician, finding that he continued to suffer from his February 8, 1993 employment injury.

By letter dated June 19, 1999 letter, the Office advised appellant that there was a conflict in the medical opinion evidence between Drs. Sestin and Dash. Accordingly, the Office advised appellant that he would be referred to an impartial medical specialist to resolve the conflict.

By letter dated August 3, 1999, the Office referred appellant along with a statement of accepted facts, a list of specific questions and medical records to Dr. Irving D. Strouse, a Board-certified orthopedic surgeon. By letter of the same date, the Office advised Dr. Strouse of the referral.

The Office received Dr. Strouse's August 17, 1999 medical report finding that appellant's accepted employment-related conditions had resolved.

By decision dated September 18, 1999, the Office terminated appellant's compensation effective September 20, 1999 on the grounds that Dr. Strouse's medical opinion established that appellant no longer had any residuals of his February 8, 1993 employment injury.

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.<sup>1</sup>

Pursuant to section 8123(a) of the Federal Employees' Compensation Act, the Office properly referred appellant to Dr. Strouse for an impartial medical examination and report to resolve the conflict in the medical opinion evidence between Dr. Sestin, a physician for the Office and Dr. Dash, appellant's treating physician, concerning the issue whether appellant had any residuals of his February 8, 1993 employment injury.<sup>2</sup> In his August 17, 1999 medical report,

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<sup>1</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>2</sup> 5 U.S.C. § 8123(a) states in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

Dr. Strouse provided a history of appellant's February 8, 1993 employment injury, medical treatment and employment, a review of medical records and his findings on physical examination. Dr. Strouse diagnosed chronic cervical thoracic and lumbar sprain. He stated:

"It is my opinion that [appellant's] cervical, thoracic and lumbosacral sprains, as well as chronic myositis have resolved. My opinion is based on the review of the [his] records, including his diagnostic studies, as well as my physical examination. There are no objective findings on both diagnostic studies and physical examination to substantiate his subjective complaints. It is my opinion that [appellant] is not disabled at this time. It is my opinion that [he] can return to his previous occupation without restriction. It is my opinion that he can work eight hours per day in his occupation as described. It is my opinion that [appellant] has reached maximal benefit from medical treatment and that no further treatment is indicated."

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>3</sup> In the present case, the report of Dr. Strouse, obtained to resolve a conflict of medical opinion, was rationalized and based on an accurate factual and medical background. The report of Dr. Strouse constitutes the weight of the medical evidence and is sufficient to establish that appellant no longer has any residuals of his February 8, 1993 employment injury.

The September 18, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 12, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>3</sup> *James P. Roberts*, 31 ECAB 1010 (1980).