

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES D. REYES and U.S. POSTAL SERVICE,
POST OFFICE, Lakewood, CA

*Docket No. 01-75; Submitted on the Record;
Issued April 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective September 20, 2000.

On February 6, 1999 appellant, then a 41-year-old letter carrier, sustained a lumbosacral strain in the performance of duty when he slipped and fell on a wet porch while being chased by a dog. He returned to limited duty on April 4, 1999 working four hours a day through June 2, 1999, increasing to eight hours a day on June 18, 1999.

In a report dated February 19, 1999, Dr. Gerald J. McCann, appellant's attending orthopedic surgeon, diagnosed a lumbar sprain, a contusion of the left shoulder, a lumbar disc herniation at L4-5 and degenerative disc disease at T12-L1. He related that on February 6, 1999 appellant slipped and landed on his buttocks, twisted his body and hit his left shoulder.

In a report dated April 28, 1999, Dr. B. Ted Field, appellant's new attending physician and a Board-certified orthopedic surgeon, provided a history of his condition and findings on examination. He diagnosed lumbosacral and left shoulder strains and indicated that appellant could perform modified work.

In reports and notes dated May 26, June 2, June 23, July 14, August 4, August 25, September 22, October 18 and November 17, 1999, Dr. Field reiterated that appellant could perform modified work.

In a report dated January 19, 2000, Dr. Field stated that appellant underwent a permanent and stationary evaluation on that date. He stated that appellant's back condition precluded him from heavy lifting but he could continue to perform his modified work duties and was discharged from care.

On April 13, 2000 appellant accepted a modified letter carrier position with the employing establishment which was within the physical restrictions recommended by Dr. Field.

By letter dated April 25, 2000, the Office referred appellant, together with copies of medical records and a statement of accepted facts, to Dr. J. Pierce Conaty, a Board-certified orthopedic surgeon, for an examination and opinion on whether appellant had any residual disability or medical condition causally related to his February 6, 1999 employment injury.

In a report dated May 18, 2000, Dr. Conaty provided a history of appellant's condition and findings on examination and diagnosed a lumbosacral strain, resolved left shoulder strain and degenerative disc disease of the lumbar spine. He stated:

“The diagnosed condition of lumbosacral strain is medically connected to the work injury by direct cause. The diagnosed condition of left shoulder strain is also medically connected to the work injury by direct cause, but this has resolved. Also, the low back condition appears to be an aggravation of the underlying degenerative changes in the lumbar spine, secondary to a long history of previous back problems....

“I believe the aggravation is temporary and has ceased. This is substantiated by the fact that there was no change in the MRI [magnetic resonance imaging]. There is increased subjective pain, but no significant clinical objective findings which would indicate there has been a material change in the underlying disease.

“[Appellant] does continue to suffer residuals of the work injury, but these are all subjective. There are no objective residuals.”

Dr. Conaty stated that appellant should continue using medications and had physical limitations due to his preexisting degenerative back condition such as no heavy lifting, pushing and pulling, no prolonged walking or standing and no reaching above the shoulder.

In a supplemental report dated August 9, 2000, Dr. Conaty stated that the diagnoses provided in his May 18, 1999 report should be changed to lumbosacral strain, resolved; left shoulder strain, resolved; and degenerative disc disease of the lumbar spine. He stated:

“[Appellant] complained of occasional pain in the left shoulder, pain in the back and aching into both legs. These are primarily subjective in nature and I believe that there is symptom magnification. [His] previous condition of lumbosacral strain was medically connected to the work injury by direct cause, but this was a temporary, soft tissue injury that resolved in three months. The findings in the back are totally related to the condition of lumbosacral degenerative disc disease and not to the February 6, 1999 work injury....

“I believe further medical treatment is indicated solely relative to [appellant's] longstanding lumbosacral degenerative disc disease.... I believe he has limitations due to the underlying lumbosacral disc disease....”

By letter dated August 15, 2000, the Office advised appellant that it proposed to terminate his compensation benefits on the grounds that the weight of the medical evidence of

record established that he had no residual disability or medical condition causally related to his February 6, 1999 employment injury.

By decision dated September 20, 2000, the Office terminated appellant's compensation benefits effective that date.

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.¹

In this case, appellant returned to modified duty on April 4, 1999.

In a report dated April 28, 1999 and subsequent reports and notes, Dr. Field indicated that appellant could perform modified work. In a report dated January 19, 2000, Dr. Field stated that appellant's back condition precluded him from heavy lifting, noting that he had lost about one-half of his preinjury capacity for lifting and repetitive bending and stooping. However, Dr. Field indicated that appellant's accepted lumbosacral strain had resolved, and vocational rehabilitation was not needed if appellant continued to perform his modified work duties.

On April 13, 2000 appellant accepted a modified letter carrier position with the employing establishment which was within the physical restrictions established by Dr. Field.

In reports dated May 18 and August 9, 2000, Dr. Conaty, the Office referral physician agreed with Dr. Field that appellant's accepted lumbosacral strain had resolved, based on his examination and on a previous MRI scan. Dr. Conaty described physical limitations attributable to appellant's preexisting nonwork-related degenerative changes in the lumbar spine and recommended work restrictions, which included no heavy lifting, pushing and pulling, no prolonged walking or standing and no reaching above the shoulder. The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits based upon the thorough and well-reasoned reports of Dr. Conaty, which established that appellant's accepted lumbosacral strain had resolved.

¹ See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

The September 20, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 23, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member