

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES F. RHOADES and U.S. POSTAL SERVICE,  
GENERAL POST OFFICE, Harrisburg, PA

*Docket No. 99-1751; Submitted on the Record;  
Issued April 23, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation benefits effective March 1, 1998.

The Board has duly reviewed the case record in the present appeal and finds that the Office failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits effective March 1, 1998.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</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>2</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>4</sup>

In the present case, the Office accepted that on January 2, 1996 appellant, then a 58-year-old supervisor of fleet operations, sustained a lumbar strain, lumbar disc displacements and cervical radiculopathy when he slipped and fell in the performance of duty. Appellant was off work until March 11, 1996, when he returned to work four hours a day, with restrictions. Appellant returned to work six hours a day on April 18, 1996, but stopped work altogether on

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<sup>1</sup> *Lawrence D. Price*, 47 ECAB 120 (1995).

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

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>4</sup> *Id.*

June 7, 1996 and filed a claim for a recurrence of disability. The Office accepted appellant's claim for a recurrence on September 30, 1996, and found that appellant was only capable of working four hours a day. In a decision dated August 28, 1997, an Office hearing representative set aside the Office's September 30, 1996 decision and remanded the case for further medical development and clarification of appellant's level of disability, if any. After a failed attempt to obtain clarification from the original second opinion physician, the Office referred appellant for evaluation by Dr. Joseph R. Sgarlat, a Board-certified orthopedic surgeon, who opined that there was no objective evidence to indicate that appellant's January 1996 employment-related fall caused any significant damage and that the work injury would not prevent appellant from returning to his job as the supervisor of fleet operations.

On December 30, 1997 the Office issued a notice of proposed termination and on February 11, 1998, having reviewed the additional arguments and evidence submitted by appellant, issued a decision terminating appellant's compensation benefits. The Office specifically found that the weight of the medical evidence of file was represented by the well-rationalized opinion of Dr. Sgarlat, the Office referral physician. Appellant disagreed with the decision and requested an oral hearing before an Office hearing representative. Appellant also submitted additional medical evidence from his treating physicians. By decision dated January 15, 1999, the Office hearing representative affirmed the Office's decision terminating appellant's compensation benefits effective March 1, 1998 on the grounds that he had no employment-related disability after that date. The instant appeal follows.

The relevant medical evidence in this case includes numerous reports by appellant's treating neurologist, Dr. Mahmood Nasir, who has treated him continually beginning in 1996. In his reports, Dr. Nasir noted appellant's complaints of constant back pain radiating into his lower extremities and documented his finding of back spasms on examination. He diagnosed failed back syndrome and has treated appellant with medication, including intravenous narcotics, physical therapy and nerve blocks. Dr. Nasir has consistently opined that appellant is totally disabled due to intractable low back pain secondary to failed back syndrome as a result of his January 2, 1996 employment injury.

Appellant also submitted a medical report from Dr. Walter C. Peppelman, Jr., an osteopath and spine specialist, who evaluated appellant on April 8, 1998 for possible surgical intervention. In his report, Dr. Peppelman noted that on physical examination appellant displayed a significant amount of symptom magnification and inappropriate illness behavior. Dr. Peppelman further noted, however, that appellant had undergone a discometric evaluation by Dr. Mahraj at the Hershey Medical Center, which revealed significant and severe concordant pain response at the L3-4 area, which was identified as the area of appellant's usual pain. Appellant was also found to have some back and gluteal pain at the L5-S1 area, and a loss of disc height at this level with severe internal derangement, although not to the significant degree or reproduction of the pain generated at the L3-4 area. Due to these mixed findings, Dr. Peppelman asked Dr. Thomas Fink, a rehabilitation psychologist, to evaluate appellant and give an opinion as to whether appellant's overlying emotional aspect superceded the physical findings in the low back. Dr. Peppelman noted that, if Dr. Fink felt that appellant's overlying emotional aspect did supercede the physical findings, then he would not recommend appellant for any surgical procedures, but if, on the other hand, Dr. Fink opined that appellant's emotional overlay was

secondary to his chronic pain, then additional treatments could be recommended and surgery could be cautiously considered.

In a report dated June 4, 1998, Dr. Fink noted that appellant had been referred to him by Dr. Peppelman because examination and testing had revealed a possible objective cause for appellant's continuing pain difficulties, but that appellant also presented with possible psychological overlay. Dr. Fink detailed his findings on psychological examination and testing and noted that the results of the Hendler Screening Test produced a total score of 12, consistent with what is described as an "objective pain patient." Dr. Fink explained that an objective pain patient is someone who reports a normal response to the chronic pain experience, without significant exaggeration, secondary gain or emotional overlay. Dr. Fink concluded that appellant's observed pain behavior was therefore likely to be communicative in nature, rather than manipulative, and that, as long as there was an indication of organic pathology, he did not see any psychological reason to exclude appellant from consideration for surgery.

In a report dated December 11, 1997, Dr. Joseph R. Sgarlat, a Board-certified orthopedic surgeon who provided an evaluation for the Office, opined that there was no objective evidence to indicate that appellant's January 1996 employment-related fall caused any significant damage and that the work injury would not prevent appellant from returning to his job as the supervisor of fleet operations.

Section 8123(a) of the Federal Employees' Compensation Act,<sup>5</sup> provides, "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." In this case, in terminating appellant's compensation benefits, the Office relied upon the opinion of Dr. Sgarlat, who stated that appellant had no objective deficits and could return to work. Appellant's treating physicians, Drs. Nasir, Peppelman and Fink, diagnosed employment-related chronic pain problems and opined that appellant's pain response was normal, without significant exaggeration, secondary gain or emotional overlay. The Board, therefore, finds that a conflict in medical evidence exists between the opinions of appellant's treating physicians and Dr. Sgarlat regarding whether appellant continues to suffer from disabling residuals of his January 2, 1996 employment injury. The Office, thus, did not meet its burden of proof in terminating appellant's compensation effective March 1, 1998.<sup>6</sup>

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<sup>5</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

<sup>6</sup> See *Gail D. Painton*, 41 ECAB 492 (1990).

The decision of the Office of Workers' Compensation Programs dated January 15, 1999 is hereby reversed.

Dated, Washington, DC  
April 23, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member