

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKLIN D. HAISLAH and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 01-208; Submitted on the Record;
Issued August 1, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has established that he had any driving restrictions which precluded his return to suitable work; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits.

This is the third appeal to the Board in this case.¹ On the first appeal, the Board reversed the May 14 and July 2, 1992 decisions of the Office, finding that appellant met his burden of proof to establish that he sustained a lumbosacral strain due to a January 15, 1992 employment injury. The case was remanded to the Office to determine the period of appellant's disability.² On the second appeal, the Board found that the Office properly terminated appellant's wage-loss compensation on October 23, 1997 based on his refusal to accept suitable work. The Board noted that Dr. Charles J. Paquelet, a Board-certified orthopedic surgeon selected as an impartial medical specialist, found that appellant could work eight hours modified duty, subject to restrictions including limited sitting, walking and lifting. The Board noted that appellant requested reconsideration of the Office's suitable work determination and submitted a November 4, 1997 report from his treating physician, Dr. Paul A. Steurer, Jr., a Board-certified orthopedic surgeon, who stated that appellant should not drive more than 30 minutes to avoid aggravating his back condition. The Board found that the Office erred in dismissing Dr. Steurer's opinion on the basis that the amount of driving time to work was not a recognized work restriction and in determining that Dr. Paquelet's statement that appellant could sit for an hour meant that appellant could drive for that amount of time. The Board noted appellant's allegation that his commute to the offered job was 45 to 55 minutes in good weather with no traffic problems. The Board set aside the Office's December 3, 1997 decision and remanded the

¹ Docket No. 98-569 (issued December 27, 1999); *Franklin D. Haislah*, 45 ECAB 483 (1994). The facts and history of the case as set forth in the prior decisions are herein incorporated by reference.

² Appellant's claim was accepted for lumbar strain, aggravation of lumbar strain and thoracic strain.

case for further development. The Board instructed the Office to address appellant's ability to drive to the offered job, given his physical limitations and the geographical distance involved.

On remand, the Office found that a conflict of medical opinion was created between Dr. Steurer and Dr. Paquelet on the issue of whether appellant was able to drive to the offered job of modified letter carrier. Appellant was referred to Dr. Ralph J. Kovach, a Board-certified orthopedic surgeon selected as the impartial medical specialist to resolve the conflict.

In a June 8, 2000 report, Dr. Kovach reviewed appellant's history of injury and medical treatment, noting his complaint of intermittent pain in his upper and lower back. Dr. Kovach noted that appellant related a restriction of no driving for more than 30 minutes. On physical examination, Dr. Kovach stated that muscle spasms were not palpable anywhere in the upper, middle or lower back. He noted some atrophy on the right side of appellant's neck, in the region where he underwent radiation therapy for cancer and removal of a cervical node. Dr. Kovach described a good and active range of motion of the upper extremities with excellent range of movement to his back in all directions. The physician found no sensory changes, trigger points, muscle spasm or atrophy of the legs or upper extremities. Straight leg raising was negative. Dr. Kovach reviewed appellant's medical file and stated that the magnetic resonance imaging (MRI) scan was essentially normal, showing no disc herniation or bulging. He stated that appellant's physical examination was "completely normal showing no objective signs or findings to indicate [appellant] has any ongoing problems concerning the allowed claim which was accepted for thoracic and lumbar strain." Dr. Kovach concluded that appellant could return to his usual work as a letter carrier without any driving or sitting restrictions or any limitation on the time he was allowed to drive or ride in a car.

By decision dated June 21, 2000, the Office issued a notice of proposed termination of medical benefits, finding that Dr. Kovach's opinion constituted the weight of the medical evidence and established that appellant's accepted conditions had resolved. The Office noted that Dr. Kovach did not support any restrictions on appellant's ability to drive or ride in a car.

Appellant submitted a June 2, 2000 report from Dr. Steurer who noted pain and tenderness of his back. He noted that appellant had the same back problem and related leg pain. Dr. Steurer indicated that appellant had some limitation regarding bending, lifting and travel but could "hopefully work with some restrictions." He prescribed medication for appellant and a stretching and exercising program. In a July 7, 2000 note, Dr. Steurer stated that appellant continued to have soreness and aching in his back and leg. Dr. Steurer referred appellant to Dr. George A. Hunter, a Board-certified orthopedic surgeon.

By decision dated July 25, 2000, the Office terminated appellant's compensation benefits, stating that the weight of the medical evidence established that appellant's work-related conditions had resolved.

By letter dated August 21, 2000, appellant requested reconsideration and submitted the reports of Dr. Hunter. In a July 25, 2000 report, Dr. Hunter reviewed appellant's history of injury and the February 18, 1997 MRI scan, which demonstrated a mild degree of degenerative central stenosis at the L4-5 level. He also reviewed x-ray records of the cervical and lumbar spine that showed evidence of muscle spasm in the cervical area, with slight degenerative

changes in the lumbar spine. Dr. Hunter performed a physical examination, noting the active range of motion of the thoracolumbar spine was 40 degrees of forward flexion, with 10 degrees of extension and 20 degrees of right and left lateral bending. He found no evidence of motor or sensory loss and indicated that straight leg raising to 90 degrees was negative. Dr. Hunter opined that “the decreased range of motion involving the thoracolumbar spine is the result of preexisting degenerative disc changes, as demonstrated on the MRI. It would further be my opinion that this decreased range of motion is on the basis of the allowed conditions of ‘thoracic strain, lumbar strain and aggravation of lumbar strain.’” Dr. Hunter found that appellant had the capacity to perform light-duty work, with no driving, no lifting more than 20 pounds and no repetitive motion, particularly with the arms and forward bending of the spine, such as casing mail. Dr. Hunter stated that because of the residuals from the August 16, 1996 employment injury, appellant should not be required to accept the offer of a modified letter carrier. He also noted that appellant should be capable of traveling for a period of one hour, but not as a driver when taking medication. In an August 14, 2000 report, Dr. Hunter reiterated his findings and opinion on causal relationship. He prescribed physical therapy and medication for recurrent muscle spasm and pain.

By decision dated October 16, 2000, the Office denied modification of the July 25, 2000 decision.

The Board finds that appellant has failed to establish that he had driving restrictions which precluded his ability to return to suitable work. The Board also finds that the Office met its burden of proof to terminate appellant’s medical benefits.

In the December 27, 1999 decision, the Board found that the Office met its burden of proof to terminate appellant’s wage-loss compensation based on his refusal to accept suitable work. The Board found that the weight of medical opinion on appellant’s capacity for modified duty was represented by the report of the impartial medical specialist, Dr. Paquelet. The Board noted, however, that following the termination of appellant’s wage-loss benefits, an issue arose on whether appellant had the physical capacity to drive a car to the job. On this issue, appellant bears the burden of proof. After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.³ With regard to the issue of continuing entitlement to medical benefits, the Board notes that the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁴

Following the Board’s remand, the Office determined that a conflict of medical opinion arose between Dr. Steurer and Dr. Paquelet on whether appellant had the capacity to drive to the job-duty station. The Office referred appellant to Dr. Kovach, selected as the impartial medical specialist to resolve the conflict.

³ See *Talmdage Miller*, 47 ECAB 673 (1996).

⁴ See *Wiley Richey*, 49 ECAB 166 (1997).

In a June 8, 2000 report, Dr. Kovach reviewed appellant's history of injury and reported normal findings on physical examination. He noted that muscle spasm was not palpable over the spine and that appellant exhibited an excellent range of motion to his back in all directions. There were no sensory changes, trigger points or atrophy of the legs or upper extremities. Straight leg raising was reported as negative. Dr. Kovach reviewed appellant's MRI scan, which he noted was essentially normal with no evidence of disc herniation or bulging. He stated that appellant's examination was completely normal, showing no objective signs of any ongoing problems concerning his accepted thoracic and lumbar strains. Dr. Kovach concluded that appellant could return to his usual work as a letter carrier without any driving or sitting restrictions.

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.⁵ The Board finds that the report of Dr. Kovach is thorough and well rationalized. His opinion establishes that appellant does not have any driving restrictions for work. Moreover, his report establishes that appellant no longer has any residuals due to his accepted employment injuries. For this reason, the Office properly terminated appellant's medical benefits.

The evidence submitted by appellant after notice of the proposed termination of compensation consists of Dr. Steurer's progress notes. In a June 2, 2000 progress note, Dr. Steurer stated that appellant had continuing back and related leg pain with some limitation regarding bending, lifting and travel. He indicated that appellant could "hopefully" work with some restrictions. In a July 7, 2000 progress note, Dr. Steurer stated that appellant continued to have soreness in his back and leg. In his progress notes, Dr. Steurer did not further describe the driving restrictions he imposed or provide additional rationale to support a finding that appellant was unable to perform the suitable work position as of October 23, 1997. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.⁶ Moreover, Dr. Steurer had previously expressed his opinion regarding appellant's work restrictions and was on one side of the conflict that was resolved by Dr. Paquelet.⁷ Thus, Dr. Steurer's progress notes were insufficient to create a new conflict.⁸

Following the termination of benefits, appellant submitted several reports from Dr. Hunter. In a July 25, 2000 report, Dr. Hunter found that appellant had a moderate degree of motion loss in forward flexion, involving the dorsal and lumbar spine. He opined that the decreased range of motion was due to preexisting degenerative disc changes and the allowed conditions of thoracic strain, lumbar strain and aggravation of lumbar strain. Dr. Hunter stated that, due to the residuals from the August 16, 1996 employment injury, appellant should not perform the duties of a modified letter carrier. He stated that appellant could travel for up to one

⁵ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

⁶ *Ronald C. Hand*, 49 ECAB 113, 118 (1997).

⁷ *See Virginia Davis-Banks*, 44 ECAB 389 (1993).

⁸ *Id.* at 392.

hour but not when taking medication for his back. Dr. Hunter did not provide a sufficient medical rationale explaining appellant's work restrictions due to the accepted strain conditions and did not find that appellant was unable to drive to the selected job. His opinion does not establish that appellant could not perform the job of modified letter carrier. Dr. Hunter's report is insufficient to overcome the weight of medical evidence afforded to the reports of the impartial medical specialists.⁹

The report of Dr. Kovach, the impartial medical specialist, is complete and well rationalized. It establishes that appellant has recovered from his work-related back conditions and no longer has any disability related to his accepted injury. It further establishes that appellant does not have physical limitations in driving or sitting in a motor vehicle. The Office properly found that appellant did not establish that he has driving restrictions which preclude his return to suitable work. Dr. Kovach's report establishes that appellant no longer has a work-related back condition. Therefore, appellant is not entitled to medical benefits.

The October 16 and July 25, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 1, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁹ See *Josephine L. Bass*, 43 ECAB 929 (1992).