

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WALLACE ALEXANDER and U.S. POSTAL SERVICE,  
POST OFFICE, Washington, DC

*Docket No. 99-1686; Oral Argument Held June 19, 2001;  
Issued August 15, 2001*

Appearances: *Marc H. Sliffman, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation after July 25, 1978; and (2) whether appellant has established any continuing disability on or after July 25, 1978.

The Board has duly reviewed the case on appeal and finds that the Office failed to meet its burden of proof in terminating appellant's compensation from July 25, 1978 to November 26, 1981.

This is the third appeal in this case. In an April 20, 1984 decision,<sup>1</sup> the Board noted that appellant claimed that he suffered residuals of an accepted right lower abdominal injury sustained on May 25, 1978, which rendered him totally disabled from work after July 25, 1978. By decision dated May 26, 1982, the Office denied appellant's claim after July 25, 1978, finding that the medical evidence did not support disability after that period. On December 19, 1982 an Office hearing representative affirmed the May 26, 1982 decision and, in a July 7, 1983 decision, the Office denied modification of the prior decision based on a merit review. The Board found that a medical report by Dr. David Wherry, a referral physician, which the Office afforded the weight of the evidence, was insufficient to justify termination of compensation effective July 25, 1978 and remanded the case to the Office for further development of the evidence.

The record reflects that, on remand, the Office referred appellant to a physician named Dr. Philbin, an impartial medical specialist, for determination of whether appellant had a condition or disability related to the May 25, 1978 injury after July 25, 1978. On September 20,

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<sup>1</sup> Docket No. 83-1949.

1984 the Office again denied appellant's claim for benefits after July 25, 1978 due to his May 25, 1978 employment injury and on November 10, 1994, the Office denied modification of the September 20, 1984 decision. In the November 10, 1994 decision, the Office noted that appellant had been evaluated by an impartial medical specialist who opined that appellant had no continuing condition or disability due to the May 25, 1978 injury and appellant had not submitted any evidence to the contrary.

Appellant subsequently filed an application for review with the Board of the November 10, 1994 decision. In the second appeal,<sup>2</sup> the Board noted that the evidence considered by the Office at the time of the September 20, 1984 decision was not contained in the case record and therefore, the Board remanded the case to the Office to reconstruct the record and issue a *de novo* decision.<sup>3</sup>

By decision dated November 3, 1995, the Office again denied appellant's claim for additional benefits on the grounds that appellant failed to submit evidence which demonstrated disability on or after July 25, 1978 causally related to the accepted injury of May 25, 1978. Appellant requested reconsideration and the Office, in merit decisions dated August 8, 1996 and July 24, 1997, denied modification of the prior decision.

Appellant again requested reconsideration. In support, appellant submitted medical reports from Dr. Basedo Balkissoon, her treating physician, dated from June 1, 1978 to November 22, 1982, some of which were already of record. The Office, in a January 4, 1999 merit decision, denied modification of the July 24, 1997 decision.

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>4</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>5</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>6</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>7</sup>

In this case, the Office accepted appellant's claim for abdominal strain causally related to a May 25, 1978 employment injury and appellant was authorized to seek medical treatment for

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<sup>2</sup> Docket No. 95-562.

<sup>3</sup> The record reflects that the Office attempted to reconstruct the record with all documents pertaining to appellant's claim for compensation; however, the Office was unable to produce any missing information, including the reports of Dr. Wherry, the referral physician, and Dr. Philbin, the impartial specialist.

<sup>4</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>5</sup> *Id.*

<sup>6</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>7</sup> *Id.*

residuals of the May 25, 1978 injury.<sup>8</sup> Based on the authorization, appellant was directed to submit medical reports from his treating physician, which indicated what residuals he was experiencing as a result of the accepted injury. Appellant submitted medical reports; however, on May 26, 1982 the Office issued a decision denying compensation after July 25, 1978, finding that the medical evidence did not support disability after that period. Following two appeals in which the Office was directed to further develop and later reconstruct the record, the Office continued to both deny appellant's claim for additional benefits after July 25, 1978 and deny modification in subsequent decisions.

Appellant submitted a report from Dr. Balkissoon dated March 13, 1980, in which he reported that appellant had been under his care for treatment of a severe sprain of the rectus abdominal muscle since May 26, 1978 when he sustained an injury while working at the employing establishment. He further indicated that, as of March 10, 1980, appellant still complained of excruciating pain in the right side of his abdomen and right thigh and that appellant remained totally disabled from working at that time.<sup>9</sup> Appellant further submitted an attending physician's report from Dr. Balkissoon dated September 17, 1981 which indicated that on May 25, 1978 appellant sustained a severe sprain of the rectus abdominal muscle on May 25, 1978 and that his current spasms of the rectus abdominal muscles were due to the employment injury. He indicated however that appellant was no longer disabled from work and could resume regular work on November 26, 1981.

The Board finds that appellant has provided medical evidence which establishes that he still had residuals due to his accepted employment injuries and was totally disabled from July 25, 1978 to November 26, 1981, the date upon which Dr. Balkissoon released appellant to regular duty. This evidence is sufficient to establish disability during the above-stated period, given the absence of any opposing medical evidence. Based on the evidence of record, the reports from appellant's treating physician submitted on reconsideration establishes disability from July 25, 1978 to November 26, 1981. As such, the Office failed to meet its burden of proof to terminate appellant's compensation and medical benefits for the period July 25, 1978 to November 26, 1981. Based on the medical evidence from Dr. Balkissoon, appellant did not have any disability due to his accepted injury after November 26, 1981.

The January 4, 1999 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC  
August 15, 2001

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<sup>8</sup> The Board notes that appellant previously sustained an employment injury on April 6, 1977, which was accepted for right side and shoulder pain. He suffered a second employment injury on August 26, 1977, which was accepted for sprain of the right lower abdomen.

<sup>9</sup> The Board notes that Dr. Balkissoon also reported that appellant had been under great emotional stress because of the conditions relating to his injury and that appellant had also been assaulted in 1979 with a baseball bat.

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member