

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KARIN L. KUPPER and U.S. POSTAL SERVICE,  
POST OFFICE, Birdsboro, PA

*Docket No. 00-2818; Submitted on the Record;  
Issued July 2, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

Appellant, then a 31-year-old rural carrier, filed a notice of traumatic injury on December 9, 1999 alleging that on September 24, 1999 she injured her low back in the performance of duty. The Office accepted appellant's claim for aggravation of lumbar strain on January 31, 2000.<sup>1</sup> In a letter dated May 31, 2000, the Office proposed to terminate appellant's compensation benefits. By decision dated July 28, 2000, the Office terminated appellant's compensation benefits on that date.

The Board finds that the Office failed to meet its burden of proof to terminate appellant's benefits.

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.<sup>2</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>3</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>4</sup> To terminate

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<sup>1</sup> Appellant had a previous claim, which the Office accepted for lumbar strain and aggravation of preexisting lumbar degenerative disc disease.

<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Id.*

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

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>5</sup>

Appellant's attending physician, Dr. Philip G. Perkins, a Board-certified surgeon, completed a series of reports. In a report dated February 2, 2000, Dr. Perkins noted that appellant underwent a functional capacity evaluation which indicated that appellant could return to light-medium sedentary work. He released appellant to return to limited duty and recommended physical therapy. On May 1, 2000 Dr. Perkins indicated that appellant could work eight hours a day with limitations.

In a report dated April 26, 2000, Dr. Steven Valentine, an osteopath and Office referral physician, noted appellant's history of injury, reviewed diagnostic studies and performed a physical examination. He found no spasm, normal range of motion and normal neurological examination. Dr. Valentine diagnosed resolved aggravation of lumbar strain and stated that appellant had recovered without residuals. He stated that appellant's clinical examination demonstrated no abnormalities and that she required no further medical treatment. Dr. Valentine concluded that appellant could return to her date-of-injury position without restriction.

In a report dated June 14, 2000, Dr. Perkins provided findings on physical examination. He stated that appellant did not have full range of motion of her lumbar spine, that reflexes were symmetrical and that she showed no motor or sensory loss from L2 to S2. Dr. Perkins stated that appellant's straight leg raising produced no significant symptomatology. He stated that appellant could perform light to medium duty as long as it did not involve any prolonged sitting, standing or walking for more than 30 minutes at a time without a break.

In this case, appellant's attending physician, Dr. Perkins, a Board-certified surgeon, concluded that appellant could work eight hours a day with restrictions. The second opinion physician, Dr. Valentine, an osteopath, concluded that appellant had no work restrictions and no medical residuals due to her accepted employment injury. Due to the unresolved conflict of medical opinion evidence regarding the extent of appellant's ability to work and whether she still has residuals of the accepted condition,<sup>6</sup> the Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

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

<sup>6</sup> Section 8123(a) of the Federal Employees' Compensation Act 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." 5 U.S.C. §§ 8101-8193, 8123(a).

The July 28, 2000 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC  
July 2, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member