

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALD A. BEALS and U.S. POSTAL SERVICE,  
POST OFFICE, Newark, NJ

*Docket No. 00-313; Submitted on the Record;  
Issued June 20, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate disability and medical benefits effective June 19, 1998.

On January 31, 1995 appellant, then a 51-year-old letter carrier, filed a claim for a traumatic injury, Form CA-1, alleging that he fell on his right knee and twisted his back. The Office accepted appellant's claim for a sprain of the right sacroiliac region, a sprain of the right knee and leg, right knee arthroscopy on January 7, 1997 and internal derangement of the right knee. Appellant stopped work on January 13, 1995 and returned to light-duty work on July 10, 1995. He missed work due to a recurrence of disability from January 6 to April 22, 1997 and returned to light-duty work on April 22, 1997.

On February 4, 1998 appellant applied for a schedule award for the right and left leg.

By two decisions both dated June 19, 1998, the Office terminated appellant's claim for disability and medical benefits, stating that the weight of the medical evidence established that appellant had no continuing disability as a result of the January 31, 1995 employment injury and that his work-related injury had resolved.<sup>1</sup>

Appellant's requests for reconsideration were subsequently denied on September 28 and December 14, 1998, and July 21, 1999.

A March 9, 1995 magnetic resonance imaging (MRI) scan of the lumbosacral spine showed an extruded disc fragment behind the upper portion of the body of L5 and there was a possibility of a lesion of other etiology. A February 15, 1995 MRI scan of appellant's right knee showed degenerated anterior horn of the lateral meniscus and large joint effusion. A March 3, 1995 electromyogram (EMG) of the lower extremities showed L5-S1 radiculitis.

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<sup>1</sup> These decisions are verbatim the same except for the last sentence in which one decision denied disability benefits and the other decision denied medical benefits.

In a report dated May 9, 1995, appellant's treating physician, Dr. Monica Mehta, a Board-certified physiatrist, considered appellant's history of injury, performed a physical examination and reviewed the MRI scans and EMG. She diagnosed L5-S1 radiculitis with extruded disc fragment, degeneration of anterior horn of the large meniscus and large joint effusion. Dr. Mehta stated that all of appellant's conditions were secondary to the trauma appellant sustained while at work. She opined that appellant was unable to work through June 1, 1995.

In a report dated July 13, 1995, one of appellant's treating physicians and the doctor who performed his arthroscopy, Dr. Ronald E. Gennace, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination, reviewed MRI scan results and x-rays, and diagnosed that appellant had a herniated disc. Dr. Gennace stated that appellant's major problem seemed to be the residuals from his lumbar spine injury. He opined that appellant's back was his major problem and prevented him from performing his usual work. Dr. Gennace stated that appellant's right knee was arthritic in nature but was not causing his major disability. He stated that appellant's injuries were directly related to the January 31, 1995 employment injury.

In a report dated December 22, 1997, the referral physician, Dr. Sebastian O. Adibe, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination, and reviewed the February 15 and March 8, 1995 MRI scans. Dr. Adibe stated that appellant had done well with his arthroscopy surgery and his overall prognosis was good. He stated that although appellant had some partial physical impairment resulting from his January 31, 1995 employment injury, he should be able to perform his usual work without restrictions.

In a report dated January 17, 1998, appellant's treating physician, Dr. Horia H. Schwartz, a Board-certified physiatrist, considered appellant's history of injury, performed a physical examination and reviewed the results of the February 16 and March 8, 1995 MRI scans and EMG. Dr. Schwartz diagnosed permanent residuals of work-related traumatic injury involving his lumbosacral spine with indication of extensive degenerative changes, severe myofascitis, bilateral sacroiliitis and indication of radiculopathy involving the right L4-5 and S1. He also diagnosed permanent residuals of direct trauma to the right knee with persistent severe degenerative arthritic changes, chondromalacia, and internal derangement status-post arthroscopic surgery with persistent symptomatology which rendered appellant severely disabled. Dr. Schwartz further diagnosed permanent residuals of degenerative arthritic changes and chondromalacia patella in the left knee most likely secondary to overuse on the left side. He opined that appellant had a 50 percent impairment to the right lower extremity and a 10 percent impairment of the left lower extremity secondary to radiculopathy. Dr. Schwartz stated that it was "very obvious" that appellant's condition was causally related to the January 31, 1995 employment injury.

To resolve the conflict between Drs. Mehta and Adibe's opinions as to whether appellant continued to be disabled due to his January 31, 1995 employment injury, the Office referred appellant to an impartial medical specialist, Dr. Carl F. Mercurio, a Board-certified orthopedic surgeon. In his report dated February 23, 1998, Dr. Mercurio considered appellant's history of injury, performed a physical examination, and reviewed the February 15 and March 8, 1995 MRI scan reports. He diagnosed status post arthroscopic intervention of the right knee, resolved, underlying age-related degenerative arthritis of the knee, resolved lumbar sacral strain, chronic

low back syndrome, symptom magnification and obesity. Dr. Mercurio opined that appellant's knee surgery and lumbosacral strain had resolved, that they did not require restrictions and appellant could return to his usual activities. He stated that appellant's degenerative arthritis, chronic low back pain, symptom magnification and obesity were not related to his January 31, 1995 employment injury and prevented him from performing his usual work.

In a report dated May 29, 1998, after reviewing the actual February 15 and March 8, 1995 MRI scans, Dr. Mercurio stated that his opinion regarding his prior diagnoses and causation had not changed.

In his request for reconsideration dated July 6, 1998, appellant stated that the Office erred in its June 19, 1998 decision by failing to consider Dr. Schwartz's report and noted that neither Dr. Adibe nor Dr. Mercurio considered the EMG results.

By decision dated September 28, 1998, the Office denied appellant's request for modification and after reviewing Dr. Schwartz's January 17, 1998 report, stated that Dr. Adibe's and Dr. Mercurio's reports constituted the weight of the evidence.

By letter dated October 8, 1998, appellant requested reconsideration of the Office's decision, stating that the Office had not properly reviewed Dr. Schwartz's opinion and that the Office ignored his objections to the statement of accepted facts in his July 22, 1998 letter. He also stated that there had been no response to his request for a schedule award.

By decision dated December 14, 1998, the Office denied appellant's request for modification. The Office found that Dr. Schwartz's opinion was of diminished probative value because he did not review the actual MRI scan films.

By letter dated April 28, 1999, appellant requested reconsideration of the Office's decision and submitted a "certification" of the facts from appellant and a medical report from Dr. Schwartz dated April 16, 1999. In his April 16, 1999 report, Dr. Schwartz stated that he reviewed the MRI scan film of the right knee and agreed that it showed that appellant had a torn meniscus. He stated that he also reviewed the MRI scan films of the lumbosacral spine and, in addition to evidence of straightening of the lordosis, he found a bulging disc impinging on the thecal sac at L4-5.

By decision dated July 21, 1999, the Office denied appellant's request for modification.

The Board finds that the Office met its burden of proof to terminate disability and medical benefits.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. 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> The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.<sup>3</sup>

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.<sup>4</sup> In the present case, to resolve the conflict between the medical opinions of appellant's treating physician, Dr. Mehta, and the referral physician, Dr. Adibe, as to whether appellant had continuing disability from his January 31, 1995 employment injury, the Office referred appellant to the impartial medical specialist, Dr. Mercurio, a Board-certified orthopedic surgeon. In his February 23, 1998 report, based on appellant's history of injury, a physical examination and a review of the February 15 and March 9, 1995 MRI scan reports, he concluded that appellant's knee surgery and lumbosacral strain had resolved and appellant did not require restrictions for those conditions. He found that appellant's other medical conditions of underlying age-related degenerative arthritis of the right knee, chronic low back pain, symptom magnification and obesity were not work related and prevented him from working. In his May 29, 1998 report, after reviewing the February 15 and March 9, 1995 MRI scan films, Dr. Mercurio stated that his prior opinion as to the diagnoses and causation remained unchanged. Dr. Mercurio's opinion is complete and well rationalized and establishes that appellant recovered from his work-related injury. As the impartial medical specialist, Dr. Mercurio's opinion constitutes the weight of the evidence.

The decisions of the Office of Workers' Compensation Programs dated July 21, 1999 and December 14, 1998 are hereby affirmed.

Dated, Washington, DC  
June 20, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member

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<sup>2</sup> *Wallace B. Page*, 46 ECAB 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

<sup>3</sup> *Larry Warner*, 43 ECAB 1032 (1992); see *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).