

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM MORRIS and U.S. POSTAL SERVICE,  
POST OFFICE, Boston, MA

*Docket No. 01-475; Submitted on the Record;  
Issued June 15, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective July 12, 2000.

On August 12, 1999 appellant, then a 37-year-old clerk, was lifting a tray of mail when he felt pain in his lower back. Appellant stopped work on August 12, 1999 and returned to a light-duty position on December 4, 1999. The Office accepted the claim for low back strain.<sup>1</sup> Appellant was paid appropriate compensation.

Appellant submitted reports dated between October 12 and November 3, 1999, prepared by Dr. Stephen F. Koelbel, Board-certified in physical medicine and rehabilitation. An attending physician's report dated October 12, 1999, indicated a diagnosis of lumbar strain. Dr. Koelbel noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and noted that the injury occurred while at work when appellant was lifting a tray of mail. He indicated appellant was totally disabled from August 12 to October 19, 1999. The attending physician's report of November 3, 1999 diagnosed appellant with acute lumbar strain. Dr. Koelbel's note indicated that appellant could return to limited duty on November 3, 1999 subject to the following restrictions: being permitted to change positions frequently, walking or stretching every 20 minutes, no frequent bending and no lifting greater than 20 pounds.

Thereafter, appellant was offered a limited-duty assignment which complied with the medical restrictions set forth by Dr. Koelbel. This position was effective December 4, 1999.

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<sup>1</sup> Appellant filed three previous claims for compensation for injuries sustained in the performance of duty: a March 25, 1994 neck injury, an October 14, 1995 hip injury and an October 20, 1995 low back strain. The Office accepted appellant's claims for cervical strain; contusion of the left hip and low back strain, respectively. These claims are not before the Board.

Appellant submitted an attending physician's report dated December 7, 1999, prepared by Dr. Koelbel, which diagnosed appellant with acute lumbar strain with a recommendation to continue the lifting restrictions.

Appellant submitted additional medical records including progress notes from Dr. Koelbel and associates dated August 12 to December 7, 1999, two return to work certificates prepared by Dr. Koelbel and a magnetic resonance imaging (MRI) scan dated December 27, 1999. The progress notes indicated that appellant remained under treatment for low back pain. The return to work certificates indicated that appellant sustained a recurrence of his back injury of August 12, 1999 and would not be able to return to his employment duties until January 12, 2000. The MRI revealed a mild disc bulge and disc hydration at the L4-5 level; however, there was no evidence of focal disc herniation.<sup>2</sup>

On March 31, 2000 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated a recurrence on December 18, 1999, noting that his pain had intensified in the lower back since the employment-related injury of August 12, 1999. Appellant stopped work on December 18, 1999 and returned for one day on March 31, 2000 and thereafter remained off work. The Office accepted appellant's claim for recurrence of disability and paid appropriate compensation.

Appellant submitted numerous certificates of disability prepared by Dr. Koelbel indicating that appellant remained disabled due to the recurrence of injury from December 18, 1999 through June 23, 2000. Appellant also submitted two attending physician's reports dated June 5 and 16, 2000 prepared by Dr. Koelbel. He diagnosed appellant with acute lumbar strain with residual right gluteal myofascial pain syndrome. Dr. Koelbel indicated that appellant was referred for a spine function restoration program.

On June 21, 2000 the Office referred appellant for a second opinion to Dr. Howard Taylor, a Board-certified orthopedic surgeon. The Office provided Dr. Taylor with appellant's medical records, a statement of accepted facts and a detailed description of appellant's employment duties.

In a medical report dated July 14, 2000, Dr. Taylor indicated that he reviewed the records provided to him and performed a physical examination of the appellant. He noted a history of appellant's condition. Dr. Taylor noted that upon examination appellant experienced tenderness at the posterior/superior iliac spine on the right; straight leg raises were negative bilaterally; Patrick tests were negative bilaterally and there was no motor or sensory deficit in the lower extremities. He reviewed the MRI and noted a minimal disc bulging at the L4-5 level. Dr. Taylor indicated that the conditions which were demonstrated on the MRI were not in any way related to the incident of August 12, 1999. He diagnosed appellant with a low back strain, which he indicated would typically cause impairment of four to six weeks and partial impairment of approximately four to six weeks thereafter. Dr. Taylor noted that there was no objective or orthopedic residual findings to substantiate any continued complaints related to the injury of

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<sup>2</sup> Appellant was assigned a rehabilitative nurse in October 1999. The nurse indicated that appellant returned to work on December 4, 1999 and, however, became disabled and stopped work December 18, 1999.

August 12, 1999. He indicated that appellant could return to his regular job and had been able to do so since October 12, 1999.

On July 18, 2000 appellant submitted a note from Dr. Koelbel dated June 5, 2000, an attending physician's report dated July 7, 2000 and a letter from him dated July 10, 2000. The note from Dr. Koelbel dated June 5, 2000, diagnosed appellant with lumbar strain with residual right gluteal myofascial pain syndrome and noted that appellant was not currently working. The attending physician's report indicated a diagnosis of acute lumbar strain with residual right gluteal myofascial pain syndrome and noted that appellant remained totally disabled from December 20, 1999 to July 7, 2000. The letter from him dated July 10, 2000, noted that appellant continued to be disabled as a result of the acute lumbar strain of August 12, 1999. Dr. Koelbel diagnosed appellant with acute lumbar strain with residual right gluteal myofascial pain syndrome.

The Office determined that a conflict of medical opinion was created between Dr. Koelbel, appellant's treating physician, who indicated that appellant was permanently disabled and Dr. Taylor, the Office referral physician, who determined that appellant did not have residuals of the low back strain of August 12, 1999.

To resolve the conflict in medical opinion appellant was referred to an impartial medical specialist, Dr. Denis P.A. Byrne, a Board-certified orthopedic surgeon.

In a medical report dated August 15, 2000, Dr. Byrne indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury. Dr. Byrne indicated that appellant continued to have right low back pain which extended into his buttocks. Upon physical examination he noted that appellant had full motion of the lumbar spine; however, it was tender upon palpation, there was no sign of motor or sensory deficit and no atrophy was noted. Dr. Byrne noted that typically this injury requires four to six weeks recovery time and indicated that appellant's disability ceased six weeks after October 12, 1999, the date his physicians said appellant could return to limited duty. He indicated that he reviewed the MRI scan of the lumbar spine dated December 27, 1999, which revealed a mild disc bulge and disc dehydration at the L4-5 and noted that although it was not felt to be totally normal, this condition was seen frequently enough in asymptomatic patients that in view of his normal examination it was not worrisome. Dr. Byrne further noted that the MRI study "did not indicate any disability from work for the limited-duty job ... or at anytime thereafter." He determined that appellant did not have any residuals of his injury of August 12, 1999 and could return to his regular job as a clerk.

On October 12, 2000 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Byrne's report dated August 15, 2000, established no continuing disability as a result of the August 12, 1999 employment injury.

On October 27, 2000 the Office received an attending physician's report dated September 20, 2000, prepared by Dr. Koelbel. He diagnosed appellant with acute lumbar strain with residual gluteal myofascial pain. Dr. Koelbel indicated with a checkmark "no" that the condition was not caused or aggravated by an employment activity and noted appellant was

referred for a spine function restoration program. He noted appellant was disabled from work for the period of December 20, 1999 to September 20, 2000.

By decision dated October 31, 2000, the Office terminated appellant's wage-loss benefits effective July 12, 2000 on the grounds the weight of the medical evidence established that appellant had no continuing disability resulting from his August 12, 1999 employment injury.

The Board finds that the Office has met its burden of proof to terminate benefits effective August 15, 2000.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>3</sup> After it has determined that an employee has a 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>4</sup>

In this case, the Office accepted appellant's claim for a low back strain on August 12, 1999 and paid appropriate compensation. The Office reviewed the medical evidence and determined that a conflict existed in the medical evidence between appellant's attending physician, Dr. Koelbel, who disagreed with Dr. Taylor, an Office referred physician, concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Byrne to resolve the conflict.

Where there exists a conflict of medical opinion 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 upon a proper factual background, is entitled to special weight.<sup>5</sup>

The Board finds that, under the circumstances of this case, the opinion of Dr. Byrne is well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition has ceased.

Dr. Byrne examined appellant on August 15, 2000 to resolve the conflict in medical opinion. He reviewed appellant's history, reported findings and noted that appellant sustained a low back strain on August 12, 1999. His physical examination revealed appellant had full motion of the lumbar spine, however, it was tender upon palpation, there was no sign of motor or sensory deficit and no atrophy was noted. Dr. Byrne indicated that he reviewed the MRI scan of the lumbar spine dated December 27, 1999, which revealed a mild disc bulge and disc dehydration at the L4-5 and determined that in view of his normal examination it was not worrisome. He further noted that the MRI study "did not indicate any disability from work for the limited-duty job ... or at anytime thereafter." Dr. Byrne concluded that appellant had no

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<sup>3</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>4</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>5</sup> *Aubrey Belnavis*, 37 ECAB 206 (1985).

ongoing disability or condition due to his accepted employment-related condition. He opined that the accepted work injury resolved approximately six weeks after October 12, 1999, the date his physicians said appellant could return to limited duty. Dr. Byrne found no basis on which to attribute any continuing disability to the August 12, 1999 employment injury.

After issuance of the pretermination notice, appellant submitted a September 20, 2000 attending physician's report, which indicated he was disabled from work for the period December 20, 1999 to September 20, 2000. However, Dr. Koelbel's reports are similar to his prior reports and are insufficient to overcome the opinion of Dr. Byrne or to create a new medical conflict, as Dr. Koelbel was on one side of the conflict that Dr. Byrne, the impartial medical specialist, was requested to resolve.<sup>6</sup>

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits. The Board will modify the October 31, 2000 decision, to find the Office met its burden of proof effective August 15, 2000, the date appellant was examined by Dr. Byrne.<sup>7</sup>

The October 31, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed as modified.

Dated, Washington, DC  
June 15, 2001

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> See *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>7</sup> With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c).