

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE A. MUNOZ and U.S. POSTAL SERVICE,  
POST OFFICE, Hicksville, NY

*Docket No. 00-579; Submitted on the Record;  
Issued May 16, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of appellant's compensation benefits effective April 6, 1999.

On February 11, 1983 appellant, then a 44-year-old letter carrier, was placing and retrieving mail from a mail tub and pulling a mail tub when he felt pain in his left arm, chest and left hand. He stopped work on February 11, 1983 and did not return. The Office accepted the claim for temporary aggravation of thoracic outlet syndrome and noted that appellant's left thoracic outlet syndrome was due to a congenital abnormality. Appellant was paid appropriate compensation.

Subsequently appellant submitted various medical records from the Veterans Administration Medical Center (VAMC) where he was treated since April 1984. He was hospitalized from May 13 to 15, 1985 and from May 27 to June 2, 1985 for thoracic outlet syndrome. Appellant underwent surgery for a left first rib resection on May 28, 1985. He also submitted a medical report from Dr. Jose R. Muniz, a family practitioner, dated August 11, 1986. Dr. Muniz noted appellant had been diagnosed with Raynaud's Phenomenon, thoracic outlet syndrome, myofascial syndrome, depression and intractable pain. He indicated that appellant was in constant debilitating pain and described appellant's condition as an autoimmune disorder.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians and also to impartial medical examiners.<sup>1</sup>

Appellant submitted VAMC treatment notes indicating that he remained disabled and under treatment for thoracic outlet syndrome.

Subsequently, appellant submitted three work restriction evaluations dated January 31 and February 25, 1997 and January 27, 1998. The work restriction evaluation dated January 31, 1997 prepared by Dr. G. Krishnamoorthy, a Board-certified neurologist, indicated restrictions for lifting; use of the hands, pushing and pulling; and reaching above the head. He noted appellant was not able to engage in any gainful employment. The February 25, 1997 and January 27, 1998 work restriction evaluations prepared by Dr. S. Dwivedi, a Board-certified neurologist, indicated that appellant had severe limitations and was permanently disabled and unemployable and not suitable for rehabilitation.

On April 15, 1998 the Office referred appellant for a second opinion to Dr. William Bloom, a Board-certified neurologist. The Office provided him with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated April 27, 1998, Dr. Bloom indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's condition. The physical examination was essentially normal. Dr. Bloom indicated a diagnosis of preexisting cervical spondylosis. He noted that upon examination appellant demonstrated no symptoms related to the work incident of February 11, 1983. Dr. Bloom indicated that appellant had no neurological disability and was able to perform his regular work duties as a letter carrier without restriction and has been able to do so since 1984.

The Office determined that a conflict of medical opinion had been established between Dr. Dwivedi, appellant's treating physician, who indicated that appellant was permanently disabled, unemployable and not suitable for vocational rehabilitation and Dr. Bloom and prior Office referral physicians, who determined that appellant did not suffer residuals from thoracic outlet syndrome.

To resolve the conflict appellant was referred to a referee physician, Dr. Allen G. Zippin, a Board-certified neurologist.

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<sup>1</sup> This included referring appellant to a second impartial specialist 1992 when the first impartial specialist, in 1991, did not provide the clarification requested by the Office. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming to the Office or if the physician is unable to clarify or elaborate on the original report or if the physician's report is vague, speculative or lacks rationale, the Office must refer the employee to another impartial medical specialist for a rationalized medical opinion on the issue in question. See *Margaret M. Gilmore*, 47 ECAB 718 (1996); *Terrence R. Stath*, 45 ECAB 412 (1994); *Nathan L. Harrell*, 41 ECAB 402 (1990); *John I. Lattany*, 37 ECAB 129 (1985). The Board also notes that the Office improperly found a medical conflict in 1993 between two Office referral physicians. However, an Office referral physician cannot create a conflict on behalf of the claimant in a situation where claimant did not use the referral physician as a treating physician. See *LeAnne E. Maynard*, 43 ECAB 482 (1992).

In a medical report dated August 25, 1998, Dr. Zippin 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. Zippin indicated appellant underwent a rib resection; however, appellant noted his symptoms had worsened since that time. Upon physical examination he noted the cranial nerve examination was normal; motor power was normal, no muscle wasting noted; reflexes were brisk and symmetrical, abdominal reflex was present; sensation was intact; coordination was intact; lumbar paraspinal muscles were normal with full range of lumbar motion; no sciatic notch tenderness; straight leg raises were normal; peripheral pulses were intact; and Tinel's sign was negative. Dr. Zippin indicated that appellant, when asked as part of the examination, showed marked limitation of extension and flexion; however, when watching the examiner appellant turned his neck without apparent difficulty. He indicated that he reviewed the diagnostic studies and noted a magnetic resonance imaging (MRI) scan of the cervical spine dated February 23, 1994 revealed a herniated disc at level C5-6, however, a later MRI scan dated June 5, 1996 revealed a mild disc bulge at C5-6 with no indication of compression of the neural structures. Dr. Zippin determined that the cervical injury was not related to appellant's work injury on the basis of the MRI scans, specifically the normal MRI scan dated October 3, 1990 and the diagnosis of the herniated disc at C5-6 made on the MRI scan on February 23, 1994, which indicated the herniated disc occurred sometime during this period and therefore was unrelated to the employment injury. He determined that appellant's accepted condition of aggravation of the thoracic outlet syndrome had totally resolved. Dr. Zippin indicated that appellant's multiple other complaints of pain in other extremities were not in any way related to appellant's job injury, but rather might be related to an immune disease as Dr. Jose Muniz indicated in his report dated August 11, 1986. He diagnosed appellant with left upper extremity pain without objective findings; depression; possible diffuse arthritis; gastrointestinal bleeding and bleeding from the ear. Dr. Muniz noted that appellant had returned to his preinjury status and was able to perform his regular duties.

On March 2, 1999 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Zippin's report dated August 26, 1998 established no continuing disability or residuals as a result of the February 11, 1983 employment injury.

On March 5, 1999 the Office received a work restriction evaluation dated March 1, 1999, prepared by Dr. Dwivedi. He indicated that appellant was permanently disabled from work and was unemployable. Dr. Dwivedi noted that appellant could not participate in vocational rehabilitation as appellant was in chronic severe pain. He further indicated that appellant had a severe illness and was handicapped and on multiple medications.

By decision dated April 6, 1999, the Office terminated all appellant's compensation benefits effective April 6, 1999 on the grounds the weight of the medical evidence established that appellant had no residuals resulting from his February 11, 1983 employment injury.

The Board finds that the Office has met its burden of proof to terminate benefits effective April 6, 1999.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>2</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>3</sup>

The right to medical benefits for an accepted condition is not limited to the period of disability to terminate authorization for medical treatment. The Office must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.<sup>4</sup>

In this case, the Office accepted appellant's claim for a temporary aggravation of thoracic outlet syndrome on February 11, 1983 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. Dwivedi, who disagreed with Drs. Pitman, Reiser and Bloom concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Zippin to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial 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. Zippin is sufficiently 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. Zippin reviewed appellant's history, reported findings and noted that appellant sustained a temporary aggravation of the thoracic outlet syndrome on February 11, 1983. His physical examination revealed no abnormalities neurologically or of the cervical spine, upper extremities, lower extremities or dorsolumbar spine. Dr. Zippin determined appellant's "causally related problem was that of aggravation of a thoracic outlet syndrome and all object findings are now gone ... in view of this his job related condition has totally resolved." He determined that appellant's current complaints were related to a possible immune disease and unrelated to the employment-related injury of February 11, 1983. Dr. Zippin concluded that appellant had no ongoing disability or condition due to his work-related condition. He opined that the accepted work injury likely resolved at the time appellant underwent surgery in 1985, as no objective findings were noted post surgery. Dr. Zippin found no basis on which to attribute any continuing disability or condition to appellant's employment injury.

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<sup>2</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>3</sup> *Vivian L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>4</sup> *Wiley Richey*, 49 ECAB 166 (1997).

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

After issuance of the pretermination notice, appellant submitted a March 1, 1999 work restriction report from Dr. Dwivedi who indicated that appellant remained disabled and was unemployable. However, his report is similar to his prior reports and is insufficient to overcome that of Dr. Zippin or to create a new medical conflict as Dr. Dwivedi was on one side of the conflict.<sup>6</sup>

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated April 6, 1999 is hereby affirmed.

Dated, Washington, DC  
May 16, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
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). The Board notes that Dr. Dwivedi's report does not contain new findings or rationale upon which a new conflict might be based.