

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EFRAIN M. MORALES and U.S. POSTAL SERVICE,  
COOPER STATION, New York, NY

*Docket No. 00-1502; Submitted on the Record;  
Issued May 21, 2001*

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DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits; and (2) whether the Office properly denied his request for reconsideration.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

It is well established that, once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.<sup>1</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.<sup>2</sup>

On February 3, 1998 appellant, then a 36-year-old distribution clerk, sustained a lumbosacral strain in the performance of duty. By letter dated May 26, 1998, the Office advised appellant that he had been placed on the periodic compensation rolls effective April 22, 1998 to receive compensation for temporary total disability. By letter dated July 15, 1999, the Office advised appellant that it proposed to terminate his compensation benefits on the grounds that the weight of the medical evidence established that he had no continuing disability causally related to his February 3, 1998 employment injury. By decision dated October 22, 1999, the Office terminated appellant's compensation benefits effective November 7, 1999.

By letter dated November 16, 1999, appellant requested reconsideration and submitted additional evidence as well as evidence previously of record.

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<sup>1</sup> See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

<sup>2</sup> *Wiley Richey*, 49 ECAB 166 (1997).

By decision dated March 4, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and insufficient to warrant a merit review of the prior decision.

In a report dated September 15, 1998, Dr. Robert J. Orlandi, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's lumbosacral strain, a review of the medical records and physical findings on examination. Dr. Orlandi stated his opinion that appellant was experiencing a false lumbar pain syndrome. He stated:

"Physical findings ... include a loss of sensation in the entire left lower extremity, an inability to forward flex beyond 20 degrees, which is seldom seen on organic pathology and an extremely positive straight leg raising on both the symptomatic left side and the asymptomatic right side at 20 degrees. Dr. Kahanowicz ... reported the straight leg raising test as being positive at 70 degrees on the left and 80 degrees on the right four months ago<sup>3</sup> and this represents an unexplained deterioration of [appellant's] physical findings. Of equal significance is [appellant's] alleged inability to dorsiflex and plantar flex his large toe and his inability to dorsiflex his left ankle when he had no drop-foot disturbance which would definitely be present if [appellant] could not function against more than gravity with his left foot. [Appellant's] inability to flex his large toe is unquestionably a false-positive physical finding in view of the intact S1 reflex."

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"It is my opinion that, if [appellant's] urological studies are unremarkable, then he has no causally related disability and may return to work without restriction. Even if he does have a bladder disturbance, which is causally related, this would not preclude him from working. Given normal electrodiagnostic studies or further diagnostic work-up, it is my opinion that he has no permanent residuals from [the employment injury], the prognosis is good, he requires no work restriction and he will definitely require no additional musculoskeletal treatment.

"[Appellant's] current pain syndrome, in my opinion, is not causally related to the [employment injury] on February 3, 1998."

The Board finds that this thorough and well-rationalized report of Dr. Orlandi establishes that appellant's February 3, 1998 employment-related lumbosacral sprain had resolved. Therefore the Office met its burden of proof in terminating appellant's compensation benefits effective November 7, 1999.

The reports of appellant's physicians are not sufficient to outweigh the opinion of Dr. Orlandi or to create a conflict in the medical opinion evidence.

In a report dated October 19, 1998, Dr. Leonard Biel, a Board-certified urologist, diagnosed bladder dysfunction and stated his opinion that the condition was causally related to the February 3, 1998 employment-related lumbosacral strain. However, he also stated that

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<sup>3</sup> In a report dated April 13, 1998, Dr. Zwi Kahanowicz noted that appellant could flex only to 90 degrees and extension was 10 degrees, Laseque sign on the right was 80 degrees and 70 degrees on the left side.

further studies were needed to determine the etiology (cause) of the condition. Thus, he appeared to contradict himself as to whether the bladder condition, which is not an accepted condition in this case, was causally related to the February 3, 1998 employment injury. Moreover, he failed to provide any medical rationale for his belief that the bladder condition was causally related to the employment-related lumbosacral strain.

In a report dated October 24, 1998, Dr. Ernest D. Abeles, appellant's attending Board-certified orthopedic surgeon, provided findings on examination and diagnosed a history of an acute lumbosacral sprain, noted that a magnetic resonance imaging (MRI) scan was negative and indicated further testing was needed to rule out any objective pathology. However, Dr. Abeles failed to provide a definite diagnosis, noting that further testing was needed. Furthermore, he did not provide any medical rationale explaining the causal relationship, if any, of appellant's condition to the February 3, 1998 employment injury.

In disability certificates dated January 15 to July 9, 1999, Dr. Abeles indicated that appellant was totally disabled due to sciatica radiculopathy. However, sciatica is not an accepted condition in this case and Dr. Abeles failed to explain how this condition was causally related to the February 3, 1998 employment injury.

In a report dated August 17, 1999, Dr. Abeles indicated that appellant was totally disabled. However, he failed to provide any medical rationale explaining how appellant's disability was causally related to his February 3, 1998 employment injury.

Considering all the medical evidence of record, the Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective November 7, 1999 based upon the opinion of Dr. Orlandi that appellant had no further residuals of his February 3, 1998 employment injury.

The Board further finds that the Office was within its discretion in denying appellant's request for reconsideration.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>5</sup>

In a report dated March 31, 1998, Dr. Kahanowicz diagnosed acute derangement of the lumbar spine and indicated that appellant was totally disabled until at least April 28, 1998. However, this report does not address the issue of whether appellant had any residual disability on or after November 7, 1999, the date the Office terminated his compensation benefits, and therefore it does not constitute relevant and pertinent evidence not previously considered by the Office.

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<sup>4</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>5</sup> 20 C.F.R. § 10.608(b) (1999).

In a report dated July 28, 1998, Dr. Abeles indicated that appellant had been under his care since February 10, 1998 for sciatica radiculopathy. In disability certificates dated September 18 through October 9, 1998 and August 13 through December 3, 1999, he indicated that appellant was totally disabled due to sciatica radiculopathy. However, the condition of sciatica is not an accepted condition in this case and therefore this medical evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant also submitted evidence, which was previously of record in this case and, therefore, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

As appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office, and did not submit relevant and pertinent evidence not previously considered by the Office, the Office was within its discretion in denying his request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated March 4, 2000 and October 22, 1999 are affirmed.

Dated, Washington, DC  
May 21, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member