

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN CSORA and U.S. POSTAL SERVICE,  
POST OFFICE, Akron, OH

*Docket No. 00-1539; Submitted on the Record;  
Issued May 2, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective June 29, 1999 on the grounds that he had no further condition or disability causally related to his December 27, 1979 employment injury; and (2) whether the Office met its burden of proof to terminate appellant's entitlement to medical benefits.

The Office accepted that on December 27, 1979 appellant, then a 58-year-old letter carrier, sustained lumbosacral sprain and a herniated disc at L-5 in the performance of duty. He returned to work on February 5, 1980 but stopped work in June 1980 and did not return.

By letter dated August 7, 1998, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for a second opinion evaluation. On May 27, 1999 the Office issued appellant a proposed notice of termination on the grounds that the weight of the medical evidence, as represented by the report of Dr. Kaffen, established that he had no further condition or disability causally related to his employment injury.

In a decision dated June 29, 1999, the Office terminated appellant's compensation and entitlement to medical benefits, effective that date. In a letter dated July 8, 1999, appellant requested a hearing before an Office hearing representative. By decision dated February 4, 2000, the hearing representative affirmed the Office's June 29, 1999 termination of appellant's compensation.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective June 29, 1999.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation

without establishing that the disabling condition ceased or that it was no longer related to the employment.<sup>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>2</sup>

The Board finds that the opinion of the Office referral physician, Dr. Kaffen, constitutes the weight of the medical evidence. He discussed appellant's history of injury and reviewed the medical evidence of record, including the results of objective testing. Dr. Kaffen stated:

“[A] [r]eview of medical records indicates that the myelogram was performed on June 20, 1980. The report indicates that there was asymmetry of the nerve roots at L5-S1[;] however, there is no specific description of a herniated disc. Osteoarthritic changes and narrowing of the disc space are described at L5-S1. An EMG [electromyogram] done on June 28, 1980 is reported as showing ‘no convincing paraspinal denervation seen to make the diagnosis of a radiculopathy.’ X-ray reports reveal the presence of degenerative arthritis of the lumbar spine and narrowing of the intervertebral disc space at L4-5 and L5-S1 on several occasions. Review of other medical reports by his attending physician indicates that surgery was not recommended. The neurosurgeon, on several occasions, indicated that his symptoms were secondary to degenerative disc disease and radiculopathy secondary to a spur.

“There are no objective findings to indicate that the accepted condition [] of lumbosacral sprain is still active. On the basis of his history and physical examination and review of medical records, [appellant] has never had a herniated intervertebral lumbar disc. The current diagnosis is osteoarthritis of the lumbar spine with disc degeneration which is not currently related to his employment.”

Dr. Kaffen further related:

“It is my opinion that [appellant] is unable to return to his date[-]of[-]injury job as a [l]etter [c]arrier due to the presence of symptoms related to his nonwork[-]related condition of degenerative disc disease and osteoarthritis of the lumbar spine. On the basis of the accepted work-related injury, [he] would have no physical restrictions since there are no objective physical findings due to the accepted work-related conditions.”

The Board has carefully reviewed the opinion of Dr. Kaffen and finds that it has reliability, probative value and convincing quality. He provided a thorough review of the factual and medical background of appellant's claim and accurately summarized the relevant medical evidence. Moreover, Dr. Kaffen analyzed the factual and medical history and findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant's condition which comported with this analysis.<sup>3</sup> While he found appellant totally

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<sup>1</sup> *David W. Green*, 43 ECAB 883 (1992).

<sup>2</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>3</sup> *See Melvina Jackson*, 38 ECAB 443 (1987).

disabled from his employment, he specifically stated that appellant's condition was the result of nonwork-related conditions. Therefore, the Office properly relied on Dr. Kaffen's opinion in terminating appellant's benefits.

The evidence submitted prior to the Office's termination of compensation is insufficient to establish that appellant had continuing disability due to his employment injury. In a report dated June 29, 1999, Dr. Richard C. Zahn, a Board-certified neurosurgeon and appellant's attending physician, noted that he had last reported on appellant's condition in 1993. He stated:

"At that time [appellant] was complaining of back and bilateral leg pain. He had been disabled from the early 80 secondary to back and left leg pain which I felt was secondary to a disc problem involving the lower lumbar roots. This was diagnosed on myelogram.

"Over the years besides having left leg pain, [appellant] developed bilateral leg pain with walking.

"[Appellant's] symptoms at this time essentially remain bilateral leg pain associated with walking, more on the left than the right. His exam[ination] really shows an excellent range of motion of the lumbosacral spine; however, in extreme positions he has low back pain. [Appellant's] straight leg raising tests are negative. He is generally areflexic in the lower extremities. There is no definite motor weakness in the legs.

"At this time, I think [appellant's] symptoms are compatible with lumbar stenosis which I have thought present in the past. I certainly do not think that he could ever return to work as an [employing establishment] employee because of his pain which worsens with walking and particularly his age...."

Dr. Zahn attributed appellant's current symptoms to lumbar stenosis rather than to his accepted employment injuries of lumbosacral strain and a herniated disc. Appellant, therefore, has the burden of establishing that this condition is related to his employment through the submission of rationalized medical opinion evidence.<sup>4</sup>

However, Dr. Zahn did not address whether appellant's spinal stenosis was causally related to his December 27, 1979 employment injury. He also did not find appellant disabled due to his accepted employment injury but instead noted that he could no longer work primarily due to his age and pain while walking. Thus, his opinion is of little probative value. Accordingly, as the record does not contain probative medical evidence supporting a finding that appellant had any further employment-related disability, the Office met its burden of proof to terminate appellant's compensation.

The Board further finds that the Office properly terminated appellant's authorization for medical treatment.

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<sup>4</sup> See *Charlene R. Herrera*, 44 ECAB 361 (1993).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</sup> To terminate 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>6</sup> The Office met this burden through the report of Dr. Kaffen, who found that appellant had no residual condition caused by his employment injury.

The February 4, 2000 and June 29, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
May 2, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>5</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>6</sup> *Id.*