

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PERVEZ A. KHAN and U.S. POSTAL SERVICE,  
PROCESSING & DISTRIBUTION CENTER, Oakland, CA

*Docket No. 00-2494; Submitted on the Record;  
Issued May 17, 2001*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly terminated compensation benefits on the basis that appellant no longer had any residuals due to his accepted employment injury.

On August 19, 1996 appellant, then a 44-year-old engineer, filed a traumatic injury claim for injuries to his neck, shoulders and back after an automobile accident on August 17, 1996. The Office accepted the claim for cervical and back strains. Appellant returned to limited duty working four hours a day on December 2, 1996, increased his hours to six a day on February 3, 1997 and returned to full-duty work on May 16, 1997.

In a report dated February 19, 1999, Dr. Arun M. Mehta, an attending Board-certified orthopedic surgeon, opined that appellant continued to have "occasional persisting complaints" due to his August 17, 1996 employment injury, which required occasional physical therapy or home exercise programs.

In a report dated June 21, 1999, Dr. Aubrey A. Swartz, a second opinion Board-certified orthopedic surgeon, concluded that appellant no longer had any residual disability due to his accepted August 17, 1996 employment injury.

On February 11, 2000 the Office referred appellant to Dr. Roger D. Danier, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Drs. Mehta and Swartz regarding whether appellant continued to have any residuals from his accepted employment injury.

In a report dated March 21, 2000, Dr. Danier opined that appellant continued to have residuals from his accepted August 17, 1996 employment injury. However, appellant did not require any further medical care as because he had "maximized out from supervised care in regard to his condition to the neck and low back." The only medical treatment necessary was over-the-counter nonsteroidal anti-inflammatory medication. Lastly, Dr. Dainer opined that

appellant had “sustained an industrial injury to his neck and low back with permanent residuals precluding him from very heavy lifting as well as prolonged sitting.”

On April 14, 2000 the Office issued a notice of proposed termination of benefits, relying on the opinion of Dr. Danier, the impartial medical specialist.

By decision dated May 16, 2000, the Office finalized the termination of compensation benefits.

The Board finds that the Office did not meet its burden of proof to terminate appellant’s compensation effective May 16, 2000.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination or modification of compensation benefits.<sup>1</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>2</sup> The Office’s burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</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, which require further medical treatment.<sup>4</sup>

In this case, the Office properly found a conflict of medical opinion between appellant’s treating physician, Dr. Mehta, and the Office’s referral physician, Dr. Swartz along with to Dr. Danier for an impartial medical examination pursuant to section 8123(a) of the Federal Employees’ Compensation Act.<sup>5</sup> The opinion of such specialist, if sufficiently rationalized and based on a proper factual background, is entitled to special weight.<sup>6</sup>

While Dr. Danier opined that appellant no longer required medical treatment for his accepted employment injuries of cervical and back strains, he concluded that appellant had a permanent disability due to his employment injury and would continue to have symptoms. His opinion is contradictory in that he concluded appellant has a permanent disability, yet opined that appellant required no further medical treatment other than occasional over-the-counter medication.

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<sup>1</sup> *Gewen C. Hawkins*, 52 ECAB \_\_\_\_ (Docket No. 99-798, issued January 29, 2000); *Raymond W. Behrens*, 50 ECAB \_\_\_\_ (Docket No. 97-1289, issued January 14, 1999).

<sup>2</sup> *Gewen C. Hawkins*, *supra* note 1; *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

<sup>3</sup> *Raymond W. Behrens*, *supra* note 1.

<sup>4</sup> *Mary A. Lowe*, 52 ECAB \_\_\_\_ (Docket No. 99-1507, issued January 19, 2001).

<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> *Brady L. Fowler*, 44 ECAB 343, 352 (1992); *Carl Epstein*, 38 ECAB 539 (1987).

Due to these inconsistencies in his report, Dr. Danier's report is insufficient to establish that all residuals of appellant's employment-related condition had ceased.<sup>7</sup> The Board therefore finds that the Office did not establish that all residuals of appellant's work injury had resolved by May 16, 2000, the date the Office terminated his compensation benefits.

The May 16, 2000 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC  
May 17, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>7</sup> *Frederick Justiniano*, 45 ECAB 491 (1994); see *Marlene G. Owens*, 39 ECAB 1320 (1988); *Calvin S. Mays*, 39 ECAB 993 (1988).