

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOUGLAS M. McQUAID and U.S. POSTAL SERVICE,  
POST OFFICE, Deptford, NJ

*Docket No. 99-2212; Submitted on the Record;  
Issued May 24, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective June 16, 1998; and (2) whether the Office properly denied appellant's requests for reconsideration without merit review of the claim.

In the present case, appellant, then a 29-year-old mail processor, filed a claim alleging that he sustained a back injury in the performance of duty on October 13, 1995.<sup>1</sup> In a decision dated December 26, 1996, an Office hearing representative determined that appellant had met his burden to establish a herniated L5-S1 disc in the performance of duty on October 13, 1995. Appellant returned to work in March 1996, and then filed a recurrence of disability claim for disability commencing August 18, 1997. The Office determined that appellant was claiming a new injury based on new work incidents on August 18, 1997, and developed the claim as a new injury.

In a letter dated November 3, 1997, the Office advised appellant that his claim was accepted for lower back herniated disc. By decision dated May 4, 1998, the Office rescinded acceptance of herniated disc, and accepted a lumbosacral sprain/strain.

By letter dated April 28, 1998, the Office notified appellant that it proposed to terminate his compensation for wage loss on the grounds that a second opinion referral physician, Dr. Marc L. Kahn, an orthopedic surgeon, had established that the employment-related disability had ceased. By decision dated June 19, 1998, the Office terminated compensation effective June 16, 1998.

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<sup>1</sup> Appellant also filed an occupational injury claim (Form CA-2) alleging that he sustained a back injury causally related to his federal employment. Appellant indicated that he first realized his condition was employment related on October 13, 1995.

In a decision dated October 13, 1998, an Office hearing representative affirmed the termination decision. By decision dated February 2, 1999, the Office denied appellant's request for reconsideration without merit review of the claim. In a decision dated March 26, 1999, the Office again denied reconsideration without merit review.

The Board finds that the Office did not meet its burden of proof to terminate compensation.

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 was no longer related to the employment.<sup>2</sup>

In this case, the Office relies on the March 16, 1998 report from Dr. Kahn, the referral physician. With regard to the factual and medical background, the hearing representative states the following in the October 13, 1998 decision: "I note that Dr. Kahn was not provided with an SOAF [statement of accepted facts] noting the claimant's preexisting back condition, nor did he provide his own history of a preexisting back condition. I further note that Dr. Kahn was apparently not provided with a complete medical background, as the present case record is missing some medical records, such as the October 13, 1995 hospital record, and some others."

It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.<sup>3</sup> Although Dr. Kahn briefly noted that appellant stated he was injured in October 1995, he did not provide significant details or discuss appellant's prior medical history.

With respect to medical rationale for the opinion offered, Dr. Kahn states that, "since there are no objective findings, [appellant] is capable of working full duty with no restrictions." The Board notes that the diagnosis included both lumbosacral sprain/strain, and a "preexisting herniated disc, which by MRI [magnetic resonance imaging] report, has not changed from a previous MRI prior to the work-related accident of August 18, 1997." The herniated disc is clearly an objective finding, and if Dr. Kahn believes that it was not causally related to employment, he must provide more rationale beyond stating that it preexisted the August 1997 injury. The preexisting herniated disc was an accepted employment injury; there must be a medical explanation as to why the continuing herniated disc is not causally related to employment, or in the alternative why it was not disabling. The statement that there are no objective findings is incomplete and is not sufficient medical rationale in this case.

The Board finds that Dr. Kahn did not provide a reasoned medical opinion, based on a complete and accurate factual and medical background, establishing that appellant's employment-related disability had ceased. The record does not contain a probative medical

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<sup>2</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>3</sup> *See Patricia M. Mitchell*, 48 ECAB 371 (1997); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

report establishing that the employment-related disability had ceased as of June 16, 1998. Accordingly, the Board finds that the Office did not meet its burden of proof in this case.

In view of the Board's findings on the first issue, the reconsideration issue will not be addressed.

The decisions of the Office of Workers' Compensation Programs dated March 26 and February 2, 1999 and October 13, 1998 are reversed.

Dated, Washington, DC  
May 24, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member