

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES A. ENGLISH and U.S. POSTAL SERVICE,
POST OFFICE, King of Prussia, PA

*Docket No. 01-287; Submitted on the Record;
Issued September 18, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, 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 effective November 2, 1999; (2) whether appellant met his burden of proof, following the Office's termination of compensation, to establish any work-related disability on or after November 2, 1999; and (3) whether the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim constituted an abuse of discretion.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

On September 1, 1998 appellant, then a 59-year-old letter carrier, filed a claim for traumatic injury alleging that on August 31, 1998 he hurt his back while lifting a tray of flats. The Office accepted his claim for a lumbar strain. Appellant stopped work on September 3, 1998 and did not return. He retired from the employing establishment on May 2, 1999.

By letter dated August 30, 1999, the Office proposed to terminate appellant's compensation. In a decision dated November 2, 1999, the Office terminated appellant's compensation and medical benefits effective that date. By letter dated November 9, 1999, appellant requested an oral hearing. In a decision dated April 13, 2000, an Office hearing representative affirmed the Office's prior decision terminating benefits.

By letter dated May 3, 2000, appellant requested reconsideration and submitted additional evidence and arguments in support of his claim. In a decision dated July 26, 2000, the Office denied appellant's request on the grounds that he neither raised substantive legal questions nor included new and relevant evidence.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ 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.⁴

In this case, the record contains numerous medical reports and progress notes from appellant's treating physicians. Early treatment notes dated September 8 and 14, 1998, diagnosed right lumbar spasm and strain and right sacroiliac strain, but note no signs of a prolapsed disc and no radiating pain. A September 21, 1998 note from Dr. Nelson K. Henry, a Board-certified family practitioner, indicated that appellant was totally disabled through October 14, 1998 and diagnosed lumbar disc disease.

In treatment notes dated September 22 and October 6, 1998, Dr. Steven J. Valentino, an osteopath, noted that appellant complained of pain, greater on the right than the left, with mild right anterior thigh Achilles, but exhibited no radiculopathy on physical examination and denied radicular symptoms. Dr. Valentino diagnosed lumbar strain with facet syndrome and scheduled additional testing. A magnetic resonance imaging (MRI) scan on November 4, 1998 revealed the presence of a right herniated disc at L4-5, a broad based disc bulge at L5-S1 and mild degenerative disc disease at L3-4. Dr. Valentino reviewed the MRI scan results, noting no evidence of any nerve root impingement. He opined that the changes were degenerative, rather than traumatic, diagnosed resolved lumbar strain with intermittent facet syndrome and preexistent lumbar degenerative disc disease and released appellant to full-time light to medium-duty work.

Appellant continued to treat with Dr. Henry, who submitted an attending physician's report dated March 18, 1999, diagnosing lumbar disc disease at L3-4, L4-5 and L5-S1 and indicating by check mark that the diagnosed condition was caused or aggravated by appellant's employment injury. In a one-sentence report dated May 21, 1999, he stated that appellant remained under his care and was "permanently unable to work." In a report dated August 25, 1999, Dr. Henry diagnosed degenerative disc disease with radiculopathy, noted that appellant was totally disabled and indicated by check mark that appellant's diagnosed condition was caused or aggravated by his employment injury.

On June 17, 1999 the Office referred appellant, a statement of accepted facts, the medical opinions of record and a list of issues to be addressed to Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his report dated July 7, 1999,

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

Dr. Mandel noted that appellant related to him that after his injury, he experienced pain radiating into his left anterior thigh and dorsum of the left foot. Also on a written questionnaire completed by appellant prior to the examination, appellant described his primary complaint as lower back pain of an achy nature with radiation into the left lower extremity. During the physical examination, however, appellant complained of some right-sided symptoms.

Dr. Mandel performed a complete physical examination, noting that appellant's spine was in a normal resting posture with preservation of lordosis and level iliac crests and shoulders. There was a tendency toward a withdrawal response to light palpation over the back and appellant voluntarily forward flexed 45 degrees and extended with a normal rhythm. Appellant resisted hyperextension and lateral bending of more than 10 degrees and there was a positive trunk twist test and a positive shoulder compression test. Appellant was able to stand on his heels, but declined to stand on his toes, stating that this produced back pain. Sitting root test was positive for lower back pain, however, appellant complained of lower back pain after extending the knee from 90 to 60 degrees bilaterally. From a supine position, appellant complained of lower back pain at 5 to 10 degrees of hip flexion during straight leg raising. With the knee flexed, he also complained of lower back pain at 5 to 10 degrees of hip flexion. His reflexes were normally active and symmetrical, there were no pathologic reflexes, sensation was intact and his gait was normal and reciprocal.

After reviewing the medical records and test results, Dr. Mandel concluded:

“Today's examination reveals a lack of any objective abnormalities despite the patient's significant complaints there was no muscle atrophy, reflex loss, muscle spasm or other such physical findings. The MRI [scan] revealed a small right-sided herniation. This appears entirely unrelated with the injury in question as the patient complained of left-sided symptoms following that accident. A right-sided disc herniation cannot produce left lower extremity symptoms of the type described by the patient. My impression is of status post lumbar strain and sprain resolved. In addition, there is nonwork-related and preexisting degenerative disease at L4-5 and L5-S1 as well as a preexisting and unrelated right-sided disc herniation at L4-5. These conditions were not caused by [or] affected by the work-related incident of [August 31, 1998]. In my opinion, the patient is fully recovered from any work-related accident with regard to any such accident, he is capable of returning to regular-duty work and he is not in need of further treatment. Considering the underlying degenerative disease and right-sided disc herniation at L4-5, I would impose a 50-pound lifting and carrying restriction. In my opinion, the patient's disability ended as of [November 17, 1998]. At that time, the treating orthopedist, Dr. Valentino, felt that his lumbar strain and sprain had resolved. He was capable of returning to work at that time.”

The Board finds that the weight of the medical opinion evidence rests with Dr. Mandel's well-rationalized narrative report. Dr. Mandel provided a history of injury and appellant's medical history, reviewed the results of early tests and performed a complete physical examination. He found no objective signs of appellant's accepted lumbar strain and stated that he felt this condition had resolved. While Dr. Mandel stated that appellant was restricted by his preexisting degenerative conditions and herniated disc, he specifically opined that, as far as

appellant's accepted 1998 lumbar strain was concerned, he could return to work with no restrictions. Dr. Mandel further explained that appellant's herniated disc was not caused by his work injury, because appellant's description of his pain and discomfort following the injury did not correspond with a right-sided disc injury.

Dr. Mandel's report is in accord with the medical records, which reveal that, while appellant did complain of some right-sided lumbar pain, radiculopathy was first noted in Dr. Henry's August 25, 1999 report, more than a year after the accident. Dr. Mandel's opinion is also in accord with that of Dr. Valentino.

In contrast, Dr. Henry indicated by check mark that appellant's lumbar disc disease with L4-5 herniation was caused or aggravated by appellant's employment injury, but he did not offer any explanation for this conclusion. An opinion on the relationship between appellant's diagnosed condition and the work incident, expressed only by check mark on a form and without explanation or rationale, is insufficient to establish causal relationship.⁵

The record contains no contrary medical evidence relating appellant's current disability to his accepted lumbar strain. Dr. Mandel stated that appellant had no objective signs of his accepted lumbar strain and that his current disability was not due to his accepted condition. Therefore, the Office properly relied on Dr. Mandel's report in terminating appellant's benefits.

The Board further finds that appellant did not meet his burden of proof to establish that he had a work-related disability after November 2, 1999, causally related to his accepted August 31, 1998 lumbar strain.

In support of his claim for continuing disability, appellant requested an oral hearing and submitted additional evidence. In addition to copies of medical evidence already in the record, appellant submitted a December 16, 1998 report from Dr. Giancarlo Barolat, a Board-certified neurological surgeon, who noted that appellant complained of pain mostly in the right lower lumbar area and diagnosed degenerative disc disease at L3-4, L4-5 and L5-S1, with a right-sided disc herniation at L4-5 and a broad-based disc bulge at L5-S1. Dr. Barolat opined:

"I think that this gentleman is suffering from mostly right-sided back pain without any clear-cut radicular distribution. The symptomology is improving. He is a very large man. My experience with this kind of situation is that surgical intervention usually is not very beneficial. This is especially true in view of the fact that he has three degenerative discs and that his pain is mostly in the back and is not radicular in nature."

Dr. Barolat concluded that appellant should not return to work as a letter carrier. He did not discuss any causal relationship between appellant's diagnosed conditions and his accepted August 31, 1998 lumbar strain.

Appellant also submitted an October 21, 1999 report from Dr. Henry who diagnosed lumbosacral disc disease with radiculopathy and a January 10, 2000 attending physician's report

⁵ *Robert Lombardo*, 40 ECAB 1038 (1989).

on which Dr. Henry diagnosed L4-5 and L5-S1 disc herniations and indicated by check mark that these conditions were caused or aggravated by appellant's employment injury. Again, however, Dr. Henry offered no discussion or explanation of the causal relationship, if any, between the diagnosed conditions and appellant's accepted lumbar strain. Thus, appellant has not submitted additional medical opinion evidence establishing that he had continuing disability causally related to his accepted employment injury and, therefore, he has not met his burden of proof.

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

Section 10.606 of Title 20 of 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 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.⁶ Section 10.608 provides that 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.

Subsequent to the Office hearing representative's April 13, 2000 decision, appellant submitted duplicate copies of medical evidence already contained in the record, together with an April 3, 2000 report from Dr. Henry. In his report, Dr. Henry indicated that appellant had been injured at work on August 31, 1998, diagnosed lumbosacral disc disease with radiculopathy and concluded that appellant was totally and permanently disabled. Dr. Henry again did not discuss the cause of appellant's diagnosed conditions and their relationship, if any, to his accepted lumbar strain. Thus, Dr. Henry's report is repetitious of those previously submitted and reviewed by the Office. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁷

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁸ As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

⁶ 20 C.F.R. § 10.606(b).

⁷ *Roseanne S. Allexenberg*, 47 ECAB 498 (1996); *James A. England*, 47 ECAB 115 (1995).

⁸ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The July 26 and April 13, 2000 and November 2, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
September 18, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member