

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DENZEL D. SIZEMORE and U.S. POSTAL SERVICE,  
POST OFFICE, Dawson Springs, KY

*Docket No. 02-206; Submitted on the Record;  
Issued August 6, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective December 31, 2000.

The Board has duly reviewed the case on appeal and finds that the Office did not meet its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.<sup>1</sup> Furthermore, 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 appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>2</sup>

In the present case, the Office accepted that appellant, then a 43-year-old clerk-carrier,<sup>3</sup> sustained an employment-related subluxation of the right sacroiliac joint, L5 root involvement on the left and permanent aggravation of degenerative disc disease for which he received appropriate compensation.<sup>4</sup> Following further development on August 11, 2000 the Office referred him, along with the medical record, a statement of accepted facts and a set of questions,

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<sup>1</sup> See *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>2</sup> *Beverly J. Duffey*, 48 ECAB 569 (1997).

<sup>3</sup> Appellant is also a minister.

<sup>4</sup> Appellant was injured on February 2, 1985 when he slipped on snow covered steps while delivering mail. He returned to limited duty, sustained recurrences of disability on January 9, 1986 and February 28, 1987, and has not worked since.

to Dr. John W. Lamb, a Board-certified orthopedic surgeon, for a second opinion evaluation. Based on Dr. Lamb's opinion, by letter dated November 7, 2000, the Office proposed to terminate appellant's compensation benefits. In letters dated November 15 and 27, 2000, appellant and his attorney objected to the proposed termination. By decision dated December 20, 2000, the Office finalized the termination, effective December 31, 2000 finding that the weight of the medical evidence rested with the opinion of Dr. Lamb.

Appellant, through counsel, requested a hearing and submitted additional medical evidence. At the hearing, held on May 24, 2001 he testified that he continued to suffer from the employment-related condition.<sup>5</sup> By decision dated July 31, 2001 and finalized on August 1, 2001, an Office hearing representative affirmed the prior decision. The instant appeal follows.

The relevant medical evidence includes a report dated August 30, 2000 in which Dr. Lamb noted the history of injury, his review of the record and appellant's complaints of low back and left leg pain. He noted findings on examination and diagnosed degenerative disc and joint disease of the lumbar spine similar to, although not definitely characteristic of, disseminated intervertebral skeletal hyperostosis. Dr. Lamb opined that the majority of appellant's symptoms were related to osteoarthritis with a small percentage caused by the employment injury. Regarding disability, he stated:

"It would be reasonable to say that the condition of the lumbar spine was aggravated as a result of the injury, although one would not anticipate a soft tissue injury to be associated with a severe permanent impairment. To the best I can determine, this appears to have been a soft tissue injury of the lumbar spine which would, perhaps, be associated with a 10 percent permanent impairment, but would not, under ordinary circumstances, be expected to produce permanent and total disability."

Dr. Lamb advised that appellant needed no further treatment and was capable of "activities which would be primarily sedentary in nature, as long as the job did not require constant sitting or standing" and concluded that appellant's condition would not improve. In an attached work capacity evaluation, he advised that appellant could work eight hours per day with restrictions.<sup>6</sup> In a supplementary report dated September 18, 2000, Dr. Lamb advised that appellant had no evidence of sUBLUXATION or L5 nerve root involvement on the right. He further advised, "certainly permanent aggravation of degenerative disc disease would be expected to have continued, although there did not appear to be any acute abnormality at the time of his

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<sup>5</sup> Appellant also testified that he has not worked since February 1986. The record, however, indicates that, in November 1986 appellant accepted a limited-duty assignment and worked until February 28, 1987 when he sustained a recurrence of disability.

<sup>6</sup> Dr. Lamb advised that appellant should limit his sitting and walking to three hours per day, standing, pushing and pulling to two hours per day, lifting and climbing to one hour per day and twisting to less than one hour per day with no squatting or kneeling. He could push and pull 20 pounds and lift 10 pounds with 15-minute breaks provided every 2 hours.

examination.” Regarding residuals, Dr. Lamb stated that appellant continued to have chronic low back pain and arthritis and concluded:

“In my opinion it is reasonable to say that [appellant] sustained an injury, that it aggravated the symptoms of the osteoarthritis, but that it probably did not greatly affect the course of the disease and that it would have been expected to have resolved within a few months to a year.”

Dr. Joseph A. Milum, a Board-certified family practitioner, submitted a report dated December 1, 2000<sup>7</sup> in which he noted the history of injury and tenderness on examination with a negative straight leg raising test and no sensory or motor deficits and normal reflexes. Dr. Milum diagnosed chronic back pain.

In a report dated December 4, 2000,<sup>8</sup> Dr. David W. Gaw, a Board-certified orthopedic surgeon, noted the history of injury and findings of limited range of motion and a positive straight leg raising test at 80 degrees. Dr. Gaw diagnosed degenerative lumbar disc disease which, he opined, was aggravated by the 1985 employment injury. Regarding appellant’s ability to work, he stated:

“I feel that this gentleman would have difficulty with anything other than just occasional bending, twisting, pushing or pulling. He should lift no more than 20 pounds occasionally and he should not lift more than 20 pounds frequently. He could stand or walk less than two hours in an eight-hour day. He would need to alternate periods of sitting with standing or walking. He could sit for five to six hours in an eight-hour day but he should alternate periods of standing. He may also need to be in a reclined or supine position for periods of time during the eight-hour day for pain control.”

Dr. Milum submitted a report dated May 7, 2001 in which he advised that appellant was totally disabled due to the 1985 employment injury, advising that he could not hold a regular job because of radiating back pain. He advised that appellant could not sit or walk for an extended period and further noted left leg muscle atrophy and decreased ankle reflexes. Finally, Dr. Milum advised that magnetic resonance imaging demonstrated mild spinal stenosis at L2-3 with a bulging disc and degenerative changes in the lumbar spine.

In the present case, the Office relied on the opinion of Dr. Lamb in terminating appellant’s compensation benefits.

Under the Federal Employees’ Compensation Act,<sup>9</sup> the term “disability” means incapacity, because of the employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment

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<sup>7</sup> The report was stamped received by the Office on May 7, 2001.

<sup>8</sup> The report was stamped received by the Office on January “0”, 2001.

<sup>9</sup> 5 U.S.C. §§ 8101-8193.

causally related to a federal employment injury, but who nonetheless has the capacity to earn wages he was receiving at the time of injury, has no disability as that term is used in the Act.<sup>10</sup>

Appellant's position description at the time he sustained the recurrence of disability on February 23, 1987 included restrictions of intermittent standing for up to 3 hours per day, intermittent walking for 30 minutes per day, intermittent sitting for 5 hours per day, intermittent lifting of 0 to 20 pounds for up to 5 hours per day, intermittent lifting of 10 to 25 pounds for up to 1 hour per day, carrying of 0 to 25 pounds for up to 1 hour per day, pushing up to 15 minutes per day, twisting at the waist up to 1 hour per day and intermittent reaching above the shoulder for up to 15 minutes per day. The position did not require climbing, stooping, kneeling or crawling. Dr. Lamb, however, provided restrictions that limited appellant to sitting for only three hours per day, standing for two hours per day and twisting for less than one hour per day. Furthermore, Dr. Gaw advised that appellant could stand for only two hours per day and Dr. Milum advised that appellant was totally disabled. The evidence of record therefore fails to establish that appellant was capable of performing the type of work he was doing when he sustained the recurrence of disability in February 1987. Consequently, the Office did not meet its burden of proof in terminating appellant's compensation effective December 31, 2000.

The decision of the Office of Workers' Compensation Programs dated July 31, 2001 and finalized on August 1, 2001 is hereby reversed.

Dated, Washington, DC  
August 6, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>10</sup> See *Maxine J. Sanders*, 46 ECAB 835 (1995).