

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIAN L. BRANDT and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 02-862; Submitted on the Record;
Issued August 16, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective January 6, 2000.

On October 13, 1989 appellant, then a 49-year-old letter carrier, filed an occupational claim for a low back condition which he attributed to his work as a letter carrier. The Office accepted that the factors of appellant's employment resulted in a permanent aggravation of appellant's preexisting lumbar degenerative arthritis at L3-4, L4-5 and L5-S1 and approved appropriate compensation benefits. Appellant stopped work approximately mid September 1989 and has not returned. By decision dated January 6, 2000, compensation for wage loss and medical benefits were terminated based on the weight of the medical evidence which demonstrated that the work-related aggravation of appellant's preexisting lumbar degenerative arthritis at L3-4, L4-5 and L5-S1 had resolved. By decisions dated March 2, 2001 and February 6, 2002, the Office denied modification of its previous decision.

The Board finds that the Office has not met its burden of proof to justify the termination of appellant's compensation benefits effective January 6, 2000 on the grounds that the weight of the medical evidence established that all of appellant's employment-related residuals ceased.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

ceased,³ even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.⁴

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁵

The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ 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.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ 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.⁹

The Office found that the weight of the medical evidence rested with the opinion of Dr. Julie Wehner, a Board-certified orthopedic surgeon and Office referral physician. In a letter dated March 1, 1999 to Dr. Wehner, the Office advised that appellant's claim had been accepted for permanent aggravation of preexisting lumbar degenerative arthritis at L3-4, L4-5, L5-S1 and enclosed appellant's medical history, a statement of accepted facts amended February 19, 1999, a work restriction evaluation and a list of specific questions. The Office requested that she conduct a complete examination of appellant, obtain a history from appellant and provide a medical opinion with respect to the specific questions the Office posed. Appellant's history of injury, including the fact that appellant sees his treating physician, Dr. Hrach Hitik for pain and receives Depo-Medrol shots approximately once a month and has elected not to pursue surgery to prevent neurologic deterioration, was discussed along with his physical complaints, the results of objective tests of record and findings on physical examination. Dr. Wehner stated that her impression was that appellant has some element of chronic back pain. Dr. Wehner noted that appellant's injury was in 1989 and that the 1989 magnetic resonance imaging (MRI) scan showed some hypertrophic changes of the facet joints consistent with some arthritis at that level. She stated that those degenerative changes were preexisting since degenerative changes would not occur within two months after an injury such as appellant had. In addition, Dr. Wehner stated that those degenerative changes are found in the normal course of aging and, therefore, are

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *John Watkins*, 47 ECAB 597 (1996); *Marion Thornton*, 46 ECAB 899, 906 (1995).

⁵ *Jorge E. Sotomayor*, 52 ECAB ____ (Docket No. 99-452, issued October 6, 2000); *John W. Graves*, 52 ECAB ____ (Docket No. 98-511, issued December 7, 2000); *Mary A. Lowe*, 52 ECAB ____ (Docket No. 99-1507, issued January 19, 2001); *Gewin C. Hawkins*, 52 ECAB ____ (Docket No. 99-798, issued January 29, 2001).

⁶ *Mary A. Lowe*, *supra* note 5; *Gewin C. Hawkins*, *supra* note 5.

⁷ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁸ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁹ *Mary A. Lowe*, *supra* note 5.

not particularly related to his type of job. She opined that if appellant had some pain in his back in 1989 that was due to these degenerative changes found at L4-5 and the pain was the result of an aggravation of a preexisting condition. On that basis, Dr. Wehner opined that appellant had experienced a temporary exacerbation in 1989 based on the fact that his current subjective complaints of pain far outweigh his radiographic findings and now he has mostly chronic subjective complaints of pain. On reviewing the MRI's over the course of the years, she noted that there had been some mild progression of the L4-5 spinal stenosis. However, it is still only mild to moderate and it certainly does not correspond to appellant's level of current disability. Dr. Wehner stated that since appellant does provide total care for his son, which is also a fairly strenuous job, it could be said that any of his degenerative changes are due to this type of work as much as it was due to a letter carrying job. Based on a fairly normal neurologic examination today and MRIs that have been fairly stable and as recently as 1997, show only some mild to moderate spinal stenosis at L4-5, she opined that appellant would not need any restrictions based on his back. Dr. Wehner opined that appellant may have some psychiatric disturbance based on his feeling that the MRI is melting his back and some other fairly abnormal perceptions of his disability, which have been written out in extensive detail by him. She further opined that appellant's feelings of numbness starting in the scrotum and penis and radiating up to his sternum certainly do not have an underlying organic medical basis. Based on appellant's back related injury, as described by the statement of accepted facts and the x-ray and MRI findings throughout the years and from her clinical examination, Dr. Wehner opined that appellant was no longer suffering from the temporary exacerbation of his preexisting condition of mild to moderate degenerative changes at L4-5. She related that since she feels that any aggravation of the preexisting condition should have been temporary and that appellant's continuing complaints do not correlate with any clinical findings or his radiologic findings, Dr. Wehner opined that appellant mostly has subjective complaints of pain. She opined that appellant could return to work as a letter carrier without any restrictions based upon the work-related-injury of 1989.

The Board has carefully reviewed the opinion of Dr. Wehner. Although Dr. Wehner's opinion appears to be well reasoned, she did not conclude that the residuals of all of appellant's accepted conditions, permanent aggravation of preexisting lumbar degenerative arthritis at L3-4, L4-5 and L5-S1, had resolved. Instead, Dr. Wehner explained that in 1989 appellant had only experienced a temporary exacerbation of the preexisting degenerative changes at L4-5. She opined that the numerous x-ray and MRI findings appellant underwent over the years showed only a mild progression of appellant's preexisting degenerative changes and that it was still only mild to moderate in nature and did not correspond to appellant's current level of disability or subjective complaints. Dr. Wehner, therefore, opined that appellant had experienced a temporary exacerbation in 1989 and opined that if appellant had some pain in his back in 1989, it was due to the degenerative changes found at L4-5 and that the pain was the result of a temporary exacerbation in 1989 based on the fact that appellant's current subjective complaints of pain far outweighed his radiographic findings. It is error for the Office to use such an opinion to terminate compensation for wage loss and medical benefits on the grounds that residuals of the accepted conditions have resolved. The Office had accepted the conditions of a permanent aggravation of preexisting degenerative arthritis at L3-4, L4-5 and L5-S1. She only accepted a temporary aggravation of preexisting degenerative disease at L4-5 and did not offer any opinion on appellant's other accepted conditions of L3-4 and L5-S1. While Dr. Wehner's opinion tends to support that the residuals of L4-5 had ceased, it provides no evidentiary basis for the Office's

finding that the residuals of all the accepted conditions had resolved. The Office must inform claimants correctly and accurately of the grounds on which a decision rests, so as to afford them an opportunity to meet, if they can, any defect appearing therein.¹⁰ Because the Office failed to do so in this case, the Board will reverse the Office's February 6, 2002 and March 2, 2001 decisions, insofar as it affirmed the termination of compensation of wage loss and medical benefits for the accepted conditions in this case.¹¹

The February 6, 2002 and March 2, 2001 decisions of the Office of Workers' Compensation Programs are hereby reversed.

Dated, Washington, DC
August 16, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ *E.g., id.; James D. Boller, Jr.*, 12 ECAB 44 (1960).

¹¹ The Board notes that prior to the termination of his compensation benefits, appellant submitted medical evidence and arguments. However, in light of the disposition of this case, the Board need not address such evidence. The Board further notes that the medical evidence from appellant's treating physician, Dr. Hitik, is insufficient to cause a conflict in medical evidence as it fails to offer a well-rationalized opinion explaining why appellant's condition has continued to persist.