

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARKADE RUDOMEN, JR. and U.S. POSTAL SERVICE,  
LENOX HILL POST OFFICE, New York, NY

*Docket No. 02-668; Submitted on the Record;  
Issued December 6, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits, effective April 22, 2001, on the basis that he no longer suffered from residuals of his November 4, 1998 employment injury.

Appellant, a 37-year-old letter carrier, sustained a traumatic injury on November 4, 1998, which the Office accepted for right shoulder strain. He returned to light duty shortly after his injury; however, he sustained a recurrence of disability on November 9, 1998. The Office awarded appropriate wage-loss compensation and placed appellant on the periodic compensation rolls. Appellant has not returned to work.

In a decision dated April 5, 2001, the Office found that the medical evidence established that appellant no longer suffered from residuals of his accepted condition of right shoulder strain. Consequently, the Office terminated appellant's medical benefits and wage-loss compensation effective April 22, 2001.<sup>1</sup> The Office based its determination on the October 30, 2000 opinion of Dr. Louis J. Lombardi, a Board-certified orthopedic surgeon and impartial medical examiner.<sup>2</sup>

Appellant requested reconsideration on September 4, 2001. By decision dated November 7, 2001, the Office denied modification of the prior decision dated April 5, 2001.

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

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<sup>1</sup> On February 16, 2001 the Office issued a notice of proposed termination of wage-loss compensation and medical benefits.

<sup>2</sup> In his October 30, 2000 report, Dr. Lombardi noted complaints of neck and right shoulder pain with radiation into the right upper extremity. He diagnosed "[r]esolved cervical and [r]ight shoulder muscle strain." Dr. Lombardi further noted that a February 18, 1999 magnetic resonance imaging scan of the cervical spine did not corroborate the recent physical findings on examination. He explained that, based upon a review of the medical records, appellant's current subjective complaints and the paucity of findings on physical examination, appellant did not have a disability that precluded him from performing the full duties of a letter carrier. Dr. Lombardi further stated that appellant did not require any further orthopedic or physical therapy treatment.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>3</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>5</sup> 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>6</sup>

The Office determined that a conflict of medical opinion existed based on the opinions of Dr. Robert A. Marini and Dr. Alan R. Miller.<sup>7</sup> Therefore, the Office properly referred appellant to an impartial medical examiner.<sup>8</sup> As previously noted, Dr. Lombardi, the impartial medical examiner, diagnosed “[r]esolved cervical and [r]ight shoulder muscle strain,” and found that appellant did not have a disability that precluded him from performing the full duties of a letter carrier. The Board finds that the Office properly relied on the impartial medical examiner’s October 30, 2000 opinion as a basis for terminating benefits. Dr. Lombardi’s opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant’s medical records. Dr. Lombardi also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiner’s October 30, 2000 findings.<sup>9</sup>

Appellant submitted several additional medical opinions following Dr. Lombardi’s October 30, 2000 report. The recent evidence purportedly establishes appellant’s ongoing disability. Additionally, appellant alleged that he sustained a lower back injury on November 4, 1998, which precluded him from resuming his prior duties as a letter carrier.

Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally

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<sup>3</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>4</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>5</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>6</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>7</sup> In a series of reports from May through November 1999, appellant’s treating physician, Dr. Marini, a Board-certified physiatrist, diagnosed right shoulder derangement, cervical derangement, cervical radiculopathy and lumbosacral derangement. Dr. Marini further stated that appellant continued to be disabled from his employment.

<sup>8</sup> The Federal Employees’ Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee’s physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>9</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

related to the employment injury.<sup>10</sup> Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>11</sup>

In a report dated March 22, 2000, Dr. John Buonocore, an osteopath specializing in pain management, noted that magnetic resonance imaging (MRI) scans of the cervical and lumbar spine revealed disc herniations at C5-6 and L4-5. He also stated that electromyography (EMG) studies were positive for C5 and L5-S1 radiculopathy. Dr. Buonocore diagnosed mild cervical radiculopathy at C5, cervical myofascial pain syndrome, L5 lumbar radiculopathy pain pattern, and lumbar myofascial pain syndrome. He further stated that appellant was totally disabled. Dr. Buonocore did not, however, address the etiology of appellant's cervical and lumbar conditions. As such, his opinion is insufficient to overcome the weight of the medical evidence as represented by the October 30, 2000 opinion of the impartial medical examiner.

In a report dated January 15, 2001, Dr. Alan D. Rosenthal, a Board-certified neurosurgeon, stated that a cervical MRI scan taken two years prior revealed a right paracentral disc herniation at C5-6. He also noted that a February 2000 MRI scan of the lumbar spine showed a disc herniation at L4-5 and a degenerative disc at L5-S1. Dr. Rosenthal further stated that appellant's history and physical examination were consistent with a cervical myeloradiculopathy and lumbar radiculopathy dating from an injury occurring November 4, 1998. He recommended updated cervical and lumbar MRI scans and a computerized tomography (CT) scan. Additionally, Dr. Rosenthal stated that, if the studies confirmed his impression on examination, appellant would be a candidate for C5-6 discectomy and interbody fusion and L4-5 laminectomy and discectomy. He opined that without surgery the prognosis for appellant's return to work was nil, and with surgery, it was guarded at best.

Although Dr. Rosenthal stated that appellant's history and physical examination were consistent with a cervical myeloradiculopathy and lumbar radiculopathy dating from an injury occurring November 4, 1998, he did not explain the basis for his opinion. Particularly, he did not explain how the mechanism of injury either caused or contributed to the disc herniations at C5-6 and L4-5 and the degenerative disc noted at L5-S1. Also, he neglected to explain how appellant's "jamming his head back" resulted in low back pain radiating predominately down the right leg.

On reconsideration, appellant also submitted a July 17, 2001 from Dr. Alan R. Roth, an osteopath and family practitioner, who stated that he had been treating appellant for job injuries sustained on November 4, 1998. However, Dr. Roth did not otherwise describe the November 4, 1998 employment incident. Dr. Roth last examined appellant on May 2, 2001 and noted that the results were significant and consistent with cervical and lumbar radiculopathies. He concluded that appellant remained totally and possibly permanently disabled due to his cervical radiculopathy at C5-6 and lumbosacral radiculopathy at L4-5. Because of his failure to explain

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<sup>10</sup> *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>11</sup> See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

the basis of his opinion regarding the etiology of appellant's current condition, Dr. Roth's July 17, 2001 report is insufficient to overcome the impartial medical examiner's findings.

In a report dated July 31, 2001, Dr. Rick J. Singh, a Board-certified neurologist, stated that appellant injured his neck, lower back and right shoulder at work on November 4, 1998. He did not specifically identify the mechanics of appellant's job injury. Dr. Singh reported that EMG studies revealed lumbosacral radiculopathy most prominent on the left side at L4-5 and at L5-S1 and cervical radiculopathy most prominent on the right side at C5-6. He also noted that a CT scan of the spine revealed disc herniations at C5-6 and a disc herniation at L4-5, most prominent on the left side. Dr. Singh further stated that an MRI scan of lumbosacral spine confirmed appellant's L4-5 disc herniation. Regarding the issue of causal relationship, Dr. Singh stated that based on the history provided by appellant and review of the medical documentation, a causal relationship can be established between the above impression and the accident of November 4, 1998.

While Dr. Singh attributed appellant's current cervical and lumbar conditions to his November 4, 1998 employment injury, the doctor did not explain the basis for his opinion other than to note generally that the "history" and "medical documentation" supported such a finding. A mere conclusion without proper explanation is not sufficient to establish causal relationship. Furthermore, Dr. Singh's July 31, 2001 report did not include a detailed history of appellant's November 4, 1998 employment injury.

The reports from Drs. Buonocore, Rosenthal, Roth and Singh are collectively insufficient to establish that appellant has any continuing disability causally related to his November 4, 1998 employment injury. Dr. Buonocore did not address the etiology of appellant's current cervical and lumbar conditions, and Drs. Rosenthal, Roth and Singh each failed to provide adequate rationale for their respective opinions on causal relationship. Therefore, the weight of the evidence establishes that appellant no longer suffers from residuals of his November 4, 1998 employment injury.

The November 7, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
December 6, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member