

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL T. GARRISON and U.S. POSTAL SERVICE,
POST OFFICE, Knoxville, TN

*Docket No. 00-766; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

On June 18, 1992 appellant, then a 41-year-old mailhandler, sustained a low back injury while pulling a hamper of mail onto a dumper. The Office accepted his claim for low back strain and temporary aggravation of lumbar degenerative disc disease. Appellant received compensation for temporary total disability.

A conflict in medical opinion subsequently arose between appellant's attending physician, Dr. Robert L. Chironna, and an Office referral physician, Dr. Jeffrey A. Uzzle. Dr. Chironna reported that appellant's current condition was probably the combined effect of the degenerative arthritis, which he had had all along, and the effects of the employment injury, which made the problem worse. Dr. Uzzle reported that the lumbar strain should have resolved and that it was unknown whether aggravation of lumbar degenerative disc disease changes would resolve, since this was an age-related process expected to advance with normal aging with or without the injury in question. He diagnosed chronic pain syndrome, some of which was not work related in its causation "though it could be argued that his injury may have been an inciting or triggering factor."

To resolve the conflict, the Office referred appellant, the case record and a statement of accepted facts to Dr. Joseph H. Kay, Jr., a Board-certified physiatrist. In a report dated November 18, 1997, Dr. Kay related appellant's complaints, history and findings on examination. He diagnosed history of lumbar strain and mild lumbar degenerative joint disease, possible new L4-5 interspinous ligament strain and significantly tight bilateral lower extremity musculature.

When asked whether there were any residuals from the work-related injury of June 18, 1992, Dr. Kay replied: "No. From my review of the patient's medical records and from the

physical examination that I performed, there is no evidence of ongoing injury from June 18, 1992.”

When asked whether appellant’s disability was due to his work-related injury or to underlying conditions, Dr. Kay replied:

“It is my expert medical opinion that the patient’s current condition is due to his current physical condition and absolutely not due to a lumbar strain that occurred on June 18, 1992. His initial complaints of radicular pain have been present since July 1989 when he was admitted to Fort Sanders Regional Medical Center for work-up of complaints of ‘low back, RLE and right testicular pain of a chronic nature.’ As this complaint occurred prior to the stated injury date of June 18, 1992 it is impossible for the injury to have caused a complaint that existed at least three years prior to this suspected injury. This patient’s currently perceived ‘disability’ should in no way, shape or form be attributed to a minor injury that occurred on June 18, 1992. Instead, the ‘disability’ should be attributed to his current lack of activity or any meaningful stretching and condition program. A consistent conditioning program has been the only medically proved long-term treatment for a patient with mild lumbar degenerative joint disease. Inactivity is therefore one of the worst possible ways to treat this condition.”

When asked whether the degenerative disc disease aggravation had ceased, leaving only the baseline of progression of the underlying condition, Dr. Kay replied: “Yes, it has. Any continued complaints should be attributed to the patient’s tight musculature, mild degenerative disease, and lack of a structured exercise program.”

When asked whether the lumbar strain had resolved, Dr. Kay replied: “Yes, it has. There is no evidence of lumbar paraspinal spasm. There is only the new finding of L4-5 interspinous process tenderness; this may be a new injury, but cannot be attributed to the injury of June 18, 1992.”

Dr. Kay noted that Dr. Chironna had reported a chronic unchanged degenerative arthritis of the lumbar spine with associated chronic pain, the severity of which made a return to work impractical. He could find no significant medical evidence of this in appellant’s medical record or on his physical examination. Dr. Uzzle reported, on the other hand, that appellant had reached maximum medical improvement and would have no permanent partial impairment rating for the age-related degenerative changes and a zero percent whole body impairment for his lumbar strain. Dr. Kay noted that this was in line with appellant’s current medical condition and presentation and was based on the accepted standard for impairment ratings.

In a decision April 20, 1998, following a notice of proposed termination, the Office terminated appellant’s compensation on the grounds that the weight of the medical evidence established that he had recovered from the accepted employment injury.

In a decision dated December 17, 1998, an Office hearing representative affirmed the termination of appellant’s compensation benefits. The hearing representative found that the Office had properly accorded the weight of the medical evidence to Dr. Kay, the referee medical

examiner, as his opinion was sufficiently well rationalized and based upon a proper factual background.

The Board finds that the Office has met its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits. 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.

To resolve the conflict between appellant's attending physician and the Office referral physician on whether appellant continues to suffer residuals of his June 18, 1992 employment injury, the Office referred appellant to a referee medical examiner, Dr. Kay. The Office provided Dr. Kay with the case record and a statement of accepted facts so he could base his opinion on a complete and accurate factual and medical history. Dr. Kay unequivocally reported that there were no residuals from the work-related injury of June 18, 1992. He based his opinion on his review of appellant's medical records and on his own physical examination of appellant, the findings of which appear to be consistent. Dr. Kay specifically addressed the accepted conditions of lumbar strain and aggravation of degenerative disc disease. There was no evidence of lumbar paraspinal spasm and any continued complaints should be attributed to appellant's tight musculature, mild degenerative disease and lack of a structured exercise program.

Dr. Kay explained that appellant's current level of deconditioning could be attributed to his self-induced lack of activity. The noted tightness of appellant's gluteal, hamstring and calf musculature could be a source of low back pain due to the mechanical disadvantage and stress of the tight musculature of the lumbar spine. Dr. Kay pointedly reported that appellant's currently perceived disability should in no way, shape or form be attributed to what he described as the "minor" injury that occurred on June 18, 1992; it should instead be attributed to appellant's current lack of activity or any meaningful stretching or conditioning program.

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹

The Board finds that Dr. Kay's opinion is based upon a proper factual background and is sufficiently well reasoned that it must be accorded special weight in resolving the conflict that arose on whether appellant continues to suffer residuals of his June 18, 1992 employment injury. The weight of the medical opinion evidence supports that appellant no longer suffers residuals of his June 18, 1992 employment injury. Therefore, the Office has met its burden of proof to justify the termination of compensation for that injury.

¹ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

The Board notes that the attending physician, Dr. Chironna, and the Office referral physician, Dr. Uzzle, have raised the question of whether appellant developed a chronic pain syndrome as a result, at least in part, of the June 18, 1992 employment injury. On return of the case record, the Office shall further develop the medical evidence and issue an appropriate final decision on this issue.

The December 17, 1998 decision of the Office of Workers' Compensation Programs is affirmed and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
January 25, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member