

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM A. D'ANGELIS and U.S. POSTAL SERVICE,
POST OFFICE, Huntington Station, NY

*Docket No. 00-1843; Submitted on the Record;
Issued January 15, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that he refused suitable work pursuant to 5 U.S.C. § 8106(c).

The Board has duly reviewed the case record and finds that the Office properly terminated appellant's compensation on the grounds that he refused suitable work pursuant to 5 U.S.C. § 8106(c).

On April 8, 1996 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim alleging that on that date while he was pulling mail down out of a case, the case collapsed hitting him on the head and causing him to twist his knee. He stated that he sustained a headache, a bump on his head and knee pain.

The Office accepted appellant's claim for right knee sprain, right knee contusion, lumbosacral strain and post-traumatic stress disorder.

By letter dated June 3, 1997, the employing establishment offered appellant a limited-duty carrier position based upon the second opinion report of Dr. David Koretz, a Board-certified orthopedic surgeon, who opined that appellant could return to work on a limited-duty basis with certain physical restrictions.

On July 2, 1997 appellant rejected the offer of employment stating that he was medically unable to accept by advice of his treating physician.

Based on a conflict of medical opinion between appellant's treating physicians, Dr. Philip Su, a Board-certified neurologist, who opined that appellant could return to light-duty work on a part-time basis, and Dr. J.U. Lim, an orthopedic surgeon, who opined that appellant could not go back to work at the employing establishment, and Dr. Koretz, the Office referred appellant to

Dr. Stanley Feingold, a Board-certified orthopedic surgeon, for an impartial medical examination by letter dated August 20, 1998.

Dr. Feingold submitted an August 20, 1998 report finding that appellant's orthopedic conditions had resolved and that there were no objective findings related to appellant's April 8, 1996 employment injury.

On October 15, 1998 the Office issued a proposed notice of termination of compensation. The Office informed appellant that he had 30 days, in which to submit additional legal argument or medical evidence in opposition to the proposed termination. Appellant submitted an October 23, 1998 letter, through his counsel, in which he contested the proposed termination, but he did not submit any additional medical evidence.¹

By decision dated November 16, 1998, the Office finalized its decision to terminate appellant's compensation for his orthopedic conditions effective November 16, 1998 based upon the report of Dr. Feingold. In a November 5, 1999 letter, appellant, through his counsel, requested reconsideration of the Office's decision.

By decision dated February 7, 2000, the Office denied appellant's request for modification based on a merit review of the claim.

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.² 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.³

In this case, the Office properly found a conflict in the medical opinion evidence between appellant's treating physician and the Office second opinion physician regarding the issue whether appellant had any continuing employment-related disability. In terminating appellant's compensation, the Office relied on the impartial medical opinion of Dr. Feingold. In his August 20, 1998 report, Dr. Feingold provided a history of appellant's employment injury and medical treatment, his findings on physical examination and a review of medical records. Dr. Feingold opined that appellant had made a complete recovery from his back and right knee injuries sustained on April 8, 1996. He further opined that, from an orthopedic standpoint, appellant was not disabled from working as a letter carrier. He stated that there were no objective findings related to the April 8, 1996 employment injury and no disability as a result of the April 8, 1996 employment injury.

¹ In its proposed notice of termination, the Office stated that compensation for appellant's emotional condition would continue uninterrupted.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

Where there are 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 on a proper factual background, must be given special weight.⁴ In this case, Dr. Feingold provided a detailed report based on an accurate history of injury. He noted a lack of objective findings and concluded that appellant was not disabled due to his accepted employment injury of right knee sprain, right knee contusion and lumbosacral strain, and that he had no residuals of these conditions.

Appellant submitted Dr. Lim's March 30, July 6, September 7 and October 5, 1999, and January 18, 2000 reports finding that he continued to be totally disabled and unable to return to his previous employment. Dr. Lim was on one side of the conflict that Dr. Feingold resolved, and the additional reports from Dr. Lim are insufficient to overcome the weight accorded Dr. Feingold's report as the impartial medical specialist or to create a new conflict with it.⁵

The Board finds that Dr. Feingold, the impartial medical examiner, has established that appellant has no medical residuals of his accepted employment-related orthopedic conditions. Therefore, the Board finds that the Office met its burden of proof to terminate appellant's medical benefits for these accepted conditions.

The February 7, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 15, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁴ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

⁵ *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).