

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANTHONY M. ENNAS and U.S. POSTAL SERVICE,  
POST OFFICE, Brooklyn, NY

*Docket No. 01-1902; Submitted on the Record;  
Issued June 27, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

Appellant, a 28-year-old motor vehicle operator, filed a notice of traumatic injury on March 29, 1976 alleging that he injured his low back in the performance of duty. The Office accepted appellant's claim for back strain.

Appellant alleged that he developed an emotional condition as a result of this employment injury. By decision dated December 11, 1998, the Board affirmed the Office's denial of appellant's claim for an emotional condition.<sup>1</sup>

Following the Board's December 11, 1998 decision, the Office undertook further development of appellant's back claim. In a decision dated August 30, 2000, the Office terminated appellant's compensation benefits. Appellant, through his attorney requested an oral hearing. By decision dated June 8, 2001, the hearing representative affirmed the Office's August 30, 2000 decision.<sup>2</sup>

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

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.<sup>3</sup>

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<sup>1</sup> *Anthony M. Ennas*, Docket No. 96-1112 (issued December 11, 1998); *reaff'd on recon.*, Docket No. 96-1112, (issued May 25, 1999).

<sup>2</sup> Following this decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board will not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>3</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

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.<sup>4</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement 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>

In this case, appellant's attending physicians, Dr. Arthur L. Eisenstein, a Board-certified orthopedic surgeon, and Dr. Martin Weseley, a Board-certified orthopedic surgeon, continued to support his disability for work due to his accepted back condition. The Office referred appellant for a second opinion examination by Dr. Irving Strouse, a Board-certified orthopedic surgeon. In a report dated April 27, 1999, Dr. Strouse noted appellant's history of injury and performed a physical examination. He diagnosed degenerative disc disease with herniated discs and opined that this condition was not related to appellant's accepted employment injuries. Dr. Strouse stated that appellant could return to his date-of-injury position and that he did not require further medical treatment as a result of his accepted employment injuries.

The Office provided Dr. Strouse with appellant's most recent magnetic resonance imaging (MRI) scan dated May 12, 1999. In a report dated May 20, 1999, he stated that this diagnostic study did not change his mind or opinions regarding appellant's conditions and the relationship to his employment.

Dr. Weseley completed a work restriction evaluation form on August 4, 1999 and opined that appellant was totally disabled. In his notes dated from July 15 to November 12, 1999, he stated that appellant had a severe chronic low back problem with spasm. Dr. Eisenstein reviewed the May 12, 1999 MRI scan and found multilevel mild annular bulges L2-3 through L5-S1 as well as a superimposed small left foraminal disc protrusion L3-4 which approached the exiting nerve root laterally in the neural foramen without direct compression. He stated that appellant had chronic pain in his lower back. On November 12, 1999 Dr. Eisenstein stated that appellant's lower back pain was aggravated by activity and decreased by rest.

Section 8123(a) of the Federal Employees' Compensation Act,<sup>7</sup> provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." Appellant's attending physicians, Drs. Weseley and Eisenstein support his continuing disability for work. The Office's second opinion physician, Dr. Strouse, found that appellant was not disabled and that his current condition was not causally related to his employment injuries. Therefore, the Office properly found a conflict of medical opinion and referred appellant to an impartial medical examiner for evaluation.

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<sup>4</sup> *Id.*

<sup>5</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>6</sup> *Id.*

<sup>7</sup> 5 U.S.C. §§ 8101-8193, § 8123(a).

The Office referred appellant to Dr. Cary D. Glastein, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a report dated March 31, 2000, Dr. Glastein noted appellant's history of injury and performed a physical examination. He found that appellant did not have an antalgic gait, that he had no lumbar spine deformity, no spasm of the lumbar spine and no atrophy in his legs. Dr. Glastein stated that appellant's straight leg raising test was positive while supine and negative while sitting and that his motor examination revealed collapsing weakness of the ankles bilaterally. He noted that appellant's sensory examination was intact. Dr. Glastein reviewed the MRI reports from April 1991 and May 1996. He diagnosed lumbar sprain as a result of the employment injury and stated that appellant's objective findings of disc herniations on the left were not consistent with appellant's complaints of right leg pain. Dr. Glastein stated that appellant's degenerative changes were not related to his employment injury as a back sprain was a soft tissue injury which was self-limiting. He further found that appellant's examination revealed multiple and significant functional overtones which relate to a psychiatric condition rather than to an orthopedic problem. Dr. Glastein found that appellant could return to full duty and that he did not require further medical treatment.

In situations 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.<sup>8</sup> In this case, Dr. Glastein provided a detailed report including a history of injury, physical findings and his conclusions regarding appellant's employment injury and his current condition. His findings on physical examination did not support appellant's continued disability for work based on his employment injury as he noted that appellant had significant functional overlay. Dr. Glastein further stated that appellant's current degenerative disc disease was not caused nor aggravated by appellant's accepted condition of lumbar strain.

In response to the proposed termination of appellant's compensation benefits, Dr. Weseley completed a note on May 25, 2000 finding that appellant had discogenic pathology. He stated that appellant had sciatic symptomatology both on the right and left sides along with low back pain. Dr. Weseley stated that the most recent MRI scan demonstrated discogenic lesion affecting the neural foramen on the left in the lumbar area. He stated, "The patient has chronic low back problem, which has been present for many years. The significant pathology has been noted on a most recent MRI scan. I have found left sciatic symptomatology and electrodiagnostic work-up confirms this."

In a note dated August 11, 2000, Dr. Eisenstein provided his findings on physical examination noting loss of range of motion of the lumbar spine. He found that straight leg raising was positive bilaterally and that motor and neurological examinations were within normal limits. Dr. Eisenstein opined that appellant was totally disabled and could not return to any type of gainful employment.

These reports are not sufficient to constitute the weight of the medical evidence as the physicians did not provide a history of injury and did not offer a clear opinion that appellant's

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<sup>8</sup> *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

current condition is related to his employment injury. Drs. Eisenstein and Weseley did not provide any medical rationale to support the conclusion that appellant had continued disability.

Following the Office's August 30, 2000 termination decision, appellant submitted additional medical evidence from Drs. Weseley and Eisenstein. On September 22, 2000 Dr. Weseley stated that appellant had a long history of lower back difficulty going back almost 25 years with evidence of discogenic pathology in the lumbosacral spine. These notes also fail to describe appellant's accepted employment injury and to offer any medical reasoning explaining how a back strain could and did result in a degenerative condition. Furthermore, as Drs. Weseley and Eisenstein were on one side of the conflict that Dr. Glastein resolved, the additional reports from these physicians are insufficient to overcome the weight accorded Dr. Glastein's report as the impartial medical specialist or to create a new conflict with it.<sup>9</sup>

The weight of the medical opinion evidence rests with the well-rationalized report from Dr. Glastein and establishes that appellant has no disability nor medical residuals as a result of his accepted employment injury. Therefore, the Office met its burden of proof to terminate appellant's compensation benefits.

The June 8, 2001 and August 30, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
June 27, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).