

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LEROY JAY and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, FL

*Docket No. 01-1665; Submitted on the Record;  
Issued March 15, 2002*

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DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective August 4, 2000; and (2) whether appellant met his burden of proof in establishing that he had a continuing employment-related disability.

On December 21, 1999 appellant, then a 60-year-old letter carrier, filed a claim alleging that he developed degenerative joint disease as a result of his employment duties. Appellant indicated that he became aware of his condition on November 30, 1994. Appellant did not stop work but returned to a light-duty assignment. The Office accepted appellant's claim for aggravation of degenerative joint disease.

In support of his claim appellant submitted a report from Dr. Richard Oldenski dated April 21, 1999. Dr. Oldenski noted that appellant's history was significant for hypertension and gout. He noted treating appellant in May 1996 for pain in the scapular area, which appellant attributed to his employing establishment duties. Dr. Oldenski indicated that appellant presented in June 1997 and October 1998 for persistent pain in his scapula, neck and shoulder area. He noted an x-ray of appellant's back revealed degenerative disc disease at C5-6 and C7. Dr. Oldenski opined that appellant's condition was aggravated by his usual work duties. He noted that as of April 1999 appellant's condition was improved and that he was still working limited duty.<sup>1</sup>

By letter dated January 21, 2000, the Office requested clarification from Dr. Oldenski regarding appellant's disability.

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<sup>1</sup> Dr. Oldenski recommended limited-duty restrictions for appellant during the period of February 15 to August 15, 2000.

In a letter dated February 8, 2000, Dr. Oldenski indicated that appellant's condition of aggravation of degenerative disc disease was temporary, however, the underlying condition of degenerative disc disease was permanent. He noted that appellant's disability ceased by April 14, 1999. Dr. Oldenski indicated that although the aggravation of appellant's condition was temporary it could be aggravated by certain activities such as carrying a mailbag, lifting greater than 25 pounds and repeated lifting over head. He noted that appellant was able to tolerate his current light-duty position, however, his condition could quickly be aggravated if he went beyond these bounds.

On June 29, 2000 the Office issued a notice of proposed termination of appellant's wage compensation benefits on the grounds that Dr. Oldenski's report's of April 21, 1999 and February 8, 2000, noted that the accepted condition of aggravation of degenerative joint disease has ceased.

By decision dated August 4, 2000, the Office terminated appellant's wage compensation benefits effective the same date on the grounds that the weight of the medical evidence rested with Dr. Oldenski who determined that appellant's accepted condition was temporary and he had no continuing disability resulting from his October 18, 1996 employment injury.

By letter dated August 9, 2000, appellant requested a hearing before an Office hearing representative. The hearing was held on January 4, 2001. Appellant testified that his condition was a recurring aggravation. He noted that he continued to work restricted duty. Appellant submitted a report from Dr. Oldenski dated July 18, 2000. He noted that appellant's condition was temporary and had ceased. Dr. Oldenski further indicated that although appellant no longer experienced symptoms "this condition could quickly be aggravated if he were to go beyond these bounds." He noted that appellant had not experienced additional symptoms because he had been on restricted duty and indicated that should appellant "resume full[-]time work ... his condition would be expected to be aggravated."

By decision dated March 22, 2001, the hearing representative affirmed the decision of the Office dated August 4, 2000 and determined appellant had no continuing disability causally related to his employment-related injury of November 30, 1994.

The Board finds that the Office has met its burden of proof to terminate benefits effective August 4, 2000.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>2</sup> 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>3</sup>

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<sup>2</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>3</sup> *Vivian L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

In this case, the Office accepted that appellant sustained an aggravation of degenerative joint disease on October 18, 1996 and paid appropriate compensation. Dr. Oldenski, appellant's treating physician, submitted several treatment notes indicating that appellant was being treated for aggravation of degenerative joint disease. He diagnosed appellant with temporary aggravation of degenerative joint disease. Dr. Oldenski's report dated February 8, 2000, indicated that appellant's condition of aggravation of degenerative disc disease was temporary, however, the underlying condition of degenerative disc disease was permanent. Dr. Oldenski noted that appellant's disability ceased by April 14, 1999. He indicated that although the aggravation of appellant's condition was temporary it could be aggravated by certain activities such as carrying a mailbag, lifting greater than 25 pounds and repeated lifting over head. Dr. Oldenski noted that appellant was able to tolerate his current light-duty position, however, this condition could quickly be aggravated if he went beyond these bounds.

As appellant's attending physician, Dr. Oldenski had knowledge of the relevant facts and had numerous opportunities to examine appellant and to evaluate the course of his condition. At the time wage-loss benefits were terminated the physician had clearly opined appellant's temporary aggravation had ceased and that any work restrictions were due to appellant's underlying degenerative joint disease, a nonaccepted condition. His opinion, therefore, must be considered reliable. The Board finds that Dr. Oldenski's opinion is probative on the issue of appellant's ability to work.<sup>4</sup> As the record contains no medical evidence to the contrary, the Board further finds that Dr. Oldenski's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

After the Office properly terminated appellant's benefits the burden of proof shifted to appellant.<sup>5</sup> Appellant submitted a July 18, 2000 report from Dr. Oldenski, which noted that appellant experienced a temporary aggravation of degenerative joint disease which had since ceased. He further indicated that although appellant no longer experienced symptoms "this condition could quickly be aggravated if he were to go beyond these bounds." Dr. Oldenski noted that appellant had not experienced additional symptoms because he had been on restricted duty and indicated that should appellant "resume full[-]time work ... his condition would be expected to be aggravated." However, this restriction is prophylactic in nature and is not a basis for compensation.<sup>6</sup> Additionally, he did not indicate that appellant had a continuing disability causally related to his employment. Therefore, this report is insufficient to demonstrate that appellant was still disabled from an employment-related condition.

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<sup>4</sup> See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

<sup>5</sup> After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits; see *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

<sup>6</sup> See *Mary A. Geary*, 43 ECAB 300, 309 (1991) (finding that fear of future injury is not compensable under the Federal Employees' Compensation Act); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for compensation).

The Board finds that there is no medical evidence which supports continuing disability in this case. Dr. Oldenski had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time wage-loss benefits were terminated Dr. Oldenski clearly opined that appellant's accepted condition of temporary aggravation of joint disease had ceased. His opinion is found to be probative evidence and reliable. The Board finds that Dr. Oldenski's opinion is probative on the issue of appellant's ability to work.<sup>7</sup> As the record contains no medical evidence to the contrary, the Board further finds that Dr. Oldenski's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

Consequently, the Office properly met its burden of proof in terminating appellant's compensation benefits.

The March 22, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 15, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> *Melvina Jackson, supra* note 4.