

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BETTY J. CRAWFORD and U.S. POSTAL SERVICE,  
POST OFFICE, Cleveland, OH

*Docket No. 02-1849; Submitted on the Record;  
Issued October 24, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

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

On December 5, 1992 appellant, then a 38-year-old letter carrier, sustained an employment-related contusion of the skull and cervical and lumbar strains, when she slipped and fell on snow and ice. She stopped work that day and returned to limited duty on January 18, 1993. She again stopped work on December 14, 1996, again returning to limited duty on May 9, 1997.<sup>1</sup>

The Office continued to develop the claim, and on December 9, 1999 referred appellant to Dr. Robert Mark Fumich, a Board-certified orthopedic surgeon, for a second opinion evaluation and to evaluate appellant's entitlement to a schedule award.<sup>2</sup> Finding that a conflict in the medical opinion existed between the opinions of Dr. Fumich and that of Dr. Daniel J. Leizman, appellant's treating Board-certified physiatrist, by letter dated October 29, 2001, the Office referred appellant to Dr. Malcolm A. Brahms, a Board-certified orthopedic surgeon, for an impartial medical evaluation.<sup>3</sup> In a letter dated March 11, 2002, the Office informed appellant that it proposed to terminate her compensation, based on the opinion of Dr. Brahms. By letter dated March 8, 2002, appellant disagreed with the proposed termination and submitted copies of

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<sup>1</sup> The record further indicates that on February 6, 2002 appellant filed a recurrence claim, alleging that she sustained a recurrence of disability on February 1, 2002. She returned to limited duty on February 5, 2002. The record indicates that the Office is adjudicating the recurrence claim separately.

<sup>2</sup> By decision dated November 2, 2000, the Office found that appellant was not entitled to a schedule award, based on the opinion of Dr. Fumich. By letter dated November 6, 2000, appellant, through counsel, requested a hearing that was held on April 18, 2001. In a decision dated July 17, 2001, an Office hearing representative affirmed the prior decision. Appellant did not file an appeal with the Board in regard to this matter.

<sup>3</sup> Drs. Fumich and Brahms were furnished with the medical record, a statement of accepted facts and a set of questions.

magnetic resonance imaging (MRI) studies of the cervical and lumbar spine done on March 21, 2001. By decision dated April 26, 2002, the Office terminated appellant's benefits on the grounds that she no longer had residuals of the employment injury. The instant appeal follows.

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

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.<sup>4</sup> Furthermore, 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>5</sup>

The relevant medical evidence<sup>6</sup> includes a report dated November 28, 2000 in which Dr. Leizman noted the history of injury and appellant's continued complaints of occasional pain. Physical findings included moderately decreased cervical and lumbar spine range of motion, and x-rays demonstrated mild spondylosis at C5-6, C6-7, T11-12 and L3-4 with moderate spondylosis at L5-S1. Dr. Leizman opined that appellant had developed persistent cervical and lumbar tension myalgia causally related to the December 5, 1992 employment injury and advised that she was restricted to sedentary work. In a work capacity evaluation dated January 3, 2001, Dr. Leizman advised that appellant could perform eight hours of restricted duty per day and listed restrictions to her physical activity. He also submitted a number of treatment notes in which he reiterated his findings and conclusions.

Dr. Fumich, a Board-certified orthopedic surgeon who completed a second opinion evaluation for the Office, submitted a report dated November 30, 1999 in which he noted the history of injury, his review of the record and appellant's complaints of continued neck and back pain. Following physical examination, he advised that appellant had no further residuals of the December 5, 1992 employment injury.<sup>7</sup> In an attached work capacity evaluation, he advised that appellant could work eight hours per day with restrictions to her physical activity.

A March 21, 2001 MRI of the cervical spine demonstrated straightening of the lordotic curve with noncompressive bulging at C6-7 and C7-T1. An MRI of the lumbar spine on March 21, 2001 revealed degenerative disc disease at L3-4 with central canal stenosis, severe bilateral facet arthrosis at L4-5 and severe degenerative disc disease at L5-S1.

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<sup>4</sup> See *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>5</sup> See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

<sup>6</sup> The record also contains numerous medical reports that are distant in time to appellant's termination of benefits.

<sup>7</sup> Dr. Fumich also provided analysis regarding appellant's entitlement to a schedule award and, in a report dated September 8, 1997, advised that appellant had no impairment. See *supra* note 4.

The impartial examiner, Dr. Brahms, who is Board-certified in orthopedic surgery, submitted a report dated November 8, 2001 in which he reported the history of injury, his review of the record and appellant's complaints of pain. He advised that his findings were "minimal save for the limited range of motion and the absence of muscle spasm" and concluded that appellant could work eight hours per day of limited duty. In a supplementary report dated February 21, 2002, Dr. Brahms advised that there was no evidence that appellant had remaining objective findings regarding the employment-related cervical and lumbar strains, which would have been temporary and should have resolved in three to six weeks and, thus, had ceased. He concluded:

"The restrictions that were set forth in my report are principally preventive and with the understanding that there is a significant psychosomatic component that alludes to the initial report that I rendered on this patient referable to the injury she sustained in 1992."

In this case, the Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Brahms, the referee examiner, who advised that appellant had no residuals of her accepted conditions. The Office, therefore, properly terminated appellant's compensation on April 26, 2002.

The decision of the Office of Workers' Compensation Programs dated April 26, 2002 is hereby affirmed.

Dated, Washington, DC  
October 24, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member