

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BERNARD J. SKALA and U.S. POSTAL SERVICE,  
ROXBOROUGH STATION, Philadelphia, PA

*Docket No. 03-1077; Submitted on the Record;  
Issued December 1, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective January 15, 2002; and (2) whether appellant has established that he had any continuing disability after January, 15, 2002.

On August 6, 1999 appellant filed an occupational disease claim (Form CA-2) alleging that as a result of the constant twisting in his federal employment, he sustained strains and sprains in his iliofemor. The Office accepted appellant's claim for left hip and groin strain and aggravation of lumbar disc disease. Appellant received appropriate compensation and medical benefits.

Appellant was treated by Dr. Brian B. Kimmel, an osteopath, who in an August 24, 1999 attending physician's report (Form CA-20) diagnosed multiple disc bulges of the lumbar spine with left nerve root compression, which he indicated were caused by appellant's federal employment. Dr. Kimmel referred appellant for a magnetic resonance imaging (MRI) scan, which was performed on September 18, 1999 by Dr. Sean Reiter, a Board-certified radiologist. Dr. Kimmel interpreted the results of the MRI scan as showing a moderate size broad-based disc bulge at L4-5; a narrowing of the left-sided neural foramen with evidence of left side nerve root compression; and mild disc bulges at T12, L1, L1-2, L3-4 and L5-S1. He stated that it was his opinion, within a reasonable degree of medical certainty, that the injuries were caused by repetitive twisting motions involved during the casing of postal letters and parcels.

The Office referred appellant to Dr. Steven J. Valentino, an osteopath, for a second opinion. In a November 11, 1999 report, Dr. Valentino listed his impression as "aggravation of lumbar degenerative disc disease." He further noted:

"Based on today's evaluation, I find [appellant] continues to have residuals referable to his history of work injury in the form of diminished range of motion

and spasm along with diagnostic studies indicating lumbar degenerative disc disease along with radiculopathy.

“Disability referable to aggravation of preexistent degenerative disc disease would not be expected to last more than one to three months. However, in [appellant’s] case this has been protracted due to absence of any significant treatment.

“[Appellant] is not capable of returning to his preinjury capacity at this point but is capable of gainful employment within the capacities I specified, which are residuals of his history of work injury.

“Today’s exam[ination] did identify a nonindustrial preexistent history of lumbar degenerative disc disease, prior low back injuries and residuals referable to the right lower extremity. The right lower extremity residuals are apportioned to a nonindustrial-related motor vehicular accident.”

On January 28, 2000 appellant underwent nerve conduction studies and an electromyographic evaluation, which was interpreted by Dr. Galina Zeltser as abnormal and containing electrophysiologic evidence suggesting L5-S1 radiculopathy. Appellant also underwent an MRI scan on January 29, 2000, which was interpreted by Dr. Norman F. Ruttenberg, a Board-certified radiologist, as showing diffuse degenerative disc disease at T12-L1, involving the entire lumbar spine with the exception of L2-3 and minimal diffuse broad-based bulging of the lumbar vertebral discs. Dr. Ruttenberg further noted that these changes were causing bilateral foraminal stenosis at L4-5 and L5-S1.

Dr. Kimmel referred appellant to Dr. Grant Sinson, a Board-certified neurosurgeon, who in a report dated February 4, 2000, indicated that appellant had a lateral disc herniation at L4-5 and left leg radiculopathy. Dr. Sinson noted that appellant’s pattern of pain was “somewhat atypical for his disc herniation” and indicated that this “slightly decreases his chance of a good outcome from a surgical procedure.”

Dr. David A. Lenrow, a Board-certified physiatrist, began treating appellant on March 13, 2000 and arranged for a course of physical therapy. In Dr. Lenrow’s May 15, 2000 report, he indicated that appellant had disc protrusion at L4-5, left-sided radiculopathy, which is resolved and good resolution of his symptoms. Dr. Lenrow further indicated that appellant had recovered quite nicely and that he would like to gradually return appellant to work. In his June 5, 2000 report, Dr. Lenrow indicated that he recommended that appellant be released to work full time, full duty with the use of a cart. Appellant resumed full duty on or about June 5, 2000.

In an April 15, 2000 report, Dr. Kimmel indicated that appellant was still under his care for his work-related injury and was currently on disability.

By letter dated July 31, 2001, appellant was referred to Dr. Valentino for a second opinion. In a medical report dated August 15, 2001, Dr. Valentino after reviewing appellant's medical records and conducting a physical examination, opined that appellant had resolved aggravation of lumbar degenerative disc. He continued:

“[Appellant] does not suffer from disc herniation or nerve root compression. While the EMG [electromyogram] suggested a radiculopathy, clinical examination showed no findings of radiculopathy. The latter is supported by the fact that his MRI [scan] of the lumbar spine showed no basis for nerve root compression; hence no basis for radiculopathy as it relates to his history of work-related injury of July 29, 1999.

“Today's evaluation revealed [that] he recovered from the July 29, 1999 work injury without residual. [Appellant's] aggravation of lumbar degenerative disc disease was temporary and has ceased leaving no permanent sequella. His prognosis is excellent. [Appellant] has reached maximum medical improvement without need for ongoing supervised medical care related to the work injury. He does not suffer residuals from his work injury.”

On November 6, 2001 the Office issued a notice of proposed termination of medical benefits. Appellant did not file a timely response and by decision dated January 15, 2002, the Office terminated appellant's benefits.

By letter dated January 23, 2002, appellant, through his attorney, requested an oral hearing. At the hearing, held on September 25, 2002 appellant testified that he continued to suffer from his employment-related back pain.

In a medical report dated October 6, 2002, Dr. Kimmel indicated that he had “serious concerns” with Dr. Valentino's report. Dr. Kimmel continued:

“Also recently I have seen [appellant] in my office on September 30, 2002. He still has complaints and findings consistent with previous statements. It is my medical opinion that [appellant] still continues to suffer from his residual injury. He does in fact have studies that are consistent with his clinical picture. His prognosis remains guarded and permanent sequella are present and unresolved. I do not agree with any conclusion Dr. Valentino has made. I hope the above facts set above will draw this to the forefront of accuracy.”

By decision dated December 12, 2002, the hearing representative affirmed the Office's January 15, 2002 decision.

The Board finds that the Office has met its burden of proof to justify the termination of appellant's medical benefits effective January 15, 2002, on the grounds that the weight of the medical evidence established that appellant's employment-related residuals had ceased.

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>1</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>2</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>4</sup>

In the instant case, appellant's claim was accepted for left hip and groin strain and aggravation of lumbar disc disease. In a report dated November 11, 1999, Dr. Valentino when asked to provide a second opinion, indicated that appellant still had residuals referable to his work injury. Appellant received subsequent treatment and in a report dated May 15, 2000, Dr. Lenrow appellant's treating physiatrist, indicated that appellant's disc protrusion at L4-5, left sided radiculopathy was resolved. Pursuant to Dr. Lenrow's recommendations, appellant resumed full-duty work on or about June 5, 2000. On July 31, 2001 appellant was reexamined by Dr. Valentino, who concurred that appellant had recovered from the accepted injury. At the time of the January 15, 2002 decision terminating benefits, the Board finds that the weight of the medical opinion was represented by the opinions of Drs. Lenrow and Valentino, who had opined that appellant's condition had resolved. Dr. Lenrow's May 15, 2000 report and Dr. Valentino's August 15, 2001 report, established that appellant's condition had resolved. Both of these reports were well reasoned and well rationalized.

The Board further finds that appellant has not established that he had any continuing disability after January 15, 2002.

Following the termination of his compensation benefits, the burden of proof shifted back to appellant to support his claim of employment-related continuing disability with probative medical evidence.<sup>5</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

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<sup>1</sup> *Betty Regan*, 49 ECAB 496, 501 (1998).

<sup>2</sup> *David W. Pickett*, 54 ECAB \_\_\_\_ (Docket No. 01-1950, issued December 26, 2002).

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

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

<sup>5</sup> *See Talmadge Miller*, 47 ECAB 673 (1996).

<sup>6</sup> *Joe L. Wilkerson*, 47 ECAB 604 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996).

Subsequent to the Office's termination of appellant's compensation benefits, appellant submitted an October 6, 2002 report from Dr. Kimmel, who opined that appellant continued to suffer residuals from his injury. Dr. Kimmel expressed disagreement with Dr. Valentino's findings and conclusions. He provided a brief narrative report stating that he disagreed with Dr. Valentino, but did not provide any further rationale or physical findings pertaining to how appellant's symptoms were causally related to the accepted injury. His report is largely duplicative of his previously expressed opinion and is of diminished probative value.

The decision of the Office of Workers' Compensation Programs dated December 12, 2002 is hereby affirmed.

Dated, Washington, DC  
December 1, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member