

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIE McBRIDE and U.S. POSTAL SERVICE,  
POST OFFICE, New York City, NY

*Docket No. 03-19; Submitted on the Record;  
Issued March 12, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation benefits effective October 6, 2002.

On December 17, 1993 appellant, then a 41-year-old letter carrier, filed a claim alleging that on December 16, 1993 he sustained an injury to his lower back while in the performance of duty.

The Office accepted appellant's claim for lumbosacral strain. Appellant returned to work on December 22, 1993, but sustained several recurrences of disability and did not return to work after November 5, 1994. He participated in the Office's vocational rehabilitation program and was certified to work in the hotel industry. On November 10, 1996 appellant was removed from his position as a hotel night auditor and remained out of work since that date.

On September 26, 2000 Dr. Andrew Weiss, a Board-certified orthopedic surgeon, provided a second opinion with respect to appellant's medical condition. Dr. Weiss stated that appellant had full use of his lumbosacral spine, with no muscle tenderness spasms. Leg length was normal, no sciatic tenderness, neurovascular status was normal, physical examination of hips was normal, motor strength, sensation to light and deep tendon reflexes were normal. Dr. Weiss stated that appellant's diagnosed condition of lumbosacral strain was resolved and that he may return to his normal position of letter carrier without restrictions. As a result of conflict in medical opinion between Dr. Paul Post, appellant's treating physician and a Board-certified orthopedic surgeon, and Dr. Weiss, the Office's consultant, the Office referred appellant to Dr. Benjamin Nachamie, a Board-certified orthopedic surgeon, to resolve the conflict.

In a report dated July 8, 2002, Dr. Nachamie stated that appellant could return to an eight-hour workday, that lumbosacral strain "probably no longer exists," and that appellant "has maximally improved and has been since approximately 1994."

In a report dated July 24, 2002, Dr. Post, appellant's treating physician, stated that appellant remained totally disabled from his position as a letter carrier due to continued symptoms associated with his lumbosacral strain.

On August 15, 2002 the Office proposed termination of benefits based on evidence establishing that appellant no longer had medical residuals of his work-related injury. Appellant was provided 30 days to reply.

On September 13, 2002 the Office terminated appellant's benefits effective October 6, 2002.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. 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>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.<sup>2</sup>

Dr. Post, appellant's treating physician, stated in multiple reports that appellant was totally disabled from his position as a letter carrier based on subjective complaints and tenderness on his back. However, he noted symptoms but did not provide an opinion regarding the causal relationship between appellant's continued pain and total disability and his work-related injury. Conversely, Dr. Weiss, the Office's second opinion physician, stated that his examination of the lumbar spine, hips and legs was normal and that appellant was capable of returning to full-time duty without restrictions. As a result of this conflict in medical opinion, appellant was examined by Dr. Nachamie, a Board-certified orthopedic surgeon. In his July 8, 2002 report, Dr. Nachamie stated that on February 27, 2002 he examined appellant and reviewed the entire medical file including appellant's 1995 magnetic resonance imaging (MRI) scans and noted his particular review of Dr. Post's reports. Upon examination, he noted that flexion of the lumbar spine was to only 45 degrees which engendered subjective complaints of tenderness of the left sacrum. Dr. Nachamie also stated that straight leg raise elicited complaints of low back pain all other motions of the lumbosacral spine were reported as normal. He noted no evidence of focal disc herniation at any level, but stated that "the impression of congenital stenosis or narrowing is a subjective one as no measurements have been made and recommended a follow-up computerized tomography scan to establish the validity of that suggested finding. Dr. Nachamie determined that appellant had had chronic lumbosacral strain "without much rational treatment," that the record is devoid of objective evidence to support a continuing diagnosis, that it should have resolved over the past seven years and that appellant has been "maximally improved and has been since approximately 1994." He then stated that appellant should discontinue treatment and that his condition "does not seem rational and he does not seem to have improved." Dr. Nachamie concluded by stating that appellant "could return to his previous state of employment at the employing establishment."

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<sup>1</sup> *Wallace B. Page*, 46 ECAB 227 (1994).

<sup>2</sup> *Larry Warner*, 43 ECAB 1027 (1992).

In this case, the Office properly referred the case record to an impartial medical examiner based on a conflict in medical opinion between Dr. Post, appellant's treating physician, and Dr. Weiss, the Office's second opinion physician. Dr. Nachamie, the impartial medical examiner and a Board-certified orthopedic surgeon, reviewed the entire medical record, commented on several reports including MRIs scans and Dr. Post's reports and concluded, based on a thorough examination, that appellant no longer had medical residuals of his work-related lumbosacral strain and that he was able to return to work without restrictions. The Board finds that the medical report of Dr. Post constitutes furnished rationalized medical evidence based on a proper factual and medical background and is the weight of the medical evidence supporting termination of appellant's benefits on October 6, 2002.

The decision of the Office of Workers' Compensation Programs dated September 13, 2002 is affirmed.

Dated, Washington, DC  
March 12, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member