U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DERRICK D. LAMAR and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 03-136; Submitted on the Record;
Issued March 18, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits on the basis that he no longer suffered from residuals of his January 21, 1999 employment injury; and (2) whether the Office properly denied appellant's request for an oral hearing.

On January 21, 1999 appellant, a 32-year-old mail carrier, was involved in an employment-related motor vehicle accident. The Office accepted appellant's claim for cervical and right shoulder sprains and head contusion and awarded appropriate wage-loss compensation. On May 1, 1999 he returned to part-time, limited duty. Following appellant's return to work, the Office continued to pay wage-loss compensation for disability.

On the advice of his physician, appellant ceased working July 23, 1999. He later filed a claim for recurrence of disability. The Office subsequently resumed payment of wage-loss compensation for total disability and ultimately placed appellant on the periodic compensation rolls.

In a decision dated February 28, 2002, the Office terminated appellant's wage-loss compensation and medical benefits.[1] The Office based its determination on the November 16, 2001 opinion of Dr. Francis J. Bonner, Jr., a Board-certified physiatrist and impartial medical examiner.[2]

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[1] On November 22, 1999 the Office issued a notice of proposed termination of entitlement to compensation and medical benefits.

[2] In his November 16, 2001 report, Dr. Bonner stated that he could not detect any residuals or objective evidence of impairment from appellant's January 21, 1999 employment injury. Despite subjective complaints of pain, he noted the absence of objective findings of impairment.

By letter dated May 23, 2002, appellant sought review of his claim with the Branch of Hearings and Review. In a decision dated July 16, 2002, the Office found that appellant did not submit his request for an oral hearing within 30 days of the Office's February 28, 2002 decision and, therefore, he was not entitled to a hearing as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue could equally well be addressed through the reconsideration process.

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[3] Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[4] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[5] 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.[6]

The Office determined that a conflict of medical opinion existed based on the opinions of Dr. Steven J. Valentino and Dr. Martin D. Weaver.[7] Therefore, the Office properly referred appellant to an impartial medical examiner.[8] As previously noted, Dr. Bonner, the impartial medical examiner, found no objective evidence of impairment from appellant's January 21, 1999 employment injury. The Board finds that the Office properly relied on the impartial medical examiner's November 16, 2001 opinion as a basis for terminating benefits. Dr. Bonner's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed his medical records. Dr. Bonner also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiner's November 16, 2001 findings.[9]

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[3] *Curtis Hall*, 45 ECAB 316 (1994).

[4] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[5] *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

[6] *Calvin S. Mays*, 39 ECAB 993 (1988).

[7] In a report dated May 13, 1999, Dr. Valentino, a Board-certified orthopedic surgeon and Office referral physician, diagnosed resolved cervical and right shoulder strain and resolved contusion of the head. Based on his evaluation, Dr. Valentino stated that appellant had recovered from his January 21, 1999 motor vehicle accident without residual and had reached maximum medical improvement.

[8] The Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[9] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

As the weight of the medical evidence establishes that appellant's January 21, 1999 employment injury has resolved, the Office properly terminated appellant's wage-loss compensation and medical benefits.

The Board further finds that the Office properly denied appellant's request for an oral hearing.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.[10] However, the Office has discretion to grant or deny a request that was made after this 30-day period.[11] In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.[12]

Appellant's request for an oral hearing was dated May 23, 2002, which is more than 30 days after the Office's February 28, 2002 decision. As such, he is not entitled to a hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether he had any continuing employment-related disability could equally well be addressed by requesting reconsideration.[13] Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for an oral hearing.

[10] 20 C.F.R. § 10.616(a) (1999).

[11] *Herbert C. Holley*, 33 ECAB 140 (1981).

[12] *Rudolph Bermann*, 26 ECAB 354 (1975).

[13] The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).

The decisions of the Office of Workers' Compensation Programs dated July 16 and February 28, 2002 are hereby affirmed.[14]

Dated, Washington, DC
March 18, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[14] The record on appeal includes evidence appellant submitted after the Office's February 28, 2002 merit decision. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).