

**United States Department of Labor
Employees' Compensation Appeals Board**

KELLY ELLIOTT, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New Bern, NC, Employer**

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**Docket No. 04-348
Issued: April 27, 2004**

Appearances:
Ernest J. Wright, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 24, 2003 appellant, through her attorney, filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated April 16, 2003, terminating her compensation benefits and October 17, 2003, denying modification of the prior decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that she had no disability or medical residuals causally related to her accepted lumbar strain injury; and (2) whether appellant has established any continuing disability as causally related to her accepted employment injury.

FACTUAL HISTORY

On December 18, 2001 appellant, then a 35-year-old letter carrier, filed a notice of traumatic injury alleging on that date she injured her back and left ankle due to a fall in the

performance of duty. The Office accepted appellant's claim for lumbar muscle strain on February 14, 2002.¹ The Office entered appellant on the periodic rolls on May 15, 2002.

Appellant returned to light-duty work four hours a day on June 18, 2002. On August 5, 2002 her physician released her to return to work for eight hours a day.

In a letter dated February 27, 2003, the Office proposed to terminate appellant's compensation benefits on the grounds that she had no remaining disability or medical residuals as a result of her accepted employment injury of lumbar muscle strain. Appellant disagreed with this proposal. By decision dated April 16, 2003, the Office terminated her benefits effective April 15, 2003.

Appellant requested reconsideration on August 27, 2003 and submitted additional medical evidence. By decision dated October 17, 2003, the Office denied modification of the April 16, 2003 decision.²

LEGAL PRECEDENT -- ISSUE 1

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.³ 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.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement 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

ANALYSIS -- ISSUE 1

The Office accepted that appellant's December 18, 2001 employment injury resulted in the condition of lumbar muscle strain. In a report dated March 25, 2002, appellant's attending physician, Dr. Ray B. Armistead, a Board-certified orthopedic surgeon, diagnosed back strain with multiple areas of pain. On April 10, 2002 appellant continued to report upper and lower

¹ Appellant alleged that she sustained additional injuries as a result of the fall on December 18, 2001. As the Office has not issued a final decision affirming or denying her claim for a compression fracture at T10, the Board may not address this issue for the first time on appeal. 20 C.F.R. § 501.2(c).

² On appeal to the Board appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Id.*

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Id.*

extremity weakness, numbness and tingling, as well as low, mid and upper back pain. On June 18, 2002 appellant's referral physician Dr. Christopher S. Delaney, a Board-certified physiatrist, examined her and reviewed the history of injury. He stated: "[Appellant] reports an injury sustained in a fall resulting in mid and low back pain (the latter having resolved) and onset of numbness and dysesthesias together with a subjective feeling of weakness in the upper limbs." On August 5, 2002 Dr. Delaney indicated that appellant could increase her work to eight hours a day.

On December 19, 2002 the Office requested additional medical evidence from Dr. Delaney. On January 3, 2003 he stated that appellant did not seek his treatment for lumbar strain, but that her chief complaint was mid-back pain and numbness and tingling in the bilateral upper extremities. Dr. Delaney reviewed the magnetic resonance imaging (MRI) scan of appellant's low back and found it demonstrated only degenerative changes. He stated: "Absent the complaint of low back pain, I presume that it is resolved, but you may wish to refer to other physician's records." Dr. Delaney concluded that appellant could return to work as tolerated and that he had discharged appellant as he was unable to identify any etiology for her mid-back pain and upper extremity complaints.

Dr. Delaney's reports establish that appellant has no employment-related residuals or disability due to her accepted lumbar strain. Dr. Delaney noted that appellant did not seek treatment for low back pain and he concluded that absent any complaint of pain her strain had resolved. He found that the MRI scan of appellant's low back showed only degenerative changes. He concluded that appellant was medically stable and could return to work as tolerated. Dr. Delaney found that appellant had no medical residuals of the accepted condition of low back strain and that she could return to her date-of-injury position. There is no medical evidence establishing any continuing disability or medical residuals. The Office has met its burden to establish that the employment-related disability ceased based on Dr. Delaney's reports.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she has continuing disability causally related to her accepted lumbar strain.⁷ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment 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. The weight of medical evidence is determined by its reliability, its probative

⁷ *George Servetas*, 43 ECAB 424, 430 (1992).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS -- ISSUE 2

Following the Office's decision on April 16, 2003 appellant requested reconsideration and submitted an August 18, 2003 note from Dr. Armistead who stated that appellant had pain in her midback area as well as some low back pain. He noted that an x-ray revealed severe osteoporosis and "what appears to be a compression fracture at T10." In a narrative report of the same date, Dr. Armistead noted appellant's history of injury and his treatment. He stated that he now believed that the diagnosis of lumbar strain was incorrect and that her low back pain was referred from the thoracic area. Dr. Armistead diagnosed a compression fraction at T10. He stated that this diagnosis would explain the length of appellant's symptoms and her failure to improve. Dr. Armistead stated:

"I apologize for the misdiagnosis, but in these types of cases it can be difficult to assess the site of pain, as back pain tends to refer up and down the spine. Certainly x-rays taken today show the compression fracture, which has gradually settled over time from the time of injury."

Appellant has not submitted any evidence to supporting continued disability or residuals due to the accepted condition of lumbar muscle strain. Instead, she attributed her current disability to a compression fracture at T10, a condition not previously accepted by the Office as employment related. In support of her claim for an additional employment-related injury, appellant submitted the August 18, 2003 note and report from Dr. Armistead. He noted that appellant complained of upper, middle and low back pain in March 2002, following her December 18, 2001 employment injury. He noted that appellant received treatment for her lumbar pain, as he believed that this was the site of the majority of appellant's pain.⁹

As the Office met its burden of proof to terminate appellant's compensation benefits, appellant has the burden of proof in establishing any continuing disability or medical residuals as a result of her accepted employment injury. Dr. Armistead's reports are not sufficient to meet her burden of proof to establish that her compression fracture at T10 is causally related to the December 18, 2001 employment injury. Although Dr. Armistead noted appellant's history of injury, he did not offer any medical reasoning explaining how appellant's December 18, 2001 fall caused the diagnosed compression fracture. Furthermore, Dr. Armistead did not explain why he believed that appellant's thoracic compression fracture was due to her employment injury rather than the severe osteoporosis identified by x-ray. A detailed explanation is necessary given the extent of appellant's medical treatment and the length of time between her employment-related fall in December 2002 and her diagnosis of compression fracture over a year and a half later in August 2003. Dr. Armistead's report lacks sufficient medical reasoning to meet

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ The Board notes that Dr. Delaney's treatment focused on appellant's cervical spine despite her continued complaints of thoracic or mid-back pain.

appellant's burden of proof and establish the additional condition of compression fracture at T10 as causally related to her accepted employment injury.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as the medical evidence of record clearly establishes that appellant has no residuals or disability causally related to her accepted employment injury of lumbar muscle strain. The Board further finds that appellant failed to submit sufficient rationalized medical opinion evidence to establish that the additional diagnosed condition of compression fracture T10 is causally related to her December 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 17 and April 16, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 27, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member