



In a report dated June 12, 2001, Dr. Jeffrey J. Miller, an osteopath, indicated that appellant had “recurrent mechanical low back pain secondary to lumbar strain and sprain injury and underlying degenerative disc disease lumbar spine.” In a report dated July 31, 2001, Dr. Miller indicated that appellant had reached maximum medical benefit of any intervention for his low back injury and discharged appellant from his care. He recommended that appellant continue light-duty work. In a report dated August 9, 2001, Dr. Bilal A. Mian, a Board-certified neurologist, noted that appellant sustained an injury to the right hand and lower back when he fell on January 5, 2001. He diagnosed: (1) trauma right hand, rule out neuropathy; and (2) possible tendinitis. On August 17, 2001 he noted that appellant had a normal electromyogram and nerve conduction of the right upper extremity.

Appellant was also treated by Dr. David Bullek, an orthopedic surgeon, who opined in an attending physician’s report (Form CA-20) dated January 15, 2002, that appellant was totally disabled from August 19, 2001 through February 30, 2002 (sic). In a follow-up note of the same date, Dr. Bullek indicated that appellant had reached maximum medical improvement, was still in significant back pain, and that he had nothing further to offer him. Dr. Bullek suggested a pain management consultation. On February 27, 2002 Dr. Charles J. Court, a Board-certified anesthesiologist, conducted a pain management consultation, and noted:

“The patient’s findings are consistent with mechanical back pain due to facet arthropathy with secondary muscular spasms. He has what appears to be a piriformis syndrome giving him some right lower extremity pain. He does have some disc bulging and stenosis but no nerve impingement. He did not respond to epidural steroid injection. He has a right hand tendon injury of the flexors of the 4<sup>th</sup> and 5<sup>th</sup> digits. I think he has developed some underlying anxiety and has a poor pain tolerance. He has developed dysfunctional coping skills.”

Dr. Court noted that appellant should remain out of work at this point. On March 19, 2002 Dr. Court gave appellant a lumbar facet joint injection.

By letter dated March 4, 2002, appellant was referred for a second opinion. In a medical opinion dated April 9, 2002, Dr. Anthony W. Salem, a Board-certified orthopedic surgeon, opined that appellant’s current condition was unrelated to his injury at work and was more related to secondary gain and a lack of willingness to work out and to exercise to improve his condition. He further noted:

“I feel that the effects of his work injury are not still present. If he did fall and contuse his back, he should have been better within a few months with a motivated program of stretching and strengthening and keeping his weight down. The patient is in poor condition. He has no motivation, and there is definitely secondary gain here.

“I feel that the patient could return to his preinjury level of employment at this time, as far as doing his job is concerned, since he suffered no significant damage at that time. I feel that the patient is not disabled in any way.”

On May 23, 2002 the Office issued a notice of proposed termination of compensation. The Office noted that the weight of the medical evidence rested with Dr. Salem who concluded that the effects of the work injury had ceased. In response thereto, appellant submitted an attending physician's report dated May 30, 2002, wherein Dr Court noted that appellant had lumbar facet arthropathy, myofascial pain and lumbar disc displacement. Dr. Court checked the box indicating that he believed that this condition was causally related to the January 5, 2001 injury, but provided no further explanation for his opinion. He opined that appellant was totally disabled from January 5, 2001 through June 15, 2002, and partially disabled from June 15 through July 1, 2002. Appellant also submitted evidence that he had further lumbar facet joint injections on April 11 and May 9, 2002.

By decision dated June 26, 2002, the Office finalized the termination of compensation benefits for wage loss, for the reason that the weight of the medical evidence of record supports that the January 5, 2001 work injury had ceased.

### **LEGAL PRECEDENT**

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>

### **ANALYSIS**

The Board finds that the Office has met its burden of proof to justify the termination of appellant's medical benefits on the grounds that the weight of the medical evidence established that the effects of appellant's work injury had ceased. The weight of the medical evidence rests with the opinion of Dr. Salem, who, after reviewing the medical evidence and conducting a physical examination of appellant, concluded that appellant's current condition was unrelated to his injury at work. Dr. Salem indicated that, if appellant did contuse his back, he should have been better within a few months with a motivated program of stretching and strengthening. He opined that appellant was no longer disabled in any way. The remaining medical evidence is not sufficient to show that appellant is still disabled from his work injury. Although Dr. Court noted that appellant was partially disabled from June 15 through July 1, 2002, he provided no explanation. Although Dr. Miller indicated that appellant could continue light-duty work as of July 31, 2001, there is no more recent report indicating that appellant was still partially disabled. Dr. Bullek noted that appellant was still in significant pain as of January 15, 2002, and was totally disabled through February 30, 2002, but did not provide rationale or a detailed opinion. Therefore, the weight rests with the opinion of Dr. Salem, and the Office properly terminated benefits.

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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).

**CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 26, 2002 is affirmed.

Issued: January 23, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member