

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

SANDRA D. CRUMMY, Appellant)	
)	
and)	Docket No. 04-534
)	Issued: July 15, 2004
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Jeffrey P. Zeelanders, for the appellant</i>	
<i>Office of the Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 20, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated June 23, 2003, affirming the termination of compensation benefits effective September 9, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits.

FACTUAL HISTORY

On September 10, 2000 appellant, a 40-year-old distribution window clerk, filed an occupational disease claim for benefits, alleging that she had developed lumbar disc disease causally related to factors of her employment. Appellant first became aware that the disease was

causally related to her employment as of August 16, 2000.¹ The Office accepted the claim for aggravation of degenerative disc disease. The Office paid appropriate compensation for total disability.

In order to determine appellant's current condition and whether she still had residuals from her accepted back condition, the Office referred appellant to Dr. William H. Simon, a Board-certified orthopedic surgeon. In a report dated December 14, 2000, Dr. Simon stated that appellant had undergone four months of conservative care for a sprain or strain of her lower back superimposed upon preexisting degenerative disc disease. He advised that this was certainly enough time for the healing of any such soft tissue injury. He opined with reasonable medical certainty that appellant was completely resolved of any effects of her work injury. Dr. Simon advised that the effects of the work-related injury had ceased and concluded that her current level of impairment was the same as it was prior to August 16, 2000, when she had restrictions of no lifting exceeding 50 pounds.

In a report dated March 14, 2001, Dr. Nelson K. Henry, a Board-certified family practitioner and an attending physician, found that appellant could return to work on March 26, 2001. Appellant returned to work on light duty, for four hours per day, on April 2, 2001.

In a report dated May 4, 2001, Dr. Henry stated that he had treated appellant for more than eight years, during which time she had complained of back pain which varied in its intensity from five to seven on a scale of one to ten. Dr. Henry stated that appellant had demonstrated a fair response to therapy, with a diminished capacity to handle full-time duties and repetitive lifting. He opined that appellant would experience periods of total disability due to back pain exacerbations. Appellant continued to experience periods of intermittent total disability.

The Office determined that a conflict in the medical evidence existed between Dr. Henry and Dr. Simon. Appellant was referred, together with a statement of accepted facts and the case record, to Dr. Marvin N. Kallish, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a report dated June 1, 2001, Dr. Kallish diagnosed an underlying facet syndrome, with facet osteoarthritis. He opined that her back condition was related to the aging process based on attritional or degenerative spondylitic changes which were unrelated to her employment.

By decision dated December 17, 2001, the Office terminated appellant's compensation as of December 14, 2001.

In a decision dated April 23, 2002, an Office hearing representative, based on a review of the record, set aside the December 17, 2001 Office decision. The hearing representative found that the decision was premature and based on an incomplete statement of accepted facts. The hearing representative remanded to the Office for referral back to Dr. Kallish with instruction to amend the statement of accepted facts to specifically note that appellant's physical activities in her window clerk job aggravated her accepted degenerative disc condition. The hearing

¹ Although the claim was filed for occupational disease, the Office developed the claim as one based on traumatic injury, or traumatic aggravation of an underlying disc disease, which occurred on August 16, 2000.

representative requested that Dr. Kallish address whether the August 2000 aggravation was temporary or permanent. Appellant's entitlement to compensation was reinstated.

By letter dated July 8, 2002, the Office asked Dr. Kallish to submit a supplemental report based on an amended statement of accepted facts.² In a supplemental report dated July 26, 2002, Dr. Kallish stated that appellant had underlying attritional degenerative osteoarthritis of the spine which was temporarily aggravated by a soft tissue injury on August 16, 2000, but that any permanent problems she had were not related to the employment injury. He advised that appellant may have experienced some acute exacerbation for 12 to 16 weeks, but that this type of soft tissue injury was known to resolve after a reasonable period of time. Dr. Kallish opined that the aggravation and soft tissue injuries appellant sustained on August 16, 2000 were only temporary in nature and resolved without question. He stated that any continued problems or limitations appellant currently experienced were related solely to the preexisting degenerative spondylosis of the spine. Dr. Kallish concluded that appellant had no continuing disability related to the August 2000 employment injury.

On August 7, 2002 the Office issued a notice of proposed termination of compensation, finding the weight of the medical evidence was represented by Dr. Kallish's medical opinion which established that she had no residuals from her accepted August 16, 2000 employment injury. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

By decision dated September 9, 2002, the Office terminated appellant's compensation.

By letter dated September 22, 2002, appellant's attorney requested a review of the written record. Appellant did not submit any additional medical evidence.

By decision dated June 23, 2003, an Office hearing representative affirmed the September 9, 2002 termination decision.

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.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

² The amended statement of accepted facts noted that the evidence of record did not indicate appellant was currently totally disabled, and was currently receiving compensation benefits for four hours per day.

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

⁴ *Id.*

ANALYSIS

The Office based its decision to terminate appellant's compensation on the July 26, 2002 report of Dr. Kallish, the impartial medical specialist, who advised that appellant had sustained a soft tissue aggravation of her underlying attritional degenerative osteoarthritis on August 16, 2000, but that any permanent problems she had were related to the underlying condition and not to the employment injury. He stated that the aggravation and soft tissue injury appellant sustained on August 16, 2000 were only temporary and resolved within 12 to 16 weeks after the injury. Dr. Kallish opined that appellant had no current disability related to the August 2000 employment injury.

The Board finds that Dr. Kallish's referee opinion negated a causal relationship between appellant's condition and disability and her accepted August 2000 employment injury and that she no longer had any residuals from her employment injuries. His opinion is sufficiently probative, rationalized and based upon a proper factual background. Therefore, the Office properly accorded his opinion the special weight of an impartial medical examiner.⁵ Accordingly, the Board finds that Dr. Kallish's opinion constitutes the weight of medical opinion and rationale to support the Office's decision to terminate appellant's compensation.

Once the Office properly terminated appellant's compensation in its September 9, 2002 decision, the burden of proof shifted to appellant to establish a continuing employment-related disability.⁶ Appellant, however, did not submit any additional medical evidence to support her request for reconsideration of the September 9, 2002 termination decision. The Board therefore affirms the June 23, 2003 Office decision affirming the September 9, 2002 Office's decision terminating compensation.

CONCLUSION

The Board finds that the Office met its burden to terminate appellant's compensation benefits.

⁵ Gary R. Seiber, 46 ECAB 215 (1994).

⁶ Talmadge Miller, 47 ECAB 673, 679 (1996); see also George Servetas, 43 ECAB 424 (1992).

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member