



August 26, 1994.<sup>1</sup> In the second appeal, the Board found that the Office properly reduced appellant's monetary compensation to zero on the grounds that he failed to cooperate with vocational rehabilitation efforts in a decision dated October 1, 1998.<sup>2</sup> In the third appeal, the Board found that the Office failed to meet its burden to terminate appellant's compensation in a May 17, 2002 decision.<sup>3</sup> The Board also found that the Office properly denied appellant's request for reimbursement of expenses for postage, envelope and travel to the post office. Next, the Board found that appellant had not established a consequential injury of a low back condition due to his accepted employment-related anterior ligament right knee tear and that the Office properly denied appellant's request for a merit review. Lastly, the Board found that the Office did not abuse its discretion in determining appellant was only entitled to reimbursement for 50 miles round-trip for his medical and physical therapy treatment. The law and facts as set forth in the Board's decisions are incorporated by reference.

Subsequent to the Board's May 17, 2002 decision, the Office referred appellant to Dr. Robert Sparks, III, a Board-certified orthopedic surgeon, for a second opinion on the issue of whether appellant's low back strain had resolved.

In a September 9, 2002 x-ray report, Dr. Steven M. Theiss, an attending Board-certified orthopedic surgeon, reported the lumbar spine within normal limits. He also noted normal lumbar vertebral body alignment, lumbar vertebral bodies and intervertebral disc spaces. In an accompanying report, Dr. Theiss diagnosed chronic low back pain. The physician reported physical findings that included appellant being tender in the lumbosacral junction and having intact sensation in dermatomes from L1 to S1.

In a November 19, 2002 report, Dr. Sparks, based upon a review of the medical record, statement of accepted facts and physical examination, concluded appellant's low back strain had completely resolved within two to three months of the injury on July 5, 1982. A physical examination revealed appellant was able to bend to 10 degrees each side, had 5 degrees toward extension and 15 degrees toward forward flexion. Appellant stated that he could not bend any further due to pain and the physician noted appellant "exclaims with pain as he demonstrates spinal movement for me." Dr. Sparks noted: "no palpable paravertebral muscle spasm during the movement exam[ination], but his massive obesity could certainly hide any muscle spasm that might be present." He also reported that he "could not detect any neurologic abnormality." Regarding appellant's low back pain, Dr. Sparks opined:

"His low back pain is multifactorial. The injury of July 5, 1982, initially called back strain, probably contributed to his present problem. His massive obesity certainly contributes to his present problem. His age contributes to his present problem. He moved to a farm in 1992 and initially was able to do some farm work. That probably contributed to his present back problem."

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<sup>1</sup> Docket No. 93-1353 (issued August 26, 1994).

<sup>2</sup> Docket No. 96-1317 (issued October 1, 1998).

<sup>3</sup> Docket No. 01-500 (issued May 17, 2002).

Dr. Sparks concluded that appellant's low back strain due to his July 5, 1982 employment injury had completely resolved. He further opined that appellant had developed degenerative disc disease in the lumbosacral joint as demonstrated by an April 14, 2000 magnetic resonance imaging (MRI) scan.

By December 12, 2002, the Office terminated appellant's compensation on the basis that his low back strain due to his accepted July 5, 1982 employment injury had resolved. In reaching this decision, the Office relied upon Dr. Sparks' November 19, 2002 report.

Appellant requested an oral hearing by letter dated January 10, 2003.<sup>4</sup> A hearing was held on July 23, 2002 at which appellant and his wife testified and he submitted evidence. The evidence submitted at the hearing consisted of an MRI scan dated January 22, 2003 and physical therapy notes for 2002 and 2003.

In a January 22, 2004 report, Dr. Bernard B. Borosky diagnosed low back syndrome, back pain, right leg tingling and numbness and paresthesia based upon an MRI scan. The physician reported:

“Mild disc bulging and mild to moderate discogenic degenerative change at the level labeled L5-S1. No significant spinal canal stenosis is present. Mild to moderate bilateral foraminal narrowing is present at the L5-S1 level. Minimal L3-4 and L4-5 disc bulging is present. There is mild spinal canal stenosis at the T11-12 level secondary to diffuse disc bulging and posterior, facet degenerative change. The T12-L1 level demonstrates mild disc bulging and degenerative change.”

In an October 2, 2003 decision, the hearing representative affirmed the Office's December 12, 2002 decision terminating appellant's compensation on the basis that he had no residuals from his accepted employment injury.

### **LEGAL PRECEDENT**

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.<sup>5</sup> After it has been determined that an employee has disability causally related to his 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>6</sup> The right to medical benefits for an accepted condition is not limited to the period

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<sup>4</sup> In a February 23, 2003 letter, appellant requested an oral hearing on the Office's denial of his claim for orthopedic shoes with arch support. Appellant also requested a hearing on the Office's denial of his request for a refill of his prescription for Bextra. As no final decision has been issued regarding a denial of appellant's request for an oral hearing, the Board has no jurisdiction to review these issues. 20 C.F.R. § 501.2(c) (the Board's jurisdiction is limited to deciding appeals from final decisions of the Office).

<sup>5</sup> *Paul L. Stewart*, 54 ECAB \_\_\_\_ (Docket No. 03-1107, issued September 23, 2003).

<sup>6</sup> *Elsie L. Price*, 54 ECAB \_\_\_\_ (Docket No. 02-755, issued July 23, 2003).

of entitlement for disability.<sup>7</sup> To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.<sup>8</sup>

### ANALYSIS

In this case, the Office accepted that appellant sustained an employment-related cervical strain, anterior ligament tear of the right knee, multiple contusions and a low back strain due to his July 5, 1982 employment injury.

At the request of the Office, appellant was examined by Dr. Sparks, a Board-certified orthopedic surgeon, who served as a second opinion specialist regarding the issue of whether appellant's low back condition had resolved. The Office provided Dr. Sparks with a statement of accepted facts, the medical evidence of record and a list of issues to be addressed. In his narrative report dated November 19, 2002, Dr. Sparks noted appellant's history with respect to his employment injury, performed a complete physical examination, including range-of-motion testing and reviewed the diagnostic test results. Dr. Sparks reported that appellant was able to bend to 10 degrees on both sides and had 5 degrees of extension and flexion. He also noted that a physical examination revealed "no palpable paravertebral muscle spasm during the movement exam[ination], but his massive obesity could certainly hide any muscle space that might be present." The physician further stated that he could not detect any neurological abnormalities. Dr. Sparks concluded that appellant's low back strain had completely resolved within two to three months of his July 5, 1982 employment injury. There is no medical evidence contradicting Dr. Sparks' opinion that appellant's accepted employment injury had resolved. Neither Dr. Borosky nor Dr. Theiss offered an opinion on the cause of appellant's back conditions and, thus, do not contradict Dr. Sparks' opinion or create a conflict with it.

The Board thus finds that the weight of the medical opinion evidence is represented by Dr. Sparks, who submitted a thorough medical opinion based upon a complete factual and medical history.<sup>9</sup> His detailed and well-reasoned report established that appellant ceased to have any disability or residuals causally related to his accepted employment injury. Accordingly, the Office properly terminated compensation and medical benefits effective December 12, 2002.

### CONCLUSION

The Board finds that the Office properly terminated appellant's compensation on the basis that his accepted low back strain had resolved.

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<sup>7</sup> *James F. Weikel*, 54 ECAB \_\_\_\_ (Docket No. 01-1661, issued June 30, 2003).

<sup>8</sup> *Donald T. Pippin*, 54 ECAB \_\_\_\_ (Docket No. 03-205, issued June 19, 2003).

<sup>9</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 2, 2003 is affirmed.

Issued: July 12, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member