

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

DENNETT L. SAILS, Appellant

and

**U.S POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 04-1458
Issued: October 26, 2004**

Appearances:
Lenin V. Perez, for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On May 10, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated April 22, 2004, which denied modification of the termination of her compensation benefits. Under 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; and (2) whether appellant has established continuing disability after March 27, 2003, causally related to the accepted employment injury.

FACTUAL HISTORY

On October 16, 2001 appellant, then a 44-year-old casual clerk, injured her lower back while pushing a mail cart. She filed a claim for benefits, which the Office accepted for lumbar strain. On November 28, 2001 appellant's temporary appointment with the employing

establishment expired. On August 9, 2002 the Office paid appellant compensation for total disability retroactive to November 29, 2001 and placed her on the periodic rolls.

In a report dated August 2, 2002, Dr. Naresh Dave, a specialist in orthopedic surgery and appellant's attending physician, stated:

“[Appellant] has a resolved lumbosacral strain problem which arose as a result of her occupation when she was pulling a heavy metal cage. I believe this problem, with the passage of time and under therapy, has resolved. She can now return to work four to six hours a day on a trial basis doing a light[-]duty job.”

In a work restriction evaluation dated August 23, 2002, Dr. Dave outlined the following restrictions: intermittent sitting and walking for no more than 2 hours per day; intermittent lifting not exceeding 10 to 20 pounds; intermittent bending, squatting, climbing, kneeling and twisting; and intermittent standing for no more than 3 hours per day.

On October 18, 2002 the Office issued a proposed termination of compensation claim to appellant. The Office found that the weight of the medical evidence, as represented by the August 2, 2002 report by Dr. Dave, the attending physician, established that her accepted, employment-related lumbosacral condition had resolved. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. Appellant wrote to the Office objecting to Dr. Dave's conclusions and the proposed termination of her compensation benefits.

In order to determine appellant's current condition and to ascertain whether she still suffered residuals from her accepted lumbosacral condition, the Office referred appellant for a second opinion examination with Dr. Michael D. Slomka, a Board-certified orthopedic surgeon. In a report dated January 23, 2003, Dr. Slomka after reviewing the medical records and the statement of accepted facts and stating findings on examination, stated:

“At this time I believe this young lady has sustained a musculoligamentous strain to her lower back which has resulted in some initial spasm and then some pain in the back and legs. However, I feel that her prolonged recuperation is secondary to her exogenous obesity and that there is no permanent physical impairment or disability which should be related to the incident of October 16, 2001. I believe that the incident of October 16, 2001 resulted in a soft tissue injury, that is muscle sprain/strain injury to the lumbar spine and that condition has resolved without any permanent impairment or associated disability.”

By decision dated March 27, 2003, the Office terminated appellant's compensation, finding that the weight of the medical evidence was represented by the opinions of Drs. Dave and Slomka.

By letter dated March 1, 2004, appellant's representative requested reconsideration of the Office's March 27, 2003 termination decision. In support of her request, appellant submitted a February 11, 2004 report from Dr. David P. Kalin, a general practitioner. He stated:

"In my opinion, by review of available medical records, diagnostic studies, history and physical examination, [appellant's] present condition is the result of the work[-]related injury of October 16, 2001, which caused her chronic symptoms of thoracolumbosacral musculoskeletal ligamentous strain, with history of intermittent pain in the right lower extremity suggestive of lumbar radiculitis or plexitis. [This] ... has led to the development of chronic right shoulder pain associated with palpable tenderness along the right paracervical suprascapular muscles and intermittent pain, numbness and tingling through the right arm to all fingers suggestive of possible cervical dis[c] disease, capsulitis or internal derangement of the right shoulder and/or cervical radiculitis, plexitis, right shoulder impingement syndrome and/or peripheral neuritis."

By decision dated April 22, 2004, the Office denied reconsideration.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.¹ 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.²

ANALYSIS -- ISSUE 1

In this case, the Office based its decision to terminate appellant's compensation on the reports of Dr. Dave, the attending physician and Dr. Slomka, the Office referral physician. Dr. Dave released appellant to work in his August 2, 2002 report. He stated that appellant's work-related lumbosacral strain had resolved with the passage of time and therapy. Dr. Dave advised that appellant could return to work for four to six hours a day on a trial basis, on a light-duty job. In his referral report, Dr. Slomka stated that appellant's October 16, 2001 soft tissue injury to the lumbosacral spine had resolved without any permanent impairment or associated disability. He advised that appellant's prolonged recuperation was secondary to her exogenous obesity and that appellant had no permanent physical impairment or disability which related to the October 16, 2001 work incident. The Office relied on the opinions of Drs. Dave and Slomka in its March 27, 2003 termination decision, finding that appellant had no residuals stemming from her October 2001 work injury and that she had no continuing disability for work resulting from the accepted employment injury.

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

The Board finds that the Office properly found that the opinions of Drs. Dave and Slomka, represented the weight of the medical evidence and negated a causal relationship between appellant's current condition and her October 16, 2001 employment injury. Both physicians found that she no longer had any residuals from the employment injury and their reports are sufficiently probative, rationalized and based upon a proper factual background. The Office therefore properly relied on the opinions of Drs. Dave and Slomka in its March 27, 2003 termination decision.

LEGAL PRECEDENT -- ISSUE 2

Once the Office properly terminated appellant's compensation in its March 27, 2003 decision, the burden of proof shifted to appellant to establish continuing disability.³

ANALYSIS -- ISSUE 2

Appellant submitted the February 11, 2004 report of Dr. Kalin, who stated that appellant's current condition was the result of the October 16, 2001 work injury, which caused her chronic symptoms of thoracolumbosacral musculoskeletal ligamentous strain with history of intermittent pain in the right lower extremity suggestive of lumbar radiculitis or plexitis. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁴ Dr. Kalin's opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.⁵ He did not describe appellant's accident in any detail or how the accident would have been competent to cause her current conditions. Moreover, his opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's conditions were causally related to the October 16, 2001 lower back injury. Further, although Dr. Kalin also diagnosed a cervical and right shoulder conditions, appellant did not file a consequential injury based on these conditions; nor did the Office accept a claim for cervical and right shoulder conditions. There is no indication in the record, therefore, that these alleged cervical and right shoulder conditions were work related. Dr. Kalin failed to provide a rationalized, probative medical opinion relating appellant's current condition to her October 16, 2001 accepted employment injury. Therefore, his opinion is not sufficient to negate the Office's finding, in its March 27, 2003 termination decision, that the opinions of Drs. Dave and Slomka represented the weight of the medical evidence. The Board therefore affirms the April 22, 2004 Office decision, affirming the March 27, 2003 Office decision terminating compensation.

³ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

⁴ *See Anna C. Leanza*, 48 ECAB 115 (1996).

⁵ *William C. Thomas*, 45 ECAB 591 (1994).

CONCLUSION

Under the circumstances described above, the Board finds that the Office met its burden of proof to terminate appellant's compensation benefits and appellant has not established any employment-related continuing disability following the termination of her benefits.

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member