

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

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**THOMAS J. URCIUOLI, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New York, NY, Employer**

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**Docket No. 04-1933  
Issued: February 4, 2005**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On July 27, 2004 appellant filed a timely appeal from a February 9, 2004 decision of the Office of Workers' Compensation Programs which affirmed the termination of appellant's compensation benefits on the grounds that he had no continuing residuals due to his accepted employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this termination case.

**ISSUE**

The issue is whether the Office properly terminated appellant's compensation and medical benefits effective March 3, 2003, on the basis that he no longer had a continuing disability or medical condition causally related to his December 15, 1998 employment injury.

**FACTUAL HISTORY**

On February 15, 1998 appellant, a 39-year-old letter carrier, filed a traumatic injury claim alleging that he sustained back injuries and chronic headaches due to his feeling dizzy and passing out while delivering mail. The Office accepted the claim for contusion to the head and

cervical and lumbar strains and placed appellant on the automatic rolls for total disability effective January 30, 1999.

In a report dated September 21, 1999, Dr. Francis Lanzone, a treating physician, diagnosed severe low back and neck pain and radiculopathy in both the upper and lower extremities. Physical examination revealed:

“[T]ender range of motion, tender spinous processes, tender paracervical spasm, multiple areas of mild fracture at the trigger point, tender at C-4 to T-1, weak grip left and right hand, diminished triceps supinator reflexes, numbness left and right C-6 and C-7 dermatones. Patient complains of pain related to the C-5, C-6, C-7 dermatones left and right hands.

“Clinical examination of the lumbar spine reveals straight raising left and right, restricted to fifty (50) to sixty (60) degrees, patient complains of pain during straight leg raising left and right, patient complains of severe myofasciitis, trigger point tenderness, paralumbar spasm of the lower lumbar vertebra L-3 to S-1. Patient also complains of pain on range of motion restricted to 50 percent of the normal, diminished knee and ankle reflexes. Patient complaints of numbness and radiculopathy with pain related to the left and right L4-5, L5-S1 dermatones.”

Based upon a March 31, 1999 magnetic resonance imaging (MRI) scan, Dr. Lanzone diagnosed a cervical disc herniation at C3-4 and C5-6 and a significant lumbar disc bulge at L4-5. He diagnosed “severe internal derangement of the cervical and lumbar spine” based upon electromyography (EMG) studies and opined that appellant was totally disabled.

In a report dated September 15, 1999, Dr. Philip K. Keats, a second opinion Board-certified orthopedic surgeon, based upon a review of the medical reports, MRI scans, statement of accepted facts and a physical examination, concluded that appellant’s lumbar and cervical sprain had resolved. A physical examination revealed no deformity or spasm in either the lumbar or cervical spine. Range of motion in the cervical spine was decreased “in all planes, including flexion, extension, lateral rotation and lateral flexion on a voluntary basis secondary to pain.” The lumbosacral spine showed “decreased range of motion in flexion, extension and lateral bending on a voluntary basis secondary to pain.” In support of Dr. Keats conclusion that appellant’s cervical and lumbar sprain had resolved, he indicated that there were no supporting objective findings that all the findings were subjective on the basis of pain and the MRI scans showed “no significant orthopedic pathology.” In concluding, he opined that appellant had no orthopedic disability due to his accepted employment injury and that he could return to his date-of-injury job with restrictions. With regards to neurological disability, Dr. Keats indicated that a neurological specialist would have to answer that question.

Dr. Lanzone, in an August 28, 2000 work restriction evaluation form, indicated that appellant was permanently disabled.

In a report dated August 7, 2001, Dr. Gary Korenman, a second opinion Board-certified neurologist, diagnosed peripheral neuropathy due to his diabetes mellitus and that his cervical

and lumbosacral condition had resolved. A physical examination revealed no tenderness in the sciatic notch regions or the lumbosacral area and “the neck is supple without paraspinal muscle spasm.” With regard to disability, Dr. Korenman opined that appellant could return to work four hours per day with restrictions due to his peripheral neuropathy, which were no prolonged standing or walking. He concluded that appellant had reached maximum medical improvement and did not require any physical therapy, testing or surgical intervention.

In a November 26, 2001 report, Dr. Joseph A. Suarez, a treating Board-certified orthopedic surgeon, diagnosed a herniated disc at C3-4, C5-6 based upon a March 31, 1999 MRI scan test. He further reported “EMG’s confirm radiculopathy at L5-S1 and C5-6 levels that correspond with severe internal derangement of the cervical and lumbo-sacral spine.” A physical examination revealed tenderness in the cervical spine, his range of motion and spinous processes. Dr. Suarez also noted “diminished triceps and supraspinatus reflex,” positive straight leg raising test bilaterally on lumbosacral spinal examination, “myofascial trigger point tenderness in the paralumbar region with spasms palpated in the paralumbar area” and “numbness in the left and right C5-C7 dermatomes.” He opined that appellant was totally disabled and unable to perform any type of employment.

On February 8, 2002 appellant was referred by the Office to Dr. Stanley Soren, a Board-certified orthopedic surgeon, to resolve a conflict in the medical opinion evidence between Dr. Lanzone and Dr. Korenman regarding whether appellant had any continuing disability due to his accepted employment injury.

In a report dated October 17, 2002, Dr. Soren, based upon a review of the medical and factual evidence, a physical examination and statement of accepted facts, diagnosed: “1. lumbosacral contusion/sprain; 2. cervical contusion/sprain; 3. EMG reports of radiculopathy, C5-6 and L5-S1; 4. MRI [scan] reports of herniated nucleus pulposus, C3-4 and C5-6; and 5. diabetic peripheral neuropathy.” A physical examination of the cervical spine revealed:

“[N]o torticollis, spasm or tenderness. Range of motion was 80 percent of normal in forward flexion, extension, lateral flexion and rotation left and right. However, right lateral flexion produced some left-sided neck pain.”

With regard to the lumbar spine, he found negative bilateral leg raising and a negative Lasengue sign. A physical examination revealed “no scoliosis, spasm or tenderness.” As to the cause of appellant’s orthopedic diagnoses, he stated:

“Based on the history as given, assuming it is accurate and on the medicals and clinical examination, diagnoses one through four are felt to be causally related to the injury of note of December 15, 1998 -- especially in view of the history of [appellant] having no prior or subsequent injuries to these injuries, other than December 15, 1998.”

Regarding the diagnoses of herniated disc at C3-4 and C5-6 and radiculopathy at C5-6 and L5-S1, he opined that they were “not clinically manifested on examination date of February 28, 2002.” Dr. Soren opined that appellant was capable of performing his duties as a letter carrier based upon the marked paucity of significant clinical findings in the cervical and

lumbar area, as they relate to diagnoses one and two.” He noted appellant’s “excessive weight contributes/aggravates any of the symptoms he might have in the low back” and his weight is not causally related to the accepted December 15, 1998 employment injury. Dr. Soren noted that appellant did not require any further medical treatment for his accepted employment low back and cervical injuries, but required further treatment for his nonemployment-related weight and diabetes. In a work restriction form dated October 17, 2002, he noted no limitations on walking and standing from an orthopedic viewpoint, but recommended a neurologist’s opinion due to appellant’s peripheral diabetic neuropathy.

On January 28, 2003 the Office issued a proposed notice of termination of wage-loss and medical benefits based upon the opinion of Dr. Soren, the impartial medical examiner, that he no longer had any residuals or disability due to his accepted December 15, 1998 employment injury.

In response to the proposed notice of termination, appellant submitted a February 11, 2003 progress note by Dr. Suarez and a prescription for a brain MRI scan by Dr. Souhel Najjar who diagnosed “seizure protocol.” Dr. Suarez noted that he had treated appellant since November 26, 2001 and concluded that appellant was totally disabled. Dr. Suarez disagreed with Dr. Soren’s opinion that appellant did not have any permanent injury or disability due to the accepted December 15, 1998 employment injury. He opined that “the fact that the patient has been painful all of this time certainly means that this is a chronic problem and the patient has not improved.” A physical examination revealed “pain on passive hyperextension, right and left lateral bending of the lumbar spine,” 30 to 40 degrees forward flexion provokes pain and “there are still some spasms palpated in the lumbar area.”

In a March 3, 2003 decision, the Office finalized the termination of appellant’s compensation benefits.

In a letter dated March 18, 2003, appellant, through counsel, requested an oral hearing, which was held on December 13, 2003.

Subsequent to appellant’s hearing request, the Office received progress notes from Dr. Suarez dated August 23 to February 11, 2003. He diagnosed “cervical and lumbar radiculopathy with polyneuropathy” and noted appellant remained symptomatic. Dr. Suarez’s referred to a left ankle injury and noted appellant continued to have pain in his lumbar and cervical spine. He noted that appellant had “pain on range of motion of these areas.”

By decision dated February 9, 2004, the hearing representative affirmed the termination of appellant’s compensation benefits on the basis that he no longer had any disability or residuals due to his accepted employment injury.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s 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

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<sup>1</sup> *Paul L. Stewart*, 54 ECAB \_\_\_\_ (Docket No. 03-1107, issued September 23, 2003).

terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>3</sup>

Section 8123(a) of the Federal Employees' Compensation Act,<sup>4</sup> provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employing establishment, the Secretary shall appoint a third physician who shall make an examination.<sup>5</sup>

### ANALYSIS

The Office found a conflict in the medical opinion between Drs. Lanzone, a treating physician, and Dr. Korenman, a second opinion Board-certified neurologist. The Board finds that a conflict in the medical opinion was created as Dr. Lanzone concluded that appellant was incapable of performing his date-of-injury job due to his accepted cervical and lumbar employment injuries while Dr. Korenman concluded that appellant was capable of performing his date-of-injury job and that his accepted employment injuries had resolved. Dr. Soren had the opportunity to review all the medical evidence including the opinions of appellant's attending physicians, Drs. Lanzone and Suarez, and the second opinion physicians, Drs. Keats and Korenman, at the time of the referral to resolve the conflict in the medical opinion evidence. The Office properly referred appellant to Dr. Soren to resolve the conflict in the medical opinion evidence on the issue of whether appellant was capable of performing his date-of-injury job and whether his accepted condition had resolved. Dr. Soren concluded that appellant was capable of returning to work and also found that appellant had no residuals due to the accepted December 15, 1998 employment injuries.

The Board finds that the Office properly relied on the impartial medical examiner's October 17, 2002 report as a basis for terminating benefits. Dr. Soren's opinion is well rationalized and based upon a proper factual background. He examined appellant and reviewed the medical records. Dr. Soren also reported accurate medical and employment histories. In his October 17, 2002 report, he stated that the objective evidence failed to establish any clinical problem with appellant's cervical lumbar spine. Dr. Soren indicated that, although appellant does not require any further medical treatment for his accepted cervical and low back conditions, he does require further medical treatment for his nonemployment-related diabetic and weight conditions. He explained that the nonemployment-related weight problems contributed to and/or aggravated his current back problems. Moreover, he noted no significant clinical findings in the cervical or lumbar areas related to the accepted condition of lumbosacral sprain and cervical sprain. He concluded that appellant was capable of working as a letter carrier, his date-of-injury position.

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<sup>2</sup> *Elsie L. Price*, 54 ECAB \_\_\_\_ (Docket No. 02-755, issued July 23, 2003).

<sup>3</sup> *James F. Weikel*, 54 ECAB \_\_\_\_ (Docket No. 01-1661, issued June 30, 2003).

<sup>4</sup> 5 U.S.C. § 8123(a).

<sup>5</sup> *Id.*; see also *Robert J. Millfin*, 52 ECAB 384 (2001); *Raymond T. Brown*, 52 ECAB 192 (2001).

On appeal appellant's attorney contends, Dr. Soren's opinion is not supported by medical rationale as he concluded that appellant could return to work, but opined that appellant's cervical and lumbar strains, radiculopathy and herniated disc were employment related. He also contends that Dr. Soren's opinion that there is a neurological deficit which might require restrictions does not support his conclusion that appellant has no residuals or disability due to his accepted employment injury. Dr. Soren concluded that appellant's diagnoses were due to the December 15, 1998 employment injury. However, he specifically noted that these conditions had resolved. In stating that the conditions were caused by the December 15, 1998 employment injury, Dr. Soren was not stating that these conditions still existed. With regard to the argument regarding appellant's neurological problem, He specifically noted that any neurological deficit would be related to appellant's nonemployment-related diabetes. The Board finds that the Office properly accorded special weight to the impartial medical examiner's October 17, 2002 findings. Accordingly, the Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits.<sup>6</sup>

Appellant disagreed with this proposed termination of compensation and submitted a progress note dated February 11, 2003 report from Dr. Suarez, which noted that he had treated appellant since November 26, 2001 and concluded that appellant was totally disabled. He also noted his disagreement with Dr. Soren's opinion that appellant did not have any disability or permanent injury due to his December 15, 1998 employment injury. While Dr. Suarez's opinion generally supported a causal relationship in a conclusory statement, he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value as the physician made no mention of appellant's condition and provided no supporting medical rationale to support his conclusion that appellant was totally disabled due to his employment injuries.<sup>7</sup> Thus, the Board finds the August 23, 2003 progress note from Dr. Suarez insufficient to create a conflict with Dr. Soren.

Following the March 3, 2003 decision, terminating appellant's compensation benefits, appellant requested an oral hearing and submitted additional evidence from Dr. Suarez, who diagnosed "cervical and lumbar radiculopathy with polyneuropathy" and that he remained symptomatic. He also noted that appellant continued to have lumbar and cervical pain and "pain on range of motion in these areas."

The Board finds that the progress notes of Dr. Suarez, are insufficient to overcome the weight accorded to Dr. Soren's October 17, 2002 report or to create a conflict with it as Dr. Suarez provided no opinion as to appellant's disability, but merely noted that appellant continued to have pain and remained symptomatic. Moreover, the conditions of cervical and lumbar radiculopathy with neuropathy have not been accepted. Therefore, the Board finds that

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<sup>6</sup> In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight. *James P. Roberts*, 31 ECAB 1010 (1980); *see also Michael Hughes*, 52 ECAB 387 (2001).

<sup>7</sup> *Barbara Johnsen (James C. Johnsen)*, 54 ECAB \_\_\_\_ (Docket No. 03-1738, issued September 30, 2003) (to be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value).

the Office hearing representative's August 5, 2003 decision affirming the Office's November 15, 2002 termination of appellant's compensation benefits was proper. Dr. Soren was the impartial medical specialist selected to resolve a conflict in the medical evidence and his well-rationalized opinion based upon a complete and accurate medical history was entitled to special weight.<sup>8</sup>

**CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation benefits for wage-loss and medical benefits on the basis that he no longer had any disability or residuals due to his December 15 1998 employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' hearing representative dated February 9, 2004 is affirmed.

Issued: February 4, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> See *supra* note 7.