

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

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**KENNETH V. HOOBING, Appellant**

**and**

**U.S. POSTAL SERVICE, PROCESSING &  
DELIVERY CENTER, Philadelphia, PA,  
Employer**

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**Docket No. 06-214  
Issued: July 14, 2006**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 7, 2005 appellant filed a timely appeal of the July 13, 2005 merit decision of the Office of Workers' Compensation Programs, which affirmed the termination of his compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this claim.

**ISSUES**

The issues are: (1) whether the Office properly terminated appellant's wage-loss compensation and medical benefits effective March 24, 2004 on the basis that he did not have any remaining residuals causally related to his accepted employment injuries; and (2) whether appellant had disability on or after March 24, 2004 causally related to the accepted March 30, 2002 employment injury.

## **FACTUAL HISTORY**

On April 2, 2002 appellant, then a 43-year-old maintenance mechanic, filed a traumatic injury claim alleging that on March 30, 2002 he fell onto the concrete floor and sustained injury to his lower back. On June 27, 2002 the Office accepted appellant's claim for a herniated lumbar disc at L5-S1 and appropriate compensation and medical benefits were paid. Appellant stopped working on March 31, 2002 and returned to full-time light duty on January 23, 2003.

Appellant was referred by his family physician to Dr. Todd Albert, a Board-certified orthopedic surgeon. In a report dated October 15, 2002, he indicated that appellant had a prior anterior cervical decompression and fusion in 1996. Appellant was doing well but fell 20 feet off industrial shelving while working and landed flat on his back after hitting two shelves with his shoulder. Dr. Albert reviewed appellant's x-rays which noted a "very flattened dis[c] space at L5-S1." he stated that appellant's magnetic resonance imaging (MRI) scan showed a severe narrowing of the L5-S1 disc space and blackening with annual tear at that level.

On October 29, 2002 the Office referred appellant to Dr. Anthony Salem, a Board-certified orthopedic surgeon, for a second opinion. In a report dated November 21, 2002, he opined that appellant no longer had residuals of his March 30, 2002 work injury. Dr. Salem stated that appellant's ongoing symptoms were related to underlying degenerative changes, deconditioning and symptom magnification. He opined that "nothing changed due to [appellant's work-related] fall that would preclude his ability to perform his prior job as a maintenance mechanic."

In a medical report dated December 19, 2002, Dr. Albert indicated that appellant was under his treatment for lumbar displacement and discogenic back pain. Due to ongoing symptoms, it was medically necessary to extend appellant's period of disability until January 31, 2003. In a January 3, 2003 report, Dr. Albert stated that he reviewed the opinion of Dr. Salem and, although he agreed with most of Dr. Salem's assessments and conclusions, he did not agree that appellant's present problems were unrelated to the accepted fall. Dr. Albert noted that appellant had little or no problems related to his back prior to the fall and was now in significant pain. He would classify his injury as an exacerbation of his underlying condition.

By letter dated March 4, 2003, the Office referred appellant to Dr. Richard G. Schmidt, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the conflict found between Dr. Albert and Dr. Salem with regard to continuing disability due to the work-related injury. In a report dated April 7, 2003, Dr. Schmidt noted that, although appellant's medical record indicated that he had a past history of low back problems in 1997 that caused him to miss nine months of work, appellant denied ever having any problems with his lower back prior to March 30, 2002. Dr. Schmidt stated that appellant's current diagnostic studies were consistent with a chronic degenerative process at L5-S1. Given the diagnostic studies, he was unable to correlate the appearance at the L5-S1 disc to the fall of March 30, 2002. Dr. Schmidt agreed with Dr. Salem that appellant had recovered from the March 30, 2002 injury. He did believe that some restrictions were in order as a prophylactic measure and would not return appellant to a heavy-duty type job. He opined that these restrictions were referable to a 1992 motor vehicle accident and not to the 2002 work injury.

The Office issued a decision on June 6, 2003 terminating appellant's benefits. Appellant requested a hearing. In a decision dated December 29, 2003, the hearing representative set aside the June 6, 2003 decision and remanded the case. The hearing representative found that the Office did not meet its burden of proof to terminate appellant's benefits as Dr. Schmidt did not explain how his evaluation or review of the diagnostic studies supported his opinion that residuals of the work injury of March 30, 2002 had ceased.

In a medical report dated December 15, 2003, Dr. Albert noted that he performed an anterior lumbar interbody fusion (ALIF) on September 25, 2003. He opined that it would be unlikely that appellant would be able to return to work at the employing establishment or do heavy labor for the remainder of his life given this surgery. Dr. Albert indicated that the need for the surgery was due to the March 30, 2002 injury. He stated:

"While, indeed, he did have degenerative changes in his L5-S1 disc, he was not having significant problems with that prior to that injury and was rendered incapacitated after that injury. Therefore, the injury was causative in his ultimate demise and need for surgery."

On remand, the Office asked Dr. Schmidt to clarify his opinion on causal relationship. In a report dated February 8, 2004, he stated:

"I was unable to correlate the appearance of the L5-S1 disc to the episode of [March 30, 2002]. In other words, when I reviewed the studies, I saw chronic degenerative changes at the L5-S1 disc. I did not see evidence on the MRI scan study of any sequelae from the [March 30, 2002] episode.

"Frankly, my opinions remain in conjunction with and in conformity with the report of Dr. Salem.

"When I saw [appellant] during clinical exam[ination], he had no scoliosis or spasm. He had a normal range of motion of the lumbar spine. I would also note that neurovascular examination of the lower extremities from the standpoint of his lower back was within normal limits. There were findings on examination; however, these were referable to a previous left leg injury, which was not as a result of the [March 30, 2002] episode.

"I do not agree with the opinion of Dr. Albert that [appellant's] underlying condition was exacerbated by this injury. After a review of my very detailed lengthy report of April 7, 2003, my opinions remain unchanged. I would also note that I have reviewed in response to your letter, the updated medical records of Dr. Albert, which indicate that [appellant] underwent an [ALFI] procedure on September 25, 2003."

Dr. Schmidt stated that appellant's degenerative changes were chronic in nature and did not evidence an acute exacerbation or aggravation of his preexisting degenerative condition.

On February 23, 2004 the Office issued a notice of proposed termination of benefits based on the opinion of Dr. Schmidt. By letter dated March 2, 2004, appellant's attorney

contended that Dr. Schmidt's opinion was insufficient to terminate appellant's compensation. He argued that Dr. Schmidt failed to explain how the diagnostic studies supported that appellant's work injury had ceased, failed to demonstrate his knowledge of appellant's regular work requirements and failed to explain how appellant's prior injury impacted his work accident on March 30, 2002. By decision dated March 24, 2004, the Office terminated appellant's compensation benefits effective that date.

On March 25, 2004 appellant, through counsel, requested a hearing. In a medical report dated April 29, 2004, Dr. Albert disagreed with Dr. Schmidt's report with regard to his finding that appellant's ongoing back problems had nothing to do with his fall of 18 feet onto a concrete floor. He stated:

"I have known [appellant] for many years having operated on his neck and sent him back to his full-duty heavy occupation years ago. He has really no complaints of back problems until after this incident involving the fall on his back. He then developed severe pain. As Dr. Schmidt is well aware, many times patient[s] do not have correlative MRI [scan] imaging directly related to an injury as this but an injury such as the type of rapid extension that [appellant] had or an axial loading injury can lead to severe and intractable pain when superimposed on the dis[c] degeneration. Clearly [appellant] does and did have dis[c] degeneration at L5-S1 as was brought out by a positive discogram at that level with normal control levels above at two other levels. This is very suggestive that the test is quite valid and that was the cause of his pain. Furthermore retrospectively [appellant] did gain significant relief from an anterior lumbar fusion at L5-S1 implying that the pathology was valid. While he did have this pathology and it was not caused by the fall he had, his symptomatology was as he was asymptomatic prior to the fall and had severe symptoms after the fall.

In a progress report dated September 14, 2004, Dr. Albert noted that appellant was one year post ALIF and that his incision was healed well.

By decision dated July 13, 2005, an Office hearing representative affirmed the termination of appellant's compensation and medical benefits.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>1</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>3</sup> To terminate authorization for medical treatment,

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<sup>1</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>2</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

the Office must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

The Office properly found that a conflict existed in the medical opinion evidence between appellant's physician, Dr. Albert, and the second opinion physician, Dr. Salem, with regard to whether appellant had any continuing residuals and disability related to his March 30, 2002 injury. Accordingly, the Office referred appellant to Dr. Schmidt to resolve the conflict.<sup>5</sup>

In a report dated April 7, 2003, Dr. Schmidt stated that appellant had recovered from his work injury of March 30, 2002 and that he was unable to correlate the appearance of the L5-S1 disc to the accepted fall at work. He noted that appellant had work restrictions, but that these restrictions were referable to the 1991 motor vehicle accident and not the accepted work injury. In a March 30, 2002 supplemental report, Dr. Schmidt reiterated that appellant's current lumbar condition was unrelated to his work injury. On examination of appellant, he found no scoliosis or back spasm, a normal range of motion of the lumbar spine and neurovascular examination of the lower extremities was within normal limits. Dr. Schmidt noted that there were findings on examination referable to the previous left leg injury, which was not the result of the March 30, 2002 fall. He was unable to correlate the appearance of the L5-S1 disc to the episode of March 30, 2002. Dr. Schmidt stated that these studies showed chronic degenerative changes at the L5-S1 disc and that he did not see evidence on the MRI scan study of any sequelae from the March 30, 2002 injury.

The Board finds that the Office properly relied on the impartial medical examiner's reports in determining that appellant's accepted employment injury had resolved. Dr. Schmidt's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed his medical records. Dr. Schmidt properly explained that, although appellant still had restrictions, they were attributable to his 1992 motor vehicle accident, noting that he did not see any evidence of sequelae from the March 30, 2002 episode on appellant's MRI scan study but rather observed degenerative changes at the L5-S1 disc.

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.<sup>6</sup> Accordingly, the Office properly accorded special weight to the impartial medical examiner's findings. Dr. Albert's December 15, 2003 response to Dr. Schmidt's report is insufficient to overcome the weight given the impartial medical specialist that the employment-related injuries had resolved without residuals thus

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<sup>4</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>5</sup> 5 U.S.C. § 8123(a) provides in pertinent part: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

<sup>6</sup> *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

negating any employment-related disability due to the employment injury. He essentially reiterated his earlier opinion, which gave rise to the conflict resolved by Dr. Schmidt.

As the weight of the medical evidence establishes that appellant's accepted work-related condition has resolved, the Office properly terminated appellant's wage-loss compensation and medical benefits.

### **LEGAL PRECEDENT -- ISSUE 2**

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating benefits shifts to appellant.<sup>7</sup> In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment relationship between appellant's diagnosed condition and the implicated employment factors.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

Subsequent to the Office's termination of benefits, appellant submitted an April 29, 2004 report from Dr. Albert, who disagreed with Dr. Schmidt. Dr. Albert noted appellant's fall of 18 feet onto a concrete floor. He stated that appellant had no complaints of back problems until after the incident involving the fall onto his back, at which point he developed severe pain. Dr. Albert indicated that appellant currently did have disc degeneration at L5-S1 and that, as appellant did gain significant relief from an anterior lumbar fusion at L5-S1, this would imply that the pathology was valid. He reiterated his opinion that appellant was disabled for work.

Dr. Schmidt, the impartial medical examiner, opined that appellant had no work-related continuing disability as all employment-related conditions had resolved. Dr. Albert's report to the contrary is insufficient to overcome the weight of Dr. Schmidt's report or to create a new

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<sup>7</sup> See *Joseph A. Brown, Jr.*, 55 ECAB \_\_\_\_ (Docket No. 04-376, issued, May 11, 2004); *Virginia Davis Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

<sup>8</sup> *Juanita Pitts*, 56 ECAB \_\_\_\_ (Docket No. 04-1527, issued October 28, 2004).

<sup>9</sup> *Bobbie F. Cowart*, 55 ECAB \_\_ (Docket No. 04-1416, issued September 30, 2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

conflict in the medical evidence. Dr. Albert was on one side of the conflict resolved by Dr. Schmidt and Dr. Albert did not present new findings or rationale to support his opinion.<sup>10</sup>

**CONCLUSION**

The Office properly terminated appellant's compensation and medical benefits effective March 24, 2004 on the basis that he did not have any remaining residuals causally related to his accepted employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 13, 2005 is affirmed.

Issued: July 14, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> See *Jaja K. Asaramo*, 55 ECAB \_\_\_\_ (Docket No. 03-1327, issued January 5, 2004) (submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is, generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict).