

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

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C.G., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Colchester, CT, Employer )

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**Docket No. 06-1209  
Issued: November 30, 2006**

*Appearances:*  
Katherine Smith, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 24, 2006 appellant filed a timely appeal of a January 6, 2006 merit decision of the Office of Workers' Compensation Programs with respect to termination of compensation benefits effective November 28, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective November 28, 2004.

**FACTUAL HISTORY**

On September 18, 1997 appellant filed an occupational disease claim (Form CA-2) alleging that her degenerative back condition was causally related to her federal employment duties as a rural carrier. The employing establishment indicated that appellant had stopped

working as of May 15, 1995.<sup>1</sup> After development of the evidence, the Office accepted aggravation of degenerative disc disease and aggravation of herniated disc L1-2 and L5-S1. Appellant received compensation for temporary total disability.

The Office referred appellant, along with a statement of accepted facts and medical records, to Dr. C. David Bomar, an orthopedic surgeon. The statement of accepted facts listed appellant's job duties and noted an August 1992 incident of driving and lifting boxes, and the February and December 1994 incidents. In a report dated August 18, 2004, Dr. Bomar provided a history and results on examination. He stated that "the underlying degenerative disc disease and scoliosis in my opinion are the main factors in her ongoing back pain. I think the effects of various incidents of slips and falls and lifting and car accidents were temporary aggravations of an underlying condition." Dr. Bomar noted that treatment notes from January 1994 did not mention any specific work injury and related a history of back trouble from nonwork-related causes. In response to a question as to whether appellant continued to have the conditions related to a factor of employment as outlined in the statement of accepted facts, Dr. Bomar stated, appellant "does not have the condition related to her employment. These were temporary aggravations of preexisting conditions."

By letter dated September 8, 2004, the Office advised appellant that it proposed to terminate her compensation on the grounds that the medical evidence established that her employment-related condition had resolved. Appellant submitted a report dated October 5, 2004 from Dr. Jeffrey Bash, an orthopedic surgeon, who provided results on examination. Dr. Bash diagnosed scoliosis, lumbar radicular syndrome and degenerative disc disease. He recommended continued conservative management and stated, "I do relate a portion of her current symptoms complex related to her initial accident at work."

By decision dated November 3, 2004, the Office terminated wage-loss compensation and medical benefits effective November 28, 2004. Appellant requested a hearing before an Office hearing representative, which was held on July 11, 2005. By decision dated September 19, 2005, the hearing representative affirmed the November 3, 2004 decision.

By letter dated October 12, 2005, appellant requested reconsideration of her claim. She argued that Dr. Bomar did not offer an opinion on the issue of whether the claimant still had residuals due to the accepted aggravation of her back condition caused by her job duties. Appellant submitted an October 3, 2005 report from Dr. Bash, who opined that "the combination of her job duties that required bending, lifting and twisting, along with the two falls in 1994, did substantially aggravate a prior condition of degenerative disc disease at L1-2 and L5-S1. It is my opinion that the damage is permanent." Dr. Bash concluded that appellant was totally disabled.

In a decision dated January 6, 2006, the Office reviewed the case on its merits and denied modification of the September 19, 2005 decision. The Office found that appellant did not submit rationalized medical opinion evidence.

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<sup>1</sup> The record indicated that appellant had prior claims, including a January 29, 1999 motor vehicle accident, a February 26, 1994 slip and fall and a December 19, 1994 incident involving tripping over a tub of mail.

## LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.<sup>3</sup> The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>4</sup>

## ANALYSIS

The Office relied on the opinion of Dr. Bomar, the second opinion referral physician, as the weight of the medical evidence on the termination issue presented. The problem, however, is that Dr. Bomar did not provide an opinion on the specific issue in this case. The claim in this case, OWCP File No. 010351996, was that appellant's job duties aggravated a preexisting back condition and the claim was accepted for aggravation of degenerative disc disease and herniated L1-2 and L5-S1 discs. The statement of accepted facts prepared on July 29, 2004 does not clearly indicate that the accepted aggravations were the result of the performance of appellant's job duties prior to her work stoppage in 1995. Dr. Bomar appeared to believe that the 1992 (driving and lifting) and 1994 (slip and falls) employment incidents noted in the statement of accepted facts, as well as a 1991 motor vehicle accident noted in the history provided in his August 18, 2004 report, were the basis for the accepted aggravations.<sup>5</sup> He opined that "effects of various incidents of slips and falls and lifting and car accidents" were temporary aggravations, without discussing whether the aggravations caused by the performance of the job duties continued to contribute to appellant's condition. Dr. Bomar was not provided with a factual background that clearly explained the basis for the accepted conditions, and he did not provide an opinion on the specific issue that must be resolved before compensation benefits may be terminated pursuant to this claim.<sup>6</sup>

It is the Office's burden of proof the secure probative medical evidence that is sufficient to establish the employment-related condition has ceased. The report of Dr. Bomar is of diminished probative value in this case for the reasons noted above. Accordingly, the Office did not meet its burden of proof to terminate compensation for wage-loss and medical benefits effective November 28, 2004.

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<sup>2</sup> *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

<sup>3</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

<sup>4</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>5</sup> Presumably appellant filed claims based on these incidents, although it is not clear from the record what conditions were accepted.

<sup>6</sup> A physician must be provided with a proper factual background to adequately address the medical issue presented. See *Jack R. Smith*, 41 ECAB 691 (1990).

**CONCLUSION**

The report of the second opinion referral physician, Dr. Bomar, is not sufficient to establish that residuals of the accepted conditions had ceased as of November 28, 2004.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 6, 2006 and September 19, 2005 are reversed.

Issued: November 30, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board