

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

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**S.K., Appellant**

**and**

**U.S. POSTAL SERVICE, WACO POST  
OFFICE, Waco, GA, Employer**

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**Docket No. 06-1692  
Issued: November 13, 2006**

*Appearances:*  
*Miles L. Gammage, 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 July 18, 2006 appellant, through counsel, filed a timely appeal from a May 8, 2006 merit decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the termination of her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits effective May 14, 2005

**FACTUAL HISTORY**

On August 28, 2003 appellant, then a 44-year-old rural letter carrier, filed a traumatic injury claim alleging that on August 25, 2003 she injured her back while picking up a tray of mail from her vehicle. The Office accepted that she sustained lumbago with degenerative disc disease on October 15, 2003.

Appellant came under the care of Dr. Charles Hubbard, a Board-certified orthopedic surgeon, who treated her beginning August 28, 2003. He examined her, noted a history of her work injury and diagnosed degenerate lumbar disc disease with acute lumbago. A magnetic resonance imaging (MRI) scan of November 9, 2003 by Dr. Darwin M. Brummett, a radiologist, showed degenerative disc changes and a left paracentral disc protrusion at L4-5 causing mild narrowing of the left L4-5 lateral recess as well as mild foraminal stenosis.

Appellant stopped work on August 26, 2003 and did not return. On February 17, 2004 Dr. Hubbard released her to limited duty and a limited-duty job offer was requested. Appellant developed headaches related to epidural block treatment for her injury. Dr. Hubbard reduced her work hours to four per day on March 10, 2004 and again requested a limited-duty job offer. On March 31, 2004 he informed the Office that appellant had reached maximum medical improvement and was not able to return to her prior regular duties and needed a permanent limited-duty position.

On April 7, 2004 Dr. Hubbard reported a disability evaluation on appellant. It demonstrated that appellant had a full and painless range of motion of the shoulders, elbows, wrists and cervical spine. Her range of motion was 75 percent of normal and she exhibited a normal walk.

On October 31, 2004 the Office referred appellant to Dr. Harold Alexander, a Board-certified orthopedic surgeon, for a second opinion. In a report dated November 9, 2004, he stated that the lumbago strain, superimposed on her degenerative disc disease had subsided. Dr. Alexander found that appellant could return to her date-of-injury job. Dr. Alexander also stated that appellant had reached maximum medical improvement. He noted that initially she was diagnosed with degenerative disc disease. Appellant was treated with epidural blocks, but the treatment was terminated when she developed a headache after the second of three planned treatments. Dr. Alexander noted that the MRI scan performed on November 7, 2003 showed degenerative disc changes and a left paracentral disc protrusion at L4-5 causing mild narrowing of the left L4-5 lateral recess. Appellant also demonstrated mild foraminal stenosis and facet disease. She displayed an excellent range of motion with good extension, flexion and side-bending during the physical examination. Appellant did not exhibit radiculopathy, neurological loss, atrophy or weakness. However, she had significant unexplained back pain. Dr. Alexander concluded that appellant's subjective complaints were outweighed by the objective findings.

By letter dated December 16, 2004, Dr. Alexander stated that appellant could perform medium capacity duty. By letter dated January 12, 2005, the Office requested that Dr. Hubbard comment on Dr. Alexander's evaluation.

In an addendum dated January 17, 2005, Dr. Alexander noted that the lumbago strain was a temporary injury which was related to appellant's August 25, 2003 employment injury. However, appellant's degenerative disc disease was preexisting and unrelated to the work injury. Further, such condition was not uncommon for someone of her age. Since the lumbago strain had dissipated, there was no residual disability stemming from the work

injury. This report was also forwarded by the Office to Dr. Hubbard for comment by letter dated February 23, 2005.

On March 24, 2005 the Office issued a notice of proposed termination of compensation for medical benefits and wage-loss compensation. It credited the weight of medical opinion to Dr. Alexander's November 9, 2004 and January 17, 2005 reports. The Office noted that Dr. Hubbard had not responded to its request to comment on the findings of Dr. Alexander.

Appellant submitted an unsigned April 4, 2005 note from Carrollton Orthopedic Clinic, P.C., Carrollton, Georgia, bearing the initials CNH. It indicated that appellant's condition had improved when she underwent physical therapy and currently remained unchanged.

By decision dated May 2, 2005, the Office terminated appellant's compensation benefits effective May 14, 2005. By letter dated May 10, 2005, she requested an oral hearing before an Office hearing representative. On May 18, 2005 appellant, through her counsel, again requested an oral hearing. The Office scheduled the hearing for February 23, 2006.

At the hearing, appellant presented additional evidence. In a July 1, 2005 report, Dr. Ken Knott, a physiatrist, provided a summary of her work injury and medical treatment. Based on his examination, Dr. Knott found L5 radiculopathy on the left side. He questioned why an electromyogram (EMG) study had not been obtained. Dr. Knott also found that appellant had a "ligamentous and fascial enthesitis in her lower back" and that these conditions were difficult to heal. He recommended that appellant see a psychiatrist because she exhibited signs of depression. Dr. Knott emphasized that she needed to begin a new treatment regimen as soon as possible. He recommended ice massage and ultrasound. Depending on appellant's response, Dr. Knott suggested injections to the lower back.

Appellant entered deposition testimony from Dr. L. Das Surapu, a psychiatrist, who testified that she had a "major depressive disorder, more at the severe type with psychotic features" as well as panic disorder with agoraphobia. The depression was related to her accepted back injury and she did not have a history of depression prior to the injury. Also, there was no family history of depression. Dr. Surapu advised that appellant was unable to work due to her condition and the medications she had to take.

By decision dated May 8, 2006, the hearing representative affirmed the May 2, 2005 termination decision. However, based on evidence presented at the hearing, he found that a conflict of medical opinion existed between Dr. Knott, the treating physician, and Dr. Alexander, the Office referral physician regarding whether appellant had continuing disability and residuals causally related to the employment injury. To resolve the conflict, the case was remanded for medical development.<sup>1</sup>

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<sup>1</sup> The Board's jurisdiction is to consider and decide appeals from final decisions of the Office and there shall be no appeal with respect to any interlocutory matter. 20 C.F.R. § 501.2(c); *Steven J. Gundersen*, 53 ECAB 252 (2001). The Board notes that there is no evidence of record reflecting that the Office issued a final decision regarding the issue of whether appellant had any continuing disability or residuals causally related to the August 25, 2003 employment injury. As this matter is in an interlocutory posture, it is not before the Board on this appeal.

## 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>2</sup> After it has determined that an employee has disability causally related to 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.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. 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>5</sup>

## ANALYSIS

Having accepted the claim for lumbago with degenerative disc disease, the Office based its decision to terminate appellant's compensation on the opinion of Dr. Alexander who performed a second opinion examination. In a November 9, 2004 report and January 17, 2005 addendum, Dr. Alexander found that appellant's accepted lumbago strain had fully resolved and that she was able to return to work. He also stated that her degenerative disc disease was a preexisting injury unrelated to her August 25, 2003 work injury. Dr. Alexander based his opinion on appellant's medical and work history, a review of the records and physical examination. He noted that she did not exhibit radiculopathy, neurological loss, atrophy or weakness. However, appellant had significant unexplained back pain. According to Dr. Alexander, her subjective complaints outweighed the objective findings. His report was thorough, well rationalized and based on an accurate factual history.

The medical evidence submitted by appellant prior to the May 2, 2005 decision terminating her benefits did not support that she had continuing disability as a result of her August 25, 2003 employment injury. In an August 28, 2003 report, Dr. Hubbard diagnosed degenerative lumbar disc disease with acute lumbago. He did not directly state then or later that the lumbar disc disease was caused by appellant's accepted injury. Dr. Hubbard's report is insufficient to overcome the weight of the medical evidence as represented by Dr. Alexander.

The Board finds that Dr. Alexander's November 9, 2004 report and his January 17, 2005 addendum are sufficiently well rationalized and based upon a proper factual and

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<sup>2</sup> *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>3</sup> *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>5</sup> *James F. Weikel*, 54 ECAB 660 (2003).

medical background. He examined appellant, reviewed the medical records and reported accurate medical and employment histories. Dr. Alexander's opinion was not refuted by appellant. Therefore, the weight of the medical evidence established that her accepted lumbago with degenerative disc disease had resolved and the Office properly terminated her wage-loss compensation and medical benefits based on the weight of the medical evidence of record.

**CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective May 14, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs, dated May 8, 2006, is affirmed.

Issued: November 13, 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