

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

M.W., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Cleveland, OH, Employer)

**Docket No. 06-1798
Issued: November 28, 2006**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 1, 2006 appellant filed a timely appeal of a June 27, 2006 merit decision of the Office of Workers' Compensation Programs with respect to a termination of compensation. 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 properly terminated appellant's compensation for wage-loss and medical benefits effective May 27, 2004.

FACTUAL HISTORY

The Office accepted that on March 24, 2003 appellant was struck in the legs by a mail container and sustained the following injuries: bilateral ankle contusion, bilateral abrasion of

hip, thigh/leg, ankle, right ankle sprain and bilateral crush injury of lower limb. She stopped working on March 24, 2003 and returned to a full-time light-duty position on May 10, 2003.

The Office referred appellant for a second opinion examination by Dr. Sheldon Kaffen, an orthopedic surgeon. In a report dated November 7, 2003, Dr. Kaffen provided a history, reviewed medical reports and discussed results on physical examination. He stated that appellant had sustained contusions of both hips, thighs and legs, with sprain and abrasions of the right ankle. Dr. Kaffen stated that there were no objective findings to indicate residuals of these accepted conditions. He further stated, “[b]ased on the history and physical examination and review of available medical records, it is my opinion that the accepted conditions in this claim have ceased. On physical examination there are no objective findings to indicate that these conditions have persisted and remain.”

Dr. Kaffen was requested to provide a supplemental report addressing the accepted crush injury. In a report dated January 16, 2004, he opined that the bilateral crush injury had resolved, based on the lack of objective findings.

The attending physician, Dr. Joseph Eshelman, an occupational medicine specialist, stated in a March 2, 2004 report that appellant was last evaluated on October 13, 2003. He indicated that she was complaining of pain despite a paucity of objective findings. Dr. Eshelman concluded, “I agree with the opinion of Dr. Kaffen that no further treatment is necessary or indicated for the allowed conditions in this claim.”

By letter dated March 16, 2004, the Office notified appellant that it proposed to terminate compensation for wage loss and medical benefits on the grounds that residuals of the employment-related conditions had ceased. Appellant was advised to submit additional evidence within 30 days if she disagreed with this action. On May 19, 2004 the Office received an unsigned treatment note dated March 15, 2004.

In a decision dated May 27, 2004, the Office terminated compensation for wage loss and medical benefits. Appellant requested a hearing before an Office hearing representative, which was held on March 29, 2005. By decision dated May 31, 2005, the hearing representative affirmed the May 27, 2004 decision.

Appellant requested reconsideration of her claim and submitted medical reports from Dr. Timothy Morley, an osteopath. In a report dated October 18, 2005, Dr. Morley provided a history and results on examination. He diagnosed right hip sprain/strain and lumbar sprain/strain. In a March 30, 2006 report, Dr. Morley provided an opinion regarding the degree of impairment.

By decision dated June 27, 2006, the Office reviewed the case on its merits and denied modification of the May 31, 2005 decision.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² 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.³

ANALYSIS

The record indicated that appellant returned to full-time light-duty work following her employment injury. It is, as noted above, the Office's burden of proof to terminate authorization for medical treatment. In this case, the second opinion physician, Dr. Kaffen, provided an opinion in his November 7, 2003 and January 16, 2004 reports that residuals of the accepted injuries had ceased. He provided a factual and medical background and noted the lack of objective findings on physical examination to support his opinion. In addition, Dr. Eshelman, an attending physician, agreed with Dr. Kaffen in his March 2, 2004 report that appellant no longer needed treatment for the accepted conditions.

The weight of the medical evidence, therefore establishes, that residuals of the accepted employment injuries resolved prior to May 27, 2004. The Board accordingly finds that the Office met its burden to terminate compensation benefits as of May 27, 2004.

The Board has held that after termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.⁴ In this case, appellant submitted evidence from Dr. Morley regarding treatment for hip and lumbar complaints. The Board notes that the Office did not accept a lumbar condition causally related to the March 24, 2003 employment incident. Appellant must submit probative medical evidence with a complete and accurate background and a reasoned medical opinion on causal relationship between the diagnosed condition (and any disability claimed) and the accepted employment injuries. Dr. Morley did not provide an opinion on causal relationship in this case. The Board finds that appellant did not meet her burden of proof to establish an employment-related condition or period of disability after May 27, 2004.⁵

¹ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

² *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

³ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁴ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

⁵ The Board notes that medical evidence lacking proper identification, such as the March 15, 2004 treatment note, is of no probative medical value. *See Thomas L. Agee*, 56 ECAB ____ (Docket No. 05-335, issued April 19, 1985); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

CONCLUSION

The Office met its burden of proof to terminate compensation benefits effective May 27, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 27, 2006 is affirmed.

Issued: November 28, 2006
Washington, DC

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

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

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