

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

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C.W., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Wake Forest, NC, Employer )

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**Docket No. 07-120  
Issued: April 12, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 17, 2006 appellant filed a timely appeal from a September 29, 2006 decision of the Office of Workers' Compensation Programs, which terminated her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits effective September 29, 2006.

**FACTUAL HISTORY**

On January 31, 2004 appellant, then a 47-year-old rural carrier, filed a traumatic injury claim stating that she injured her back and head when she slipped on ice while delivering mail on January 29, 2004. She did not initially stop work, but did work a light-duty assignment.

In the development of her claim, appellant forwarded several medical reports. In a February 5, 2004 report, Dr. George M. Charron, a Board-certified orthopedic surgeon, noted

that appellant had a fall and diagnosed a lumbar back sprain. He stated that appellant could return to work within certain restrictions. In a February 19, 2004 report, Dr. Charron advised that appellant also had a cervical sprain in addition to her lumbar sprain. On March 11, 2004 he limited appellant to working four hours daily. In an April 7, 2004 magnetic resonance imaging scan report, Dr. Robert C. Vogler, a Board-certified diagnostic radiologist, diagnosed mild to moderate cervical spondylytic changes and degenerative joint disease or degenerative disc disease of the lumbar spine.

On April 26, 2004 the Office accepted appellant's claim for cervical and lumbar strain and paid appropriate benefits.

In a May 12, 2004 report, Dr. Charron advised that appellant had not responded well to conservative treatment for her continued complaints of axial spine pain. He opined that there were no surgical solutions that he could offer and released appellant to full-time work with restrictions on lifting more than 10 pounds. Dr. Charron continued submitting reports, through the summer of 2004 noting appellant's status.

On May 13, 2004 appellant accepted the employing establishment's full-time limited duty job offer effective May 17, 2004. Her wage rate in her limited-duty position was the same as her wage rate before she was injured.

By letter dated February 16, 2006, the Office requested information from the employing establishment concerning appellant's current wage rate. On February 17, 2006 the employing establishment informed the Office that appellant retired on March 24, 2005, at a wage rate of \$894.50 per week.

By decision dated March 7, 2006, the Office found that appellant's actual earnings as a modified clerk fairly and reasonably represented her wage-earning capacity. The Office found that, as this position paid wages greater than or equal to those of the current pay of the job held at the time of injury, appellant had no loss of wage-earning capacity.<sup>1</sup>

On March 21, 2006 the Office requested information from Dr. Charron, concerning whether he believed that appellant still experienced "residuals caused by the specific job[-] related injuries" that she sustained on January 29, 2004. Dr. Charron responded to the Office's request on March 30, 2006, stating that he last saw appellant on July 26, 2004 and had "no first hand information" concerning appellant's condition after that date.

On March 27, 2006 the Office referred appellant to Dr. Donald D. Getz, a Board-certified orthopedic surgeon, for a second opinion regarding her work-related condition. In a May 5, 2006 report, Dr. Getz found that appellant's condition was no longer related to her accepted employment injury. He noted that appellant was initially injured on the job on January 29, 2004, but that her condition gradually improved with the help of physical therapy, activity modification and medication. Upon examination of the cervical spine, Dr. Getz found that appellant exhibited full range of motion with slight muscular tenderness. Examination of the lumbar spine revealed that appellant was able to bend at the waist and touch her toes. Dr. Getz diagnosed "residual

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<sup>1</sup> Appellant did not appeal this decision.

cervical and low back pain due to generalized muscular deconditioning.” He also noted that appellant’s history was significant for diabetes, weight-related problems, osteoarthritis and other degenerative conditions, as well as general muscular deconditioning. Dr. Getz concluded:

“In my opinion current objective findings and residuals are caused by her preexisting osteoarthritis of the cervical and lumbar spine as shown in radiographic testing. The job[-]related injury is now resolved to the baseline of chronic, occasional discomfort related to a gradual progression of those conditions in the cervical and lumbar spine. In addition general muscular deconditioning also plays a role in the occasional flare-ups.”

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“In my opinion the accepted conditions occurring on January 29, 2004 have resolved and the remaining symptoms are related to the underlying gradual progression of cervical and lumbar osteoarthritis as well as generalized muscular deconditioning.”

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“As a preexisting condition the examinee had degenerative disc disease and degenerative spine disease in the cervical thoracic and lumbar area on the date of injury January 29, 2004. The injury represented a transient exacerbation of those conditions now returned to the gradually progressive baseline.”

On August 23, 2006 the Office notified appellant that it proposed to terminate her medical benefits and wage-loss compensation. The Office informed appellant that she had 30 days to submit evidence or argument in response.

By decision dated September 29, 2006, the Office terminated appellant’s compensation benefits.

### **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 the disability ceased or that it was 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>

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<sup>2</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>3</sup> *Id.*

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>6</sup>

### ANALYSIS

The Board finds that the Office properly terminated appellant's compensation benefits.

On March 21, 2006 the Office requested that Dr. Charron address the status of appellant's employment-related conditions but, on March 30, 2006, Dr. Charron advised that he had no opinion on the matter as he had not seen appellant since July 26, 2004. The Office then referred appellant to Dr. Getz for a current evaluation and opinion on the status of her employment-related conditions.

In a May 5, 2006 report, Dr. Getz found, after examining appellant, that her current condition was due to preexisting, nonwork-related osteoarthritis and muscular deconditioning. Specifically, he noted that appellant was diabetic and overweight and had osteoarthritis and other degenerative conditions as well as muscular deconditioning. Dr. Getz noted that appellant's osteoarthritis in the spine was preexisting based on diagnostic studies he had reviewed. He opined that, although appellant's January 29, 2004 work injury caused a transient exacerbation of symptoms of her preexisting conditions, he found that the employment-related aggravation had resolved and appellant's condition had reverted to its initial, nonemployment related, baseline. Dr. Getz diagnosed "residual cervical and low back pain due to generalized muscular deconditioning." Additionally, he noted that appellant's degenerative disc disease was a preexisting condition as well and was not related to her accepted employment injury. Dr. Getz found that appellant's accepted condition had resolved and there were no current residuals from her January 29, 2004 employment injury. He provided a rationalized medical opinion, based on a complete and accurate medical history and thorough physical examination.<sup>7</sup> Dr. Getz' report represents the weight of the medical evidence and the Office properly relied upon it in determining that appellant's employment-related conditions had resolved without residual.

There are no other medical reports of record supporting that appellant had a work-related condition after September 29, 2006.

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<sup>5</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>6</sup> *Id.*; see also *Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy Rogers*, 32 ECAB 1479 (1981).

<sup>7</sup> See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989); *Steven S. Saleh*, 55 ECAB 169, 172 (2003).

On appeal, appellant stated that she still experienced pain and weakness in her back. This, however, is insufficient to establish that she has continuing entitlement to medical benefits and wage-loss compensation.<sup>8</sup> As noted above, the weight of the medical evidence is represented by Dr. Getz' report. As explained in his report, appellant's work-related conditions have resolved and her continuing symptoms are attributable to her preexisting conditions.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's medical benefits and wage-loss compensation.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 29, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. *See supra* note 2. After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. *Wentworth R. Murray*, 7 ECAB 570, 572 (1955).