

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

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**M.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Levittown, PA, Employer**

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**Docket No. 06-2121  
Issued: September 24, 2007**

*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  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 18, 2006 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated September 5, 2006 terminating his medical 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 medical benefits due to his February 7, 2000 employment injury on September 5, 2006.

**FACTUAL HISTORY**

On February 7, 2000 appellant, then a 32-year-old letter carrier, filed an occupational disease claim alleging that he sustained aggravation of his right shoulder, neck and back

conditions due to working beyond his light-duty restrictions.<sup>1</sup> He first became aware of his condition on January 8, 1999 and first related this condition to his employment on July 21, 1999. In a report dated August 31, 1999, appellant's attending physician, Dr. Douglas G. Kimmel, an osteopath, noted the initial employment injury on January 8, 1999. He stated that appellant's condition had improved and that he was working six hours a day. However, appellant developed increased symptoms in the neck and shoulders as a result of using a postal jeep with manual steering and a heavy sliding door. He also utilized a double mail sack which irritated his neck condition. Dr. Kimmel found that diagnostic testing revealed impingement of the cervical peripheral nerve root which was not present on testing following his initial injury. The Office accepted appellant's claim for aggravation of cervical and thoracic strains on July 8, 2000.

On June 8, 2000 the Office referred appellant for a second opinion evaluation with Dr. Richard Mandel, a Board-certified orthopedic surgeon, who submitted a report dated July 28, 2000 and stated that appellant underwent right shoulder acromioplasty on October 13, 1999. Dr. Mandel found no objective findings supporting appellant's disability for work or the need for further medical treatment. He requested to review additional test results. On September 4, 2000 Dr. Mandel found that appellant's electromyogram was normal and advised that he could return to full duty with no additional treatment.

Appellant submitted a report dated August 17, 2000 from Dr. Brian Kelly, a Board-certified neurologist, who disagreed with Dr. Mandel. Dr. Kelly noted that appellant exhibited a positive Adson's maneuver with ulnar weakness as well as decreased sensation in the right arm. On September 11, 2000 he diagnosed thoracic outlet syndrome and cervical radiculopathy.

The Office proposed to terminate appellant's compensation benefits on October 18, 2000. By decision dated November 22, 2000, the Office terminated appellant's compensation and medical benefits due to his February 7, 2000 claim for occupational disease. Appellant requested an oral hearing and, by decision dated April 5, 2001, an Office hearing representative set aside the Office's November 22, 2000 decision finding that Dr. Mandel's report was not based on a complete factual background and could not constitute the weight of the medical opinion evidence. The hearing representative found that appellant's January 8, 1999 and February 7, 2000 claims should be combined; as there was a conflict of medical opinion evidence regarding appellant's thoracic outlet syndrome and his continuing disability and medical residuals as a

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<sup>1</sup> Appellant has filed several claims before the Office. He sustained a traumatic injury on January 8, 1999 which the Office accepted for thoracic outlet syndrome and neck and back strains. Appellant filed a claim for recurrence of disability due to the January 8, 1999 employment injury beginning on July 21, 1999. The Office authorized compensation benefits due to this recurrence through January 14, 2000. Appellant filed a traumatic injury claim on July 21, 2001 which the Office accepted for aggravation of cervical and thoracic strains. He sustained an aggravation of lumbar strain on September 18, 2001 as the result of a dog attack while in the performance of duty. The Board addressed the September 18, 2001 claim in an order dated June 14, 2007, Docket No. 06-1901, which reversed the Office's March 1, 2006 and June 2, 2005 decisions terminating appellant's compensation benefits on the grounds that he refused suitable work. The Board also issued an order remanding case on September 12, 2007, Docket No. 07-1052, remanding the case to the Office for consideration of appellant's claims for recurrences of disability on June 29 and July 27, 2005 causally related to his September 18, 2001 employment injury.

result of the February 7, 2000 employment injury. She reinstated appellant's compensation benefits retroactive to the November 22, 2000 termination decision.<sup>2</sup>

By decision dated December 31, 2001, the Office denied appellant's claim for medical expenses for chiropractic treatment. Appellant, through his attorney, requested an oral hearing. By decision dated November 7, 2002, the hearing representative set aside the Office's December 31, 2001 decision and remanded for further development with regard to the medical necessity of chiropractic treatment.

An Office medical adviser reviewed appellant's records on December 31, 2002. He stated that appellant's chiropractic bills had been paid. The Office medical adviser stated that several physicians established that appellant's minor work injuries had resolved. He opined that "excessive and prolonged physical therapy" had not been effective in appellant's treatment and should not be continued.

In a report dated December 19, 2001, Dr. Kimmel diagnosed cervical thoracic and lumbosacral sprain and strain, herniated disc at C3-4 and bulging disc at C4-5, C5-6 and C6-7, cervical spondylosis with spinal stenosis at C6-7 with mild cord compression and bulging discs at L1-2 and L4-5. He opined that these conditions resulted from the accepted February 7, 2000 work injuries. Dr. Kimmel stated that chiropractic treatment helped relieve appellant's pain and maintain his function.

The Office issued a decision on March 20, 2003 denying appellant's claim for wage-loss and medical benefits including medical bills for chiropractic treatment due to the February 7, 2000 employment injury. Appellant requested an oral hearing and by decision dated October 22, 2003, the hearing representative set aside the Office's March 20, 2003 decision and remanded for the issuance of a pretermination notice.

In a letter dated December 2, 2003, the Office proposed to terminate appellant's benefits due to his February 7, 2000 occupational disease claim. The Office provided a history of appellant's various accepted claims beginning on January 8, 1999 and relied on medical reports contained in those claims to terminate appellant's compensation benefits.<sup>3</sup> The Office noted that appellant's compensation benefits due to his January 8, 1999 traumatic injury had been terminated based on the report of Dr. John T. Williams, an osteopath and a Board-certified orthopedic surgeon, dated October 26, 1999. Dr. Donald F. Leatherwood, a Board-certified orthopedic surgeon, found that appellant had suffered an aggravation of his underlying neck

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<sup>2</sup> The case record before the Board does not contain the January 8, 1999 claim file, despite the directive of the hearing representative to combine the files.

<sup>3</sup> The only physician consulted regarding appellant's February 7, 2000 occupational disease claim was Dr. Mandel, a second opinion physician, who submitted a report dated July 28, 2000.

condition of degenerative disease of the cervical spine as a result of the July 21, 2001 employment injury.<sup>4</sup> The Office stated:

“Based on the weight of medical evidence represented by the opinions of Drs. Steven Valentino, Mandel, Williams, D.O., Anthony W. Salem, M.D., and Leatherwood it has been established that the claimant recovered from the residual effects of the work injury and was not in need of ongoing supervised medical care, which includes chiropractic physical therapy treatment.”

The Office noted that the December 31, 2001 decision denying chiropractic bills was remanded for further development by the hearing representative. The Office medical adviser listed the amount paid for chiropractic services and the claims examiner concluded that this treatment should not be continued for the accepted work injuries. The Office further stated: “Dr. Williams’ opinion is considered as the [i]ndependent specialist in this case as he had the benefit of reviewing a detailed, accurate statement of accepted facts, examining the claimant and the entire case file.” The Office also accorded the weight of the medical opinion evidence to the March 19, 2002 opinion of Dr. Salem, a Board-certified orthopedic surgeon. The Office proposed to terminate medical treatment including medical bills for chiropractic treatment and compensation benefits.

By decision dated January 21, 2004, the Office terminated appellant’s claim for medical benefits only.<sup>5</sup>

Appellant requested an oral hearing. His attorney appeared at the oral hearing on September 28, 2004. By decision dated December 6, 2004, the hearing representative affirmed the January 21, 2004 decision, finding that appellant had no continuing residuals from the February 7, 2000 occupational disease claim entitling him to medical benefits.

Appellant appealed the December 6, 2004 decision to the Board. In an order dated January 19, 2006, the Board remanded the case for reconstruction and proper assemblage of the case record.<sup>6</sup> The Board noted that the medical reports of Drs. Valentino, Williams, Salem and Leatherwood did not appear in the record.<sup>7</sup> The Board instructed the Office to include these reports in the record and to provide the factual basis of these reports as well as the basis for the

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<sup>4</sup> Both Drs. Williams and Leatherwood were designated as impartial medical specialist in other claims before the Office. As these physicians were not selected to resolve a conflict of medical opinion evidence in the occupational disease claim currently before the Board, their reports are not entitled to special weight. *Compare Joseph Roman*, 55 ECAB 233 (2004) (finding that the report of a physician not properly designated as an impartial medical examiner is not entitled to special weight).

<sup>5</sup> The Office has not issued a final decision denying any payment for chiropractic services already rendered. Therefore, the Board will not address this issue on appeal. 20 C.F.R. § 501.3(2)(c). The only issue before the Board is whether the Office properly terminated appellant’s medical benefits due to the February 7, 2000 claim including ongoing chiropractic expenses.

<sup>6</sup> Docket No. 05-1159 (issued July 19, 2006).

<sup>7</sup> The record does not include a copy of a report from Dr. Valentino.

selection of the physicians in the various claims. Following this development of the claim, the Board directed the Office to issue an appropriate final decision.

Following the Board's January 19, 2006 order, the Office included additional medical evidence and documents referencing appellant's claims within the record of the February 7, 2000 occupational disease claim currently before the Board.<sup>8</sup> This evidence included the fact that the Office initially referred appellant to Dr. Williams to address his disabling symptoms due to the accepted January 8, 1999 employment injury.<sup>9</sup> In a December 6, 1999 report, Dr. Williams performed a physical examination and concluded that appellant's cervical and lumbar sprain and strains had resolved. He noted that appellant continued to have right shoulder symptoms as a result of the right shoulder acromioplasty. Dr. Williams concluded that appellant's accepted employment injuries had resolved.

Dr. Salem was selected by the Office as a second opinion physician to determine appellant's condition and disability due to the September 18, 2001 employment injury. On March 19, 2002 he stated that appellant demonstrated multiple levels of chronic long-standing degenerative changes unrelated to the September 18, 2001 employment injury. Dr. Salem concluded that appellant did not have residuals of the September 18, 2001 employment injury.

Dr. Leatherwood completed a report on January 28, 2003 and opined that appellant's cervical fusion was due to the aggravation of his underlying degenerative disease of the cervical spine on September 18, 2001.<sup>10</sup> In a report dated June 1, 2004, he opined that appellant could work at a sedentary level on a full-time basis.

By decision dated September 5, 2006, the Office reissued the January 21, 2004 decision terminating appellant's medical benefits due to the February 7, 2000 occupational disease claim.

### **LEGAL PRECEDENT**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>11</sup> The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.<sup>12</sup> The Office's burden of proof in termination compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>13</sup> The

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<sup>8</sup> The Board again notes that the Office did not combine appellant's claim files, but only included a portion of the evidence mentioned in the January 21, 2004 termination decision and the January 19, 2006 order of the Board.

<sup>9</sup> As noted, Dr. Williams designation as an impartial medical examiner in the January 8, 1999 injury claim does not accord his report special weight in the current case. *Supra* note 3.

<sup>10</sup> As noted, the fact that Dr. Leatherwood was an impartial medical examiner in the September 18, 2001 traumatic injury claim does not accord his report special weight in this case. *Supra* note 3.

<sup>11</sup> *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

<sup>12</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

<sup>13</sup> *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

right to medical benefits for an accepted condition is not limited to the period of entitlement of disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>14</sup>

### ANALYSIS

Appellant filed a claim for an occupational disease on February 7, 2000, attributing his cervical and thoracic conditions to factors of his federal employment. The Office accepted appellant's claim for aggravation of cervical and thoracic strains on July 8, 2000. The Office paid compensation for medical treatment including chiropractic treatment and physical therapy. The Office terminated authorization for medical treatment due to appellant's July 21, 1999 occupational disease claim based in part on the report of Dr. Williams, a Board-certified orthopedic surgeon, which was dated December 6, 1999. Dr. Williams was selected to resolve a conflict of medical opinion evidence regarding the nature and extent of appellant's disability as a result of his initial employment injury of January 8, 1999.<sup>15</sup> As this is not the current issue, his report is not entitled to any special weight regarding appellant's need for continuing medical treatment arising from his February 7, 2000 occupational disease claim.<sup>16</sup> Dr. Williams performed a physical examination and concluded that appellant's cervical and lumbar sprain and strains had resolved. However, his report was dated December 16, 1999, prior to the filing of appellant's February 7, 2000 claim which was accepted for cervical and thoracic strains. At the time of his examination of appellant, the Office had not yet accepted the aggravation of cervical and thoracic strains that constitute the basis of this claim. Therefore, the 1999 report of Dr. Williams predates the accepted injury in this claim and is not relevant to appellant's condition on or after February 7, 2000. It does not meet the Office's burden of proof to terminate appellant's compensation benefits due to a lack of medical residuals.

The Office also relied on the March 19, 2002 report of Dr. Salem, a Board-certified orthopedic surgeon, which stated that appellant demonstrated multiple levels of chronic long-standing degenerative changes unrelated to accepted September 18, 2001 employment injury, relating to a dog attack. Dr. Salem concluded that appellant did not have residuals of the September 18, 2001 employment injury accepted for aggravation of a lumbar strain. Dr. Leatherwood, a Board-certified orthopedic surgeon, completed an impartial medical examination on January 28, 2003 and opined that appellant's cervical fusion was due to the aggravation of his underlying degenerative disease of the cervical spine on September 18, 2001. These reports offer differing opinions regarding the residuals of appellant's September 18, 2001 employment injury and do not address the issue of whether appellant required further medical treatment as a result of the February 7, 2000 claim, accepted for cervical and thoracic strains. As the reports do not address the central issue in this claim, whether appellant has medical residuals requiring additional medical treatment as a result of the February 7, 2000 occupational disease claim, the Office did not rely properly on these reports to terminate appellant's medical benefits.

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<sup>14</sup> *Mary A. Lowe, supra* note 12.

<sup>15</sup> The remainder of this record is not currently before the Board.

<sup>16</sup> *Joseph Roman, supra* note 4.

The Board finds that the Office has not met its burden of proof to terminate appellant's medical benefits as a result of his February 7, 2000 occupational disease claim. Appellant's physician, Dr. Kimmel opined that on December 19, 2001 appellant required continued chiropractic treatment to relieve pain which resulted from the February 7, 2000 claim. The record currently before the Board does not contain a detailed medical report based on a proper history of injury which establishes that appellant did not require further medical treatment as a result of his accepted February 7, 2000 occupational disease claim.

**CONCLUSION**

The Board finds that the Office failed to meet its burden of proof in establishing that appellant had no continuing medical residuals as a result of his February 7, 2000 occupational disease claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 5, 2006 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 24, 2007  
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