

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

R.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 07-1070
Issued: September 4, 2007**

Appearances:
Thomas Martin, 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 March 12, 2007 appellant filed a timely appeal of the December 20, 2006 decision of the Office of Workers' Compensation Programs, which affirmed the termination of his compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office properly terminated appellant's compensation and medical benefits effective March 27, 2006.

FACTUAL HISTORY

On July 11, 2005 appellant, then a 59-year-old retired letter carrier, filed an occupational disease claim for pain in his right upper extremity, lower back and legs. He attributed his condition to 46 years of working as a letter carrier, during which he regularly carried a mail satchel up and down stairs. Appellant also stated that casing mail contributed to his right

shoulder and arm condition.¹ He identified March 10, 2003 as the date he was first aware of his injury. Appellant last worked on March 29, 2005.

A July 23, 2003 lumbar magnetic resonance imaging (MRI) scan revealed a five millimeter right paracentral disc protrusion at L5-S1, moderate central spinal canal stenosis, and mild posterior displacement of the S1 nerve root. There was also evidence of a mild diffuse posterior disc bulge at L4-5.

In a December 21, 2004 report, Dr. Michael P. Acord, a Board-certified physiatrist, diagnosed spinal stenosis, as confirmed by previous MRI scans. He indicated that appellant's back condition and lower extremity symptoms, including numbness and tingling, weakness, pain, and occasional muscle spasm, precluded appellant from standing and walking, twisting and lifting or carrying heavy objects.

By decision dated October 6, 2005, the Office denied appellant's claim because he failed to establish an employment-related medical condition. Appellant subsequently requested an oral hearing.

While the case was pending before the Branch of Hearings and Review, the Office received an October 12, 2005 report from Dr. Acord, who indicated that appellant's back and shoulder conditions were employment related. Dr. Acord diagnosed shoulder arthritis and spinal stenosis of the lumbar spine. He explained that the mechanism of carrying a heavy satchel contributed to the pain appellant experienced in his back and lower extremities. Dr. Acord also stated that the repetitive motion required for casing mail undoubtedly contributed to appellant's shoulder difficulties.

By decision dated January 13, 2006, the Office hearing representative vacated the October 6, 2005 decision and remanded the case for further development of the record.

On the advice of counsel, appellant was examined on December 27, 2005 by Dr. John B. Dorsey, a Board-certified orthopedic surgeon. In a January 5, 2006 report, Dr. Dorsey diagnosed residuals of cervical spine strain, with cervical spondylosis, foraminal stenosis and multilevel degenerative disc disease. He also diagnosed left shoulder acromioclavicular joint arthritis, bilateral hip osteoarthritis and status post release of right trigger finger and thumb. With respect to appellant's lower back, Dr. Dorsey diagnosed lumbosacral spine strain, multilevel degenerative disc disease, spinal stenosis, foraminal stenosis and right S1 radiculopathy.

Dr. Dorsey noted a lengthy employment history as a letter carrier, ending in March 2005. He reported that appellant was injured at work on eight different occasions, six of which involved motor vehicle accidents that occurred between 1992 and 2003. Following one accident, appellant reported being out of work for approximately three months, and cumulatively he missed about six months of work since 1992. The motor vehicle accidents were not the only reported cause of appellant's neck and back injuries. Dr. Dorsey also noted that appellant

¹ Appellant also claimed to have been involved in six employment-related motor vehicle accidents between 1992 and 2003. Two of the accidents did not result in injury, three reportedly caused a whiplash-type injury and one required medical attention for an injury to appellant's hand.

experienced an increase in neck and back pain after lifting and carrying at work. Additionally, he reported complaints of pain in the right upper extremity and noted that in February 2005 appellant had undergone a right trigger finger and trigger thumb release.

According to Dr. Dorsey, appellant's upper extremity complaints, including the shoulder and right hand, were not disabling. Appellant's hip condition was also not disabling. Dr. Dorsey stated that the primary disabling factor was appellant's spinal column, which affected his neck and low back. He attributed appellant's neck and lower back condition to the six motor vehicle accidents between 1992 and 2003, which was further aggravated by continuing trauma from his letter carrier duties, which included lifting and carrying, twisting, bending, pushing, pulling and reaching. Dr. Dorsey indicated that appellant's condition had been permanently aggravated by his work activities. He explained that individuals develop arthritis and there is a natural progression of the disease, but certain work activities can aggravate and accelerate a degenerative process such as the conditions appellant has in his spinal column, including the neck and low back. Dr. Dorsey believed that appellant's employment injuries aggravated his underlying degenerative condition to the point where it became disabling, and he was no longer able to work. He also expressed agreement with Dr. Acord's October 12, 2005 assessment, noting that appellant's work activities could certainly have permanently aggravated his underlying condition. Dr. Dorsey stated that appellant was significantly disabled and he had permanent impairment of the spine.² He also advised that appellant had reached maximum medical improvement with his treatment, but would require continued care the remainder of his life in the form of medication and possible repeat steroid injections. Dr. Dorsey also noted the possibility of future surgery.

Dr. William C. Boeck Jr., a Board-certified orthopedic surgeon and Office referral physician, examined appellant on March 27, 2006 and diagnosed degenerative disc disease of the lumbar spine. He noted that appellant had nonindustrial degenerative changes in the spine and that the condition was typical of individuals in appellant's age group. However, Dr. Boeck indicated that it was difficult to state what part of appellant's current back condition was attributable to his preexisting degenerative disease and how much was due to work. Dr. Boeck stated that the diagnosed condition was "largely" related to appellant's work duties by "direct cause." He further explained that it was difficult to say from the available information to what degree aggravation of the preexisting degenerative changes played a part in appellant's symptoms and findings, "but certainly it [was] significant." Dr. Boeck next stated that "causation [was] evenly split between aggravation of a preexisting pathology in the lumbar spine and [appellant's] work activities." He also reiterated that the condition was typical of individuals in appellant's age group. Dr. Boeck further indicated that appellant's prognosis was guarded and he would require further medical treatment for relief of symptoms, but there was no current indication for surgical intervention. He also completed a work capacity evaluation (Form OWCP-5c), indicating that appellant was unable to perform his usual duties due to lumbar disc disease and spinal stenosis. However, appellant was capable of working an eight-hour day with a 20-pound restriction on pushing, pulling and lifting, a two-hour limitation on both walking and standing, and a one-hour limitation on bending and stooping.

² Dr. Dorsey provided an impairment rating of 21 percent of the whole person based upon permanent impairment of the cervical and lumbar spine.

By letter dated April 27, 2006, the Office asked Dr. Boeck to comment on appellant's neck, right shoulder and right hand and finger complaints. Additionally, the Office sought clarification on whether appellant's work activities permanently altered the preexisting degenerative spine condition or was there a temporary aggravation, and if the condition was only temporarily aggravated, had the aggravation ceased and had appellant returned to his baseline condition. The Office also provided Dr. Boeck a copy of Dr. Dorsey's January 5, 2006 report. Because the alleged employment-related motor vehicle accidents referenced in Dr. Dorsey's report had not been verified, the Office instructed Dr. Boeck to consider these incidents as nonoccupational.

In a supplemental report dated May 17, 2006, Dr. Boeck stated that, when he examined appellant on March 27, 2006, there were no specific complaints about the right shoulder, right hand, right finger or neck. He also noted that his examination did not disclose any specific positive or objective findings from an orthopedic standpoint. With respect to appellant's back condition, Dr. Boeck stated:

"I did not see any objective medical evidence that would clearly indicate a permanent alteration in the progression or manifestation of the lumbar spine disease or condition. It is more likely than not that the objective findings upon which I commented in my report were related to the degenerative dis[c] disease of the lumbar spine and natural progression, and I did not note any specific entity that definitely indicated that some aspect of this individual's federal employment brought about a definite permanent alteration. He may have had some temporary aggravation by his employment, but I did not note any findings that indicate he had not returned to his baseline normal manifestations of the degenerative disease."³

On June 1, 2006 the Office advised appellant that his claim was accepted for temporary aggravation of degenerative disc disease of the lumbar spine, which resolved as of March 27, 2006. In a separate decision, also dated June 1, 2006, the Office indicated that the claim was accepted only for a closed period ending March 27, 2006, and appellant was not entitled to compensation or medical benefits thereafter. The Office found that Dr. Boeck's March 27 and May 17, 2006 reports represented the weight of the medical evidence.

Appellant requested an oral hearing, which was held on October 10, 2006. At the hearing appellant testified regarding the six employment-related motor vehicle accidents he was involved in. He also testified about a motor vehicle accident in 2000 involving his personal vehicle, which kept appellant out of work for about two and one-half months.

Following the hearing, the employing establishment reviewed the transcript and advised the Office that it could confirm only two employment-related motor vehicle accidents involving appellant. One occurred in 1990 when appellant was rear-ended and another accident occurred in 1996 when appellant attempted to park his work vehicle and struck a private vehicle.

³ Dr. Boeck did not mention Dr. Dorsey's January 5, 2006 report. He also did not comment on what impact, if any, the alleged motor vehicle accidents had on appellant's current condition and he did not revisit his earlier assessment regarding appellant's disability and work restrictions.

In a December 20, 2006 decision, the hearing representative affirmed the Office's June 1, 2006 decision.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁶ 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.⁷

ANALYSIS

On the same day, the Office advised appellant of the acceptance of his claim for temporary aggravation of degenerative disc disease of the lumbar spine, the Office also found that the accepted condition had resolved effective March 27, 2006. The Office's acceptance of a claim for a specified period of disability does not shift the burden of proof to the claimant to demonstrate that he or she remains disabled thereafter.⁸ It is the Office's burden to demonstrate the absence of employment-related disability for the period following termination or modification of benefits.⁹ The Office based its decision to terminate compensation and medical benefits on Dr. Boeck's March 27 and May 17, 2006 reports.

The Board finds that there is an unresolved conflict of medical opinion on the issue of whether appellant continues to experience residuals of his March 10, 2003 accepted employment injury.¹⁰ Dr. Dorsey and Dr. Boeck agreed that appellant was disabled from performing his prior duties as a letter carrier. They also agreed that appellant would likely require further medical treatment for his back condition. However, the two physicians disagreed about the cause of appellant's ongoing back condition. Their disagreement concerned the extent to which appellant's letter carrier duties aggravated the degenerative changes in his spine. Dr. Dorsey believed that appellant's work activities permanently aggravated his condition whereas

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁷ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁸ *Elsie L. Price*, 54 ECAB 734, 739 (2003).

⁹ *Id.*

¹⁰ The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a) (2000); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

Dr. Boeck said he “did not note any specific entity that definitely indicated that some aspect of [appellant’s] federal employment brought about a definite permanent alteration.”

In his initial report, Dr. Boeck expressed difficulty in apportioning the respective causes of appellant’s back condition, but ultimately he characterized the condition as “largely” related to appellant’s work duties. He also stated that the work-related aggravation of appellant’s preexisting degenerative changes was “significant.” However, in his supplemental report, Dr. Boeck noted only that appellant “*may* have had some temporary aggravation by his employment.” (Emphasis added.) Dr. Boeck further commented that there was no indication that appellant had not returned to his baseline condition. Based on this evidence, the Office found that appellant’s employment-related aggravation was only temporary and it had resolved no later than March 27, 2006, the date Dr. Boeck examined appellant. But Dr. Dorsey and Dr. Boeck were not entirely in agreement and the Office made no effort to reconcile their conflicting opinions prior to terminating appellant’s benefits. Because there is an unresolved conflict of medical opinion between appellant’s physician, Dr. Dorsey, and the Office referral physician, Dr. Boeck, the Office failed to carry its burden to terminate benefits.

CONCLUSION

The Board finds that the Office improperly terminated compensation and medical benefits effective March 27, 2006.

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2006 decision of the Office of Workers’ Compensation Programs is reversed.

Issued: September 4, 2007
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