

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

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C.W., Appellant

and

U.S. POSTAL SERVICE, GENERAL MAIL  
FACILITY, Trenton, NJ, Employer

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**Docket No. 07-2122  
Issued: April 2, 2008**

*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  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 15, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' hearing representative's decision dated March 2, 2007, affirming the termination of compensation benefits effective July 8, 2006. 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 compensation for wage-loss and medical benefits effective July 8, 2006.

**FACTUAL HISTORY**

The case was before the Board on a prior appeal.<sup>1</sup> In that appeal, the Board reversed decisions of the Office dated March 11, June 4 and September 8, 1997, finding the evidence did not establish appellant's employment-related condition had ceased by September 13, 1995. The

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<sup>1</sup> Docket No. 98-607 (issued January 24, 2000).

history of the case is contained in the Board's prior decision and is incorporated herein by reference.

Appellant continued to receive compensation for wage loss as a result of her accepted lumbosacral sprain. In a report dated June 8, 2004, Dr. Stephen Roman, an attending orthopedic surgeon, diagnosed chronic low back pain, lumbar degenerative disc disease and lumbar facet arthritis. He noted in his history that appellant had back pain since 1991 while lifting at work, and appellant reported that she was out of work due to chronic pain.

The Office referred appellant to Dr. Lawrence Barr, an osteopath, for a second opinion evaluation. In a report dated August 9, 2004, Dr. Barr provided a history and results on examination. He diagnosed lumbar sprain with preexisting degenerative disc disease. Dr. Barr stated there was causal relationship between a lumbar sprain and the June 1, 1991 work incident. He also stated that appellant was able to work with modification of her job duties.

On September 9, 2004 the Office indicated that there was a conflict in the medical evidence. Appellant was referred to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a referee examination. In a report dated September 24, 2004, Dr. Askin provided a history and results on examination, diagnosing lumbosacral degenerative disc disease. He stated that appellant had arthritic changes in the joints of her back, and, while it was theoretically possible to so overwork a body part as to cause a substantive change, the nature of the employment injury and the "continuation of complaints now 13 years later makes that unlikely to a reasonable degree of medical certainty." Dr. Askin noted that appellant was overweight and stated, "there is nothing about the now ancient injury with any effect upon her prognosis, and there is no medical treatment that could be done to her to effect 'resolution' or relief of the self-imposed encumbrance." He opined that there was no remaining injury-related disability, and no work-related reason to prevent appellant from performing any employment. Dr. Askin indicated there were no objective findings of an employment-related condition and no disabling residuals.

By letter dated October 29, 2004, the Office issued a notification of proposed termination of compensation. On the same date the Office also issued a decision suspending compensation, effective April 19, 2004, for a violation of 5 U.S.C. § 8123(d). This decision was reversed by an Office hearing representative on December 23, 2005.

The record contains additional evidence from Dr. Barr received on December 13, 2004. In a report dated September 24, 2004, Dr. Barr indicated that he had reviewed a videotape of appellant made during an employing establishment investigation, and stated that it did not change his opinion. He stated that there appeared to be an aggravation of a preexisting condition, the lumbar sprain had ceased and appellant was left with problems associated with degenerative disc disease. Dr. Barr reported that no conditions would prevent appellant from returning to work, although a functional capacity evaluation would be helpful before returning to full-time work. In a November 5, 2004 report, he reported that appellant had given a very poor effort in the functional capacity evaluation and it was invalid. Dr. Barr stated that he saw no reason why appellant could not return to work as a postal clerk without restrictions.

By letter dated April 13, 2006, the Office again advised appellant that it proposed to terminate compensation for wage-loss and medical benefits. In a decision dated July 7, 2006, the

Office terminated compensation for wage-loss and medical benefits effective July 8, 2006. Appellant requested a hearing before an Office hearing representative, which was held on December 13, 2006. By decision dated March 2, 2007, the Office hearing representative affirmed the July 7, 2006 decision. The hearing representative found that the weight of the evidence was represented by Dr. Askin.

### **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 disability ceased or that it was no longer related to the employment.<sup>3</sup> 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.<sup>4</sup>

### **ANALYSIS**

In this case the Office found there was a conflict in the medical evidence under 5 U.S.C. § 8123(a) and appellant was referred to Dr. Askin as a referee physician. The Office did not clearly explain the basis for finding a conflict. An attending physician, Dr. Roman, did not offer an opinion regarding a continuing employment-related disability. The second opinion physician, Dr. Barr, indicated in his August 9, 2004 report that appellant could work with restrictions, without further explanation. When the Office referred appellant to Dr. Askin, there was no conflict in the medical evidence. Even though the report of Dr. Askin is not entitled to the special weight afforded to the opinion of an impartial medical specialist resolving a conflict of medical opinion, his reports can still be considered for their own intrinsic value and can still constitute the weight of the medical evidence.<sup>5</sup>

In his September 24, 2004 report, Dr. Askin provided a rationalized medical opinion that residuals of the employment injury had ceased. He reviewed the history and medical evidence, the nature of the employment incident, the period of time since the injury and the lack of objective findings. Dr. Askin provided an unequivocal opinion that appellant did not continue to have an employment-related condition.

In addition, the additional reports from Dr. Barr further support a finding that employment-related residuals had ceased. In his November 5, 2004 report, Dr. Barr noted the results of a functional capacity evaluation and opined that appellant could work without restrictions. On the other hand, appellant did not submit any probative evidence supporting that she continued to have residuals or disability from the accepted lumbosacral strain. Neither Dr. Roman nor any other attending physician provided a medical opinion on the relevant issue.

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<sup>2</sup> *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

<sup>3</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

<sup>4</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>5</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

The Board finds that the weight of the medical evidence supports the Office's determination that residuals of the employment injury had ceased as of July 8, 2006.<sup>6</sup> It is the Office's burden of proof, and they met their burden in this case.

**CONCLUSION**

The Office properly terminated compensation for wage-loss and medical benefits effective July 8, 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 2, 2007 is affirmed.

Issued: April 2, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>6</sup> Appellant argued the reports of Drs. Askin and Barr were almost two years old at the time of the termination, but this does not diminish their probative value and any delay in terminating compensation was not adverse to appellant.