

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

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A.P., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Charlotte, NC, Employer

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**Docket No. 08-1822  
Issued: August 5, 2009**

*Appearances:*  
*Appellant, pro se*  
*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 June 16, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 30, 2007, denying modification of a termination of compensation effective June 10, 2007. 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 properly terminated compensation for wage-loss and medical benefits effective June 10, 2007.

**FACTUAL HISTORY**

Appellant, then a 38-year-old substitute letter carrier, was injured on December 24, 1964 when a dog ran up behind her and caused her to turn quickly and twist her back. The Office accepted that appellant sustained a lumbosacral sprain and aggravation of lumbar spondylosis without myelopathy causally related to the employment incident. The record reflects that on January 31, 1980 the Office had determined that appellant's actual earnings in a modified position fairly and reasonably represented her wage-earning capacity. Appellant returned to

work in a modified position and continued to receive compensation based on her loss of wage-earning capacity. She regularly submitted updated medical reports to the Office, as requested.

As part of the periodic review of the file in 2006, appellant was again requested to obtain a medical report to establish continuing disability. She submitted a medical report from Dr. Anthony Kwon, an orthopedic surgeon, Arthritis Clinic and Carolina Bone and Joint, dated December 14, 2006. Dr. Kwon provided a history and results on examination and reported normal range of motion and strength with mild pain in the lumbar spine and that her condition “is stable and although, it is still present and I will see her back as needed.” (sic)

In a report dated January 3, 2007, an attending orthopedic surgeon, Dr. Sarjoo Bhagia, provided a history and results on examination. He noted that appellant had been receiving compensation for partial disability for 42 years, but opined that appellant had recovered from her December 24, 1964 employment injury. Dr. Bhagia noted that although appellant suffers from lumbar spondylosis, an age-related condition, any work-related aggravation of lumbar spondylosis had resolved. He noted that appellant could not return to the preinjury position, but she could perform sedentary work with restrictions of avoiding lifting more than 20 pounds and avoiding excessive bending and twisting of her lumbar spine.

In a letter dated April 11, 2007, the Office notified appellant that it proposed to terminate her compensation based on the medical evidence. It found the medical report of Dr. Bhagia was the weight of the evidence and established that her disability had resolved. Appellant provided no response to the proposed termination decision, and on May 23, 2007 the Office issued the final termination notice for wage-loss and medical benefits effective June 10, 2007.

Appellant requested reconsideration of her claim in a letter received by the Office on October 12, 2007. By report dated August 1, 2007, Dr. Bhagia noted appellant’s disagreement with his earlier report but reiterated that, “I do not see any evidence on x-rays dated March 12, 2004 that could be directly linked to the injury of December 1964.” In a report dated September 12, 2007, Dr. James Boatright, an orthopedic surgeon, provided results on examination. He stated that appellant “does have degenerative disease of the lower spine although this well could be and is likely caused by injuries of many years ago and, certainly, if not absolutely caused by it, could be enhanced by it.” In a report dated September 14, 2007, Dr. Frank E. Lorch, an orthopedic surgeon, provided a history and results of physical and radiologic examinations. He stated that appellant had recovered from her work-related injury, and any residual pain was due to the degenerative process.

By decision dated November 30, 2007, the Office reviewed the case on its merits and found the evidence was insufficient to warrant modification.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>1</sup> The right to medical

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<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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>2</sup>

Rationalized medical opinion evidence is medical evidence based on a complete factual and medical background of reasonable medical certainty and supported by medical rationale explaining the opinion offered.<sup>3</sup>

After termination or modification of benefits are clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.<sup>4</sup>

### ANALYSIS

The Office terminated compensation for wage-loss and medical benefits as of June 10, 2007 based on the report of attending physician Dr. Bhagia. The January 3, 2007 report from Dr. Bhagia provided a history and results on examination. He opined that appellant's current lumbar spondylosis was age related and the work injuries had resolved. He provided a rationalized medical opinion based on a complete factual and medical background. Appellant had an opportunity to submit additional relevant medical evidence prior to the May 23, 2007 Office decision, but none was submitted. The Board finds the weight of the medical evidence was represented by Dr. Bhagia, and the Office met its burden of proof to terminate compensation for wage-loss and medical benefits.

As noted above, appellant had received a loss of wage-earning capacity determination in 1980. The Board has established that once a loss of wage-earning capacity is determined, it remains in place unless modified.<sup>5</sup> A modification of such a determination is not warranted unless there is a material change in the nature and extent of the employment-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was in fact erroneous.<sup>6</sup> In certain situations, however, if the medical evidence is sufficient to meet the Office's burden of proof to terminate benefits, the same evidence may also negate a loss of wage-earning capacity such that a separate evaluation of the existing wage-earning capacity determination is unnecessary.<sup>7</sup> The Office's burden to demonstrate no further disability is effectively the same, irrespective of whether there is an existing determination in place finding loss of earning capacity. Case law may suggest that a threshold evaluation of the wage-earning capacity needs to be performed before there is a termination of benefits. The

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<sup>2</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>3</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

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

<sup>5</sup> A wage-earning capacity determination remains in effect until it is properly modified. *See Katherine T. Kreger*, 55 ECAB 633 (2004).

<sup>6</sup> *George W. Coleman*, 38 ECAB 782, 788 (1987); *Ernest Donelson, Sr.*, 35 ECAB 503, 505 (1984).

<sup>7</sup> There may exist a situation where a separate analysis would be necessary, based on preexisting conditions or other medical conditions, but that situation does not present itself in this case. Should those particular facts arise, this decision does not preclude a further consideration of the matter.

Board finds, however, that the burden is often substantially the same, the evidence is the same and the process of terminating benefits need only be done once. While a claimant may still have unrelated medical conditions or impairments, the medical evidence must establish that the employment-related disability and medical conditions no longer exist.

In this case, as the Board finds that the Office properly terminated benefits, no further analysis on the modification of the wage-earning capacity is necessary.

Following the termination, appellant submitted an August 1, 2007 report from Dr. Bhagia which supported the termination as he found that her work-related aggravation of spondylosis had resolved. The September 12, 2007 report from Dr. Boatright noted that appellant had a degenerative lumbar condition that “could be and is likely caused” by earlier injuries. He does not provide a complete factual and medical history or medical rationale as to causal relationship between a degenerative lumbar condition and the employment injury from 1964. The record also contains a September 14, 2007 report from Dr. Lorch, who indicated that appellant had recovered from her work injuries. The Board finds the evidence submitted after May 23, 2007 does not establish an employment-related condition or disability after June 10, 2007.

**CONCLUSION**

The Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective June 10, 2007.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers’ Compensation Programs dated November 30, 2007 is affirmed.

Issued: August 5, 2009  
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