

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

N.P., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Syracuse, NY, Employer)

**Docket No. 08-1587
Issued: July 1, 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
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 14, 2008 appellant filed a timely appeal from a February 6, 2008 decision of the Office of Workers' Compensation Programs, denying her claim for continuing disability after May 12, 2006, the date that her wage-loss compensation and medical benefits were terminated. Because more than one year has elapsed from the November 2, 2006 merit decision addressing the issue of termination to the filing of this appeal, the Board lacks jurisdiction to review this issue pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant met her burden of proof to establish that she had any employment-related disability or medical condition after May 12, 2006 causally related to her March 26, 2003 employment injury.

FACTUAL HISTORY

On April 10, 2003 appellant, then a 38-year-old clerk, filed a claim for a traumatic injury alleging that she injured her back, head and right upper and lower extremity on March 26, 2003

when she was struck by a motor vehicle while walking in the employing establishment parking lot. The Office accepted her claim for a right wrist sprain, lumbar sprain, headaches and bilateral contusion of the eyes and associated ocular structures (adnexa).

In reports dated November 29 and December 29, 2004 and May 30, 2005, Dr. Julianne Dubiel, an attending Board-certified family practitioner, indicated that appellant had continuing medical problems related to her employment injury. In reports dated August 30 and December 15, 2004, Dr. Nabil A. Aziz, a Board-certified neurologist and psychiatrist and Office second opinion physician, reviewed the medical history and provided findings on physical examination. He stated that there was no objective evidence, a residual disability or medical condition causally related to appellant's March 26, 2003 employment injury. Dr. Aziz opined that she could perform her regular duties without restrictions.

On June 9, 2005 the Office found a conflict in the medical opinion evidence between Dr. Dubiel and Dr. Aziz as to whether she had any remaining disability or medical condition causally related to her March 26, 2003 employment injury. It referred appellant to Dr. Patrick J. Hughes, a Board-certified neurologist, psychiatrist and an impartial medical specialist, together with a statement of accepted facts, a list of questions and the case record, for an independent medical examination and evaluation.

In a report dated July 15, 2005, Dr. Hughes reviewed the medical history and provided findings on physical examination. He concluded that appellant had recovered from her March 26, 2003 employment injury and could return to work without restrictions.

By decision dated October 11, 2005, the Office terminated appellant's wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence, represented by the opinion of Dr. Hughes, established that she had no continuing disability or medical condition causally related to her March 26, 2003 employment injury.

On November 9, 2005 appellant requested a review of the written record. By decision dated January 19, 2006, an Office hearing representative set aside the October 11, 2005 decision and remanded the case for further development of the medical evidence. The hearing representative instructed the Office to request a supplemental report from Dr. Hughes which reflected that he had reviewed all of the relevant medical reports.

In reports dated March 31 and April 21, 2006, Dr. Hughes reviewed additional medical reports, diagnostic test results and an updated statement of accepted facts. He reiterated his opinion that appellant had recovered from her March 26, 2003 accepted right wrist sprain, lumbar sprain, headaches and bilateral contusion of the eyes.

On May 12, 2006 the Office terminated appellant's wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence, represented by the opinion of Dr. Hughes, established that she had no continuing disability or medical condition causally related to her March 26, 2003 employment injury.

By decision dated November 2, 2006, an Office hearing representative affirmed the May 12, 2006 decision.

Appellant requested reconsideration and submitted additional evidence. In reports dated December 12, 2006 and October 22, 2007, Dr. Joseph Camseri, a family practitioner, noted that appellant was a new patient who wished to obtain multiple specialty referrals regarding several medical problems. Appellant provided a history of having been struck by a car three years earlier and having been treated for a herniated disc, myofascial pain syndrome, postconcussion syndrome and seizures, migraine headaches, neuropathy, neuralgia, neuritis, radiculitis and depression. Dr. Camseri diagnosed myalgia, myositis, lumbago and migraine headaches. In reports dated August 27, September 21 and November 22, 2007, Dr. Suzanne Lamanna, an osteopathic physician specializing in family medicine, stated that appellant had been a patient since October 2004. She provided a history of the March 26, 2003 employment injury and subsequent treatment. Dr. Lamanna diagnosed a disc herniation, chronic pain, neuropathy and myofascial pain syndrome. She opined that appellant was totally disabled due to residuals of her March 26, 2003 employment injury. In an August 16, 2004 report, Dr. Lawrence B. Hurwitz, a psychiatrist, diagnosed depression which was caused by chronic pain related to appellant's accident on March 26, 2003 when appellant was struck by a motor vehicle. He indicated that he had treated her since October 2003. Appellant also submitted evidence previously of record.

By decision dated February 6, 2008, the Office found that appellant failed to establish that she had any continuing disability or medical condition causally related to her March 26, 2003 employment injury after termination of her compensation benefits on May 12, 2006. It found that the medical evidence she submitted was not sufficient to outweigh or create a conflict with the medical opinion of Dr. Hughes that her accepted conditions had resolved. The Office denied modification of the November 2, 2006 decision.

LEGAL PRECEDENT

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the employment injury.¹ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence the burden for reinstating compensation benefits shifts to the employee. In order to prevail, the employee must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.²

ANALYSIS

The Board finds that, following the termination of her compensation and medical benefits on May 12, 2006, appellant failed to establish that she had any continuing disability or medical condition causally related to her March 26, 2003 employment-related right wrist sprain, lumbar sprain, headaches and bilateral contusion of the eyes.

¹ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Anna M. Blaine*, 26 ECAB 351, 353-54 (1975); see *Fred Foster*, 1 ECAB 127, 132-33 (1948).

² *I.J. supra* note 1; *Gary R. Sieber*, 46 ECAB 215, 222 (1994); see *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

In reports dated December 12, 2006 and October 22, 2007, Dr. Camseri noted appellant's history of being struck by a car three years earlier and having been treated for numerous medical conditions. He diagnosed myalgia, myositis, lumbago and migraine headaches. However, these diagnosed conditions were not accepted by the Office as causally related to the March 23, 2006 employment injury. Dr. Camseri provided insufficient explanation as to how these conditions were causally related to the March 26, 2003 employment injury. Therefore, his reports do not establish that appellant had any work-related residual disability or medical condition after the termination of her wage-loss compensation and medical benefits on May 12, 2006.

In reports dated August 27, September 21 and November 22, 2007, Dr. Lamanna provided a history of appellant's March 26, 2003 employment injury, subsequent treatment and diagnosed a disc herniation, chronic pain, neuropathy and myofascial pain syndrome. She opined that appellant was totally disabled due to residuals of her March 26, 2003 employment injury. However, the medical conditions Dr. Lamanna diagnosed in 2007 are not accepted conditions in this case. She provided insufficient rationale explaining how the conditions are causally related to the March 26, 2003 employment injury. Therefore, Dr. Lamanna's opinion that appellant was totally disabled in 2007 due to her March 26, 2003 employment injury is not sufficient to establish that she had any work-related disability or medical condition after the termination of her wage-loss compensation and medical benefits on May 12, 2006.

In an August 16, 2004 report, Dr. Hurwitz stated that he began treating appellant in October 2003 for depression. He opined that this condition was caused by chronic pain related to her March 26, 2003 accident at work when she was struck by a motor vehicle. However, depression is not an accepted condition. Dr. Hurwitz failed to provide sufficient explanation to establish that appellant's depression was causally related to the March 26, 2003 employment injury. Additionally, his report predates the May, 12, 2006 termination decision. Therefore, Dr. Hurwitz report does not establish that appellant had any disability or medical condition after May 12, 2006 causally related to her March 26, 2003 employment injury.

The Board finds that appellant failed to meet her burden of proof to establish that she had any residual disability or medical condition after May 12, 2006 causally related to her March 26, 2003 employment injury. The medical evidence provided with her request for reconsideration is not sufficient to outweigh or create a conflict with the medical opinion of Dr. Hughes that her accepted conditions had resolved.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she had any employment-related disability or medical condition after termination of her compensation and medical benefits on May 12, 2006 causally related to her March 26, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 6, 2008 is affirmed.

Issued: July 1, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board