

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

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**B.T., Appellant**

**and**

**U.S. POSTAL SERVICE, HAMILTON ANNEX,  
Yardville, NJ, Employer**

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**Docket No. 08-1885  
Issued: June 3, 2009**

*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  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On June 25, 2008 appellant, through counsel, filed a timely appeal of a March 20, 2008 decision of the Office of Workers' Compensation Programs' hearing representative affirming the termination of her compensation for wage-loss and medical benefits effective September 24, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

**ISSUES**

The issues are: (1) whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective September 24, 2007 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injury; and (2) whether appellant had any continuing employment-related residuals or disability after September 24, 2007.

## **FACTUAL HISTORY**

On January 31, 2006 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim alleging that, on January 30, 2006 she felt a strain in her back while pushing an all purpose container full of mail. The Office accepted the claim for lumbar region sprain/strain and paid appropriate compensation. Appellant stopped work on January 31, 2006 and was placed on the periodic rolls for temporary total disability by letter dated May 22, 2006.

In a report dated February 13, 2007, Dr. David Weiss, an attending osteopath, noted he had been treating appellant for her January 30, 2006 employment injury. He noted that appellant had previously sustained work injuries to her lumbar spine in 1990, 1996, 1998 and 2000. Dr. Weiss diagnosed post-traumatic lumbosacral strain and sprain, post-traumatic bilateral sacroiliac joint dysfunction, and aggravation of preexisting lumbar pathology from her prior work injuries. A March 2, 2006 magnetic resonance imaging (MRI) scan revealed an L4-5 disc bulge and spinal stenosis and mild degenerative changes. In concluding, Dr. Weiss opined that appellant has a permanent lumbar spine injury and is capable of working four hours per day with restrictions.

On March 23, 2007 the Office referred appellant to Dr. Zohar Stark, a Board-certified orthopedic surgeon, for a second opinion to clarify her work capability. In a report dated April 10, 2007, Dr. Stark opined that there was no objective evidence supporting a lumbar sprain. He noted that appellant sustained employment-related back injuries in 1990, 1996, 1998 and 2000. A physical examination revealed some paralumbar spine and bilateral sacroiliac joint tenderness with no spasm. Dr. Stark also reported no lower extremity motor or sensory deficits. He noted that appellant had subjective complaints of pain which he attributed to her lumbar spine degenerative disc disease, which “may have been aggravated by the incident at work on [January] 30, [20]06.” In concluding, Dr. Stark opined that appellant’s accepted lumbar strain had resolved and she was capable of performing her usual duties with no restrictions.

On June 20, 2007 the Office referred appellant along with a statement of accepted facts, a list of questions and the medical record to Dr. Gregory S. Maslow a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion evidence between Drs. Weiss and Stark as to whether appellant had any residuals of her employment-related injury. In a July 16, 2007 report, Dr. Maslow, based upon a review of the medical evidence, statement of accepted facts and physical examination, concluded that appellant’s accepted lumbar sprain had resolved. A physical examination revealed diffuse lumbar spine tenderness and full extension. Range of motion included 75 degrees lumbar forward flexion and 75 percent of expected lumbar sideward bending and rotation. Dr. Maslow attributed appellant’s complaints of back pain to her degenerative back disease and obesity. He stated that while appellant had a long and chronic history of lower back pain, the objective evidence was insufficient to establish that her back complaints were causally related to her January 30, 2006 employment injury. Dr. Maslow further opined that, while appellant’s preexisting degenerative lumbar disc disease had been aggravated by the January 30, 2006 employment injury, any aggravation had been temporary and was currently resolved. In concluding, he opined that appellant had no residuals or disability due to her accepted January 30, 2006 employment injury and that she was capable of performing the duties of a letter carrier with no restrictions.

On August 24, 2007 the Office proposed to terminate appellant's compensation benefits. It determined that, based on Dr. Maslow's report, appellant's injury-related disability had ceased. Appellant was afforded 30 days within which to submit any additional evidence.

By decision dated September 27, 2007, the Office finalized the termination of appellant's compensation benefits effective that date. It found that the weight of the evidence rested with the opinion of Dr. Maslow, the impartial medical examiner.

On October 1, 2007 appellant, through counsel, requested an oral hearing. At the hearing, held on January 16, 2008, she contended that the Office had not properly developed the medical evidence and that Dr. Maslow's report was not based on a proper factual history.

Subsequent to appellant's request for an oral hearing, she submitted progress notes for 2006, 2007 and a November 1, 2007 report by Dr. Weiss, who diagnosed L4-5 bulging disc, chronic post-traumatic lumbar sprain and strain, lumbar radiculopathy and aggravation of preexisting lumbar condition in his numerous progress notes. In a report dated November 1, 2007, Dr. Weiss noted appellant medical and employment injury history. He diagnosed L4-5 bulging disc, chronic post-traumatic lumbar sprain/strain, lumbar radiculopathy and aggravation of preexisting lumbar condition by October 1990, March 1996, August 1998 and February 2000 employment injuries. A physical examination of the lumbar spine revealed tenderness, range of motion restrictions and ongoing pain. In concluding, Dr. Weiss opined that appellant has permanent impairment as a result of the January 30, 2006 employment injury.

By decision dated March 20, 2008, affirmed the September 27, 2007 decision terminating appellant's compensation benefits. The hearing representative found the Dr. Maslow's July 16, 2007 medical opinion was based on a proper factual history and properly constituted the weight of the medical evidence to terminate appellant's benefits.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.<sup>1</sup> 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>2</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>4</sup> To terminate authorization for medical treatment,

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<sup>1</sup> *A.W.*, 59 ECAB \_\_\_ (Docket No. 08-306, issued July 1, 2008).

<sup>2</sup> *J.M.*, 58 ECAB \_\_\_ (Docket No. 06-661, issued April 25, 2007).

<sup>3</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>4</sup> *T.P.*, 58 ECAB \_\_\_ (Docket No. 07-60, issued May 10, 2007).

the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>5</sup>

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the Office properly determined that a conflict in the medical opinion evidence arose between Dr. Weiss, an attending osteopath, and Dr. Stark, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to her accepted January 30, 2006 employment-related injury. Dr. Weiss opined that appellant suffered from continuing employment-related residuals and total disability. Dr. Stark opined that appellant's employment-related lumbar sprain had resolved and she could return to work with no restrictions.

Dr. Maslow reviewed appellant's medical history, the history of injury and statement of accepted facts. He examined appellant and noted that she had diffuse lumbar tenderness, 75 degrees forward flexion and full extension and 75 percent of expected lumbar sideward bending and rotation. Dr. Maslow diagnosed a lumbar strain and that appellant's preexisting degenerative lumbar disc disease had been temporarily aggravated by her accepted January 30, 2006 employment injury. He stated that, while appellant had a long and chronic history of lower back pain, the evidence was insufficient to establish that her back complaints were causally related to her January 30, 2006 employment injury. Dr. Maslow attributed appellant's current condition to degenerative disc disease and obesity and pointed out that there was no evidence to support her objective complaints. In concluding, he opined that appellant had no residuals or disability due to her accepted January 30, 2006 employment injury and that she was capable of performing the duties of a letter carrier with no restrictions.

The Board finds that Dr. Maslow's July 16, 2007 opinion is based on a proper factual and medical background and is entitled to special weight. Based on his review of the case record, statement of accepted facts physical examination and negative findings on objective examination, he found that appellant did not have any residuals or disability causally related to her employment-related lumbar sprain. Dr. Maslow noted that while appellant's preexisting degenerative lumbar disease had been aggravated by the January 30, 2006 employment injury, any aggravation was temporary and the condition was currently resolved. He noted appellant had a chronic and long history of pain which he attributed to her obesity and degenerative back disease. Dr. Maslow's report was based on a proper history and was well rationalized. His report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist. The Board, therefore, finds that the Office met its burden of proof to terminate appellant's compensation benefits on September 27, 2007.

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<sup>5</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>6</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

## LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.<sup>7</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>8</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>9</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

## ANALYSIS -- ISSUE 2

After the Office properly terminated appellant's compensation in its September 27, 2007 decision, the burden of proof shifted to her to establish continuing employment-related disability.<sup>11</sup> Appellant submitted a November 7, 2007 report and 2006 and 2007 progress notes by Dr. Weiss diagnosing L4-5 bulging disc, chronic post-traumatic lumbar sprain/strain, lumbar radiculopathy and aggravation of preexisting lumbar condition. Dr. Weiss, however, was on one side of the conflict which was resolved by Dr. Maslow. His November 7, 2007 reports are essentially duplicative of his prior reports on whether appellant continues to suffer from L4-5 bulging disc, chronic post-traumatic lumbar sprain/strain, lumbar radiculopathy and aggravation of preexisting lumbar condition which helped to create the conflict and would be insufficient to give rise to a new conflict or otherwise show that the termination was improper.<sup>12</sup> Accordingly, the Board finds that Dr. Maslow's opinion continues to constitute the special weight of medical opinion, and affirm the Office's March 20, 2008 hearing representative's decision affirming the termination of her compensation and denying any entitlement to continuing disability after September 27, 2007 based on the accepted employment conditions of lumbar sprain/strain.

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<sup>7</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>8</sup> *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>9</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>10</sup> *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007); *Solomon Polen*, 51 ECAB 341 (2000).

<sup>11</sup> *I.J.*, *supra* note 5; *Joseph A. Brown, Jr.*, *supra* note 7.

<sup>12</sup> *M.S.*, 58 ECAB \_\_\_\_ (Docket No. 06-797, issued January 31, 2007).

**CONCLUSION**

The Board finds that the Office properly terminate appellant's wage-loss and medical benefits, effective September 24, 2007, on the grounds that she had no residuals or disability related to her accepted employment injury. The Board also finds that appellant has failed to establish that she had any employment-related residuals or disability after September 24, 2007 due to her accepted lumbar sprain/strain.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' hearing representative dated March 20, 2008 is affirmed.

Issued: June 3, 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