

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

S.B., Appellant

and

**U.S. POSTAL SERVICE, RESEARCH
TRIANGLE PARK STATION, Durham, NC,
Employer**

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**Docket No. 08-1741
Issued: March 10, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 3, 2008 appellant filed a timely appeal from an April 22, 2008 decision of the Office of Workers' Compensation Programs denying his claim for further compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he continues to have disability or residuals related to his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board on appeal. The facts and the history of the case are incorporated by reference. The relevant facts are briefly set forth below.

The Office accepted that on April 11, 2002 appellant, then 39 years old, sustained a lumbar strain when he slipped and fell on steps while carrying a tub of mail, in his capacity as an

express mail messenger. On May 24, 2005 it proposed termination of appellant's benefits based on the report of Dr. Donald Getz, a Board-certified orthopedic surgeon and second opinion physician, who found that appellant could return to work without restriction. By decision dated June 27, 2005, the Office terminated medical and wage-loss benefits. An oral hearing was held before an Office hearing representative on July 27, 2006. In a September 28, 2006 decision, the hearing representative affirmed the decision terminating benefits. By decision dated June 21, 2007, the Board affirmed the September 28, 2006 decision of the hearing representative, finding that the Office properly terminated appellant's compensation benefits on June 27, 2007 and that appellant did not establish a continuing disability or residuals caused by his work-related lumbar strain.

On January 23, 2008 appellant filed a request for reconsideration. In a January 18, 2008 statement, he contended that he had a continuing disability. Appellant also argued in detail that Dr. Getz was fraudulent and that this single evaluation was insufficient to determine that he did not suffer any continuing disability. In support of his claim, he submitted a November 6, 2006 letter from the Office of Personnel Management and a December 4, 2007 letter from the Social Security Administration, both finding that he is currently disabled.

Appellant also submitted several medical records. A July 25, 2006 magnetic resonance imaging (MRI) scan of appellant's lumbosacral spine and lumbar spine revealed bulging annulus fibrosis at L3-4, disc herniation with resultant foraminal stenosis at L4-5, and moderate-to-marked disc space narrowing at L4-5 and L5-S1. Further, in September 26, 2006 medical reports, Dr. Scot E. Reeg, a Board-certified orthopedic surgeon, diagnosed degenerative disc disease. In a February 20, 2007 medical report, he mentioned a potential future need for multilevel artificial disc replacement. In a medical report dated May 25, 2007, Dr. Duncan Fagundus, a Board-certified rheumatologist, diagnosed polymyositis and symptoms of parotid gland hypertrophy. Appellant additionally submitted several past medical records dated May 1, 2002 through January 19, 2004.

In a decision dated April 22, 2008, the Office denied modification, finding that appellant did not provide sufficient medical evidence to establish a continued work-related disability.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.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 has an employment-related disability which continued after termination of compensation benefits.²

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).

ANALYSIS

The Office accepted that appellant sustained a lumbar strain in the performance of duty and that he was temporarily totally disabled. On prior appeal, the Board determined that the Office properly terminated appellant's disability compensation on June 27, 2005. The issue is whether appellant has met his burden of proof to establish that he continues to have a work-related disability.

The Board notes appellant's complaint as to the weight and sufficiency given to Dr. Getz's medical report in determining that he is no longer disabled. The Board, in its June 21, 2007 decision, has already determined that the Office properly terminated appellant's compensation on June 27, 2005 based on this examination, which was adequate and carried the weight of medical opinion evidence. According to 20 C.F.R. § 501.6(d), the Board's decision became final after 30 days.³ The Office did not further address the issue of whether appellant's compensation was properly terminated, thus this subject matter is *res judicata* and not subject to further consideration by the Board.⁴ Because the Office properly terminated appellant's disability compensation, the burden shifted to appellant to prove that he is still disabled due to an employment-related condition.⁵

Appellant submitted letters dated December 4, 2007 from the Social Security Administration and November 6, 2006 from the Office of Personnel Management concluding that he was still disabled. This evidence is irrelevant to the Office's determination of disability. Decisions of other agencies regarding disability are not binding on the Office because the standards for establishing work-related disability under the Federal Employees' Compensation Act⁶ (the Act), which governs the Office and the Board, are not the same standards set for disability retirement or social security benefits.⁷ For example, the Social Security Administration considers a person disabled if he or she is unable to engage in gainful employment⁸ and the Office of Personnel Management looks at an employee's inability to perform the duties of his or her position because of work or nonwork-related conditions.⁹ The Act has its own specific standard for determining disability, requiring a causal relationship between the claimant's disability and the accepted work injury. Thus, the decisions of other agencies are not determinative of the issue in this case.¹⁰

³ See also *Joseph A. Brown*, 55 ECAB 543 (2004).

⁴ See 5 U.S.C. § 8128; *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

⁵ *Supra* note 3.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Raj B. Thackurdeen*, 54 ECAB 396 (2003).

⁸ See *id.*; *Hazelee K. Anderson*, 37 ECAB 277 (1986).

⁹ See *id.*; *Earl L. Swanson*, 29 ECAB 707 (1978).

¹⁰ See 5 U.S.C. § 8102(a); *supra* note 4.

Appellant further submitted an MRI scan and medical reports dated September 26, 2006 signed by Dr. Reeg and February 20, 2007 signed by Dr. Fagundus, which discussed his ongoing advanced degenerative disc disease and polymyositis. These reports are also insufficient to establish appellant's burden of proof because they do not address whether appellant is disabled. Further, neither polymyositis nor degenerative disc disease are accepted conditions; rather the only condition accepted by the Office is a lumbar strain. In order to establish continuing disability, appellant must show that he is disabled due to an employment-related condition.¹¹ Because there is no evidence to establish that appellant's degenerative disc disease or polymyositis is causally related to his employment injury, this evidence does not meet appellant's burden of proof.

Finally, appellant submitted several medical records dated May 1, 2002 through January 19, 2004. These records predate the termination of appellant's compensation on June 27, 2005 and are irrelevant to the issue of whether appellant has a continuing disability.

Therefore, the Board finds that appellant did not submit evidence sufficient to establish that he has a continuing work-related disability.

CONCLUSION

The Board finds that appellant did not establish that he continued to have disability or residuals related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ See *supra* note 3.