

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

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**J.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
East Ventura, CA Employer**

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**Docket No. 09-1197  
Issued: February 1, 2010**

*Appearances:*  
*Raquell Krueger-Denio*, 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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 2, 2009 appellant timely appealed a February 10, 2009 merit decision of the Office of Workers' Compensation Programs regarding the termination of her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether the Office properly terminated appellant's compensation benefits as of March 17, 2008 due to her February 3, 1995 and April 22, 2003 employment injuries.

**FACTUAL HISTORY**

On April 22, 2003 appellant, then a 41-year-old letter carrier, sustained injury to her low back as a result of pulling a parking brake on a two-ton truck. She stopped work on May 15, 2003 and returned to modified duty on June 1, 2004.<sup>1</sup> The Office assigned the claim file number

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<sup>1</sup> Appellant stopped work again on June 5, 2004 and thereafter began working intermittently in the acting and entertainment field. The Office paid wage-loss compensation through June 1, 2004.

xxxxxx198 and accepted a lumbar strain. It paid appropriate benefits. Appellant has other claims associated with her file. Under file number xxxxxx238, the Office accepted a lumbar strain as a result of her tripping while delivering mail on February 3, 1995. In a May 15, 1997 decision, it denied that appellant's degenerative disc disease condition was causally related to her 1995 work injury. Under file number xxxxxx278, the Office accepted a lumbar sprain as a result of her bending over to pick up a letter on August 1, 2006 and consolidated the claims under this file number. In a March 4, 2008 decision, an Office hearing representative affirmed the Office's May 3, 2007 decision terminating entitlement to compensation benefits effective May 3, 2007 on the basis appellant no longer suffered from residuals or disability causally related to her August 1, 2006 work injury. Determinative weight was accorded to the December 13, 2006 opinion of Dr. Joseph P. Conaty, a Board-certified orthopedic surgeon and Office referral physician, who found that the lumbar strain sustained as a result of the August 1, 2006 work injury had resolved and no residuals from that injury remained.

Under file number xxxxxx238, Dr. Alan M. Gross, a Board-certified orthopedic surgeon, diagnosed appellant with lumbar radiculopathy with disc protrusions at L3-4 and L5-S1 based on magnetic resonance imaging (MRI) scan studies in a May 4, 2004 report.

The record reflects that, following the April 22, 2003 injury, appellant was seen for a second opinion evaluation by Dr. Richard Pollis, a Board-certified orthopedic surgeon. In a February 9, 2004 report, Dr. Pollis diagnosed increased low back pain due to sprain injury and cumulative trauma with discogenic disease at multiple levels. He opined that appellant's 1995 back injury was aggravated as a result of cumulative and repetitive trauma as a result of repetitive lifting of up to 25 pounds in her permanent modified job and by the trauma she sustained on April 22, 2003. Dr. Pollis stated that her clinical condition worsened since April 22, 2003, noting that prior to that date she was able to perform her modified-job duties. He opined that both the accepted work injuries and appellant's cumulative duties had caused a change in her underlying degenerative disc disease condition as her degenerative disc disease had progressed since 1995 based upon MRI scan reports. However, Dr. Pollis noted that her condition was improving, that she should pursue work hardening and that she likely could return to modified duty within six to eight weeks.

In a February 28, 2007 report, Dr. Daniel Capen, a Board-certified orthopedic surgeon and appellant's attending physician, diagnosed lumbar discopathy, lumbar spondylolisthesis at L4 on L5 and lumbar disc protrusions at L3-4, L4-5 and L5-S1. He opined that she reached maximum medical improvement. Dr. Capen stated, "there is no basis whatsoever to assume that [appellant's] problem is due to anything other than the work-related injury of April 22, 2003. There is no apportionment." In an April 4, 2007 report, he diagnosed spondylolisthesis and degenerative discopathy and opined that appellant was permanently disabled from the employing establishment.

The Office referred appellant for a second opinion evaluation by Dr. G.B. Ha'Eri, a Board-certified orthopedic surgeon, to determine whether she had residuals of her accepted lumbar strains arising from the February 3, 1995 injury and April 23, 2003 the parking brake incident. Dr. Ha'Eri was provided a statement of accepted facts, which noted each of appellant's claims, a list of questions and her medical record. In a June 13, 2007 report, he noted physical examination of the spine was essentially normal with the exception of limited range of extension

in the lumbar spine. Dr. Ha'Eri diagnosed lumbar strain and multilevel degenerative discs/facet arthrosis/minimal disc protrusion at L3-4, L4-5 and L5-S1 per MRI scan studies. He opined that appellant no longer had residuals of the lumbar strains sustained in the two work-related injuries of 1995 and 2003. Dr. Ha'Eri noted that she had medical care with sufficient length for each episode. He stated that appellant's residual symptoms were due to multilevel degenerative changes of the lumbar spine, which was nonindustrial and degenerative in nature, as objectively shown by MRI scan studies. Dr. Ha'Eri opined that the pulling of parking brakes on April 23, 2003 did not affect appellant's preexisting degenerative disc disease. He further opined that she was capable of continuing her modified-duty letter carrier position and the restrictions provided were only for her nonindustrial degenerative conditions of the lumbar spine.

In an August 23, 2007 letter, the Office proposed termination of appellant's compensation benefits for the accepted lumbar sprains due to the February 3, 1995 and April 22, 2003 work injuries based on the second opinion evaluation of Dr. Ha'Eri. It also found the medical evidence insufficient to establish a causal relationship between appellant's preexisting degenerative disc conditions and her 1995 and 2003 work injuries. Appellant was provided 30 days to submit additional evidence. She did not respond.

By decision dated March 17, 2008, the Office terminated appellant's compensation benefits effective March 17, 2008 on the basis that the weight of the medical evidence, as represented by Dr. Ha'Eri's second opinion report, demonstrated that the work-related injuries had resolved without residuals.

On March 25, 2008 appellant requested an oral hearing before an Office representative, but subsequently requested a review of the written record. In an October 7, 2008 brief, appellant's representative argued the Office had not met its burden of proof to terminate appellant's compensation. She stated that Dr. Capen, appellant's treating physician, opined that appellant had ongoing degenerative conditions which were worsened by her accepted back injuries. Appellant's representative contended that Dr. Ha'Eri had not presented sufficient medical reasoning to explain why appellant's degenerative disc disease was not work related. She further contended that he had a deficient statement of accepted facts; he was asked a leading question; and he only received a partial case file for review. Appellant's representative also contended that under the April 2003 injury claim, second opinion examiner Dr. Pollis provided a well-rationalized opinion that appellant's degenerative disc condition was caused by and permanently aggravated by factors of her employment. She argued that Dr. Pollis' report should have been added to the case record and the accepted conditions expanded.

Additional medical reports from Dr. Capen were submitted. He advised that appellant had a continuing medical condition due to all three injuries. In an August 26, 2008 report, Dr. Capen noted the history of the work injuries, his review of the medical records and presented his findings on examination. He diagnosed L5-S1 discopathy and indicated that the x-rays showed progression. Dr. Capen advised that appellant had a progression and there clearly were two separate and distinct industrial injuries both of which have progressed to a point of sufficient worsening as to preclude her return to usual and customary work. In an October 1, 2008 report, Dr. Capen indicated that Dr. Ha'Eri was incorrect in his conclusion. He opined that appellant's work-related injury caused damage to the lumbar discs disc protrusions and listhesis. Dr. Capen

also advised that appellant is a candidate for surgical intervention and perhaps injection blocks, medication and therapy.

Appellant also submitted a November 27, 2007 statement noting the history of her condition and her belief that her back condition had been worsened by her employment.

By decision dated February 10, 2009, an Office hearing representative affirmed the March 17, 2008 decision.<sup>2</sup>

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.<sup>4</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 requires further medical treatment.<sup>5</sup>

For conditions not accepted by the Office, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>6</sup> Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>7</sup>

### **ANALYSIS**

The record reflects that appellant sustained work-related lumbar strains on February 3, 1995, April 22, 2003 and August 1, 2006. It is noted that under the master case file, an Office

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<sup>2</sup> In a separate letter of February 10, 2009, the Office noted that the hearing request for file number xxxxxx198 was erroneously docketed under the master claim file xxxxxx278. It advised a decision had been issued under the correct file number xxxxxx198.

<sup>3</sup> *Jorge E. Sotomayor*, 52 ECAB 105, 106 (2000).

<sup>4</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

<sup>5</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>6</sup> *See T.M.*, 60 ECAB \_\_\_\_ (Docket No. 08-975, issued February 6, 2009).

<sup>7</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

hearing representative affirmed on March 4, 2008 an Office decision terminating compensation benefits arising from the August 1, 2006 work injury. Under the current case, which includes the case files for the February 3, 1995 and April 22, 2003 work injuries, the Office terminated appellant's compensation benefits effective March 17, 2008 based on the opinion of Dr. Ha'Eri, a Board-certified orthopedic surgeon and Office referral physician, who found that she did not have residuals of her accepted lumbar strains. On February 10, 2009 an Office hearing representative affirmed the termination of appellant's compensation benefits.

In a June 13, 2007 report, Dr. Ha'Eri provided a history of injury, reviewed medical records and conducted a physical examination. He provided an unequivocal opinion that the effects of appellant's February 3, 1995 and April 22, 2003 lumbar strains had resolved and the changes in her lumbar spine were nonindustrial and degenerative in nature. Dr. Ha'Eri noted that appellant had sufficient medical care for each injury. He opined that she could return to work with no restrictions and her continuing and residuals symptoms were a consequence of her underlying degenerative process, which were nonindustrial and not effected by her work-related injuries by direct cause, aggravation, precipitation or acceleration. Dr. Ha'Hri found no basis on which to attribute any continuing residuals to the accepted employment injuries.

The medical evidence submitted by appellant's attending physicians do not address the accepted lumbar sprain condition. Rather they addressed her degenerative disc disease, a nonaccepted condition. As the Office did not accept appellant's degenerative disc disease of the lumbar spine as an employment-related condition, it is her burden of proof to establish that such condition is causally related to the accepted lumbar strains of 1995 and 2003.<sup>8</sup>

Under file number xxxxxx238, Dr. Gross stated in a May 4, 2004 report that the MRI scan confirmed that appellant had lumbar radiculopathy with disc protrusions, but he did not address the issue of causal relationship. Therefore, his opinion has little if any probative value to establish her claim. Additionally, it is noted that the Office had denied a causal relationship between appellant's degenerative disc disease and her 1995 work injury in a May 15, 1997 decision. There is no recent medical evidence supporting that the 1995 work injury caused a degenerative condition.

On February 28, 2007 Dr. Capen noted that appellant reached maximum medical improvement in regard to her lumbar discopathy, lumbar spondylolisthesis and lumbar disc protrusions. Although he opined that her conditions were due to the April 22, 2003 work injury, he provides no explanation or medical reasoning as to how the work-related injuries affected her preexisting degenerative disc disease.<sup>9</sup> Although Dr. Capen opined in his April 4, 2007 report that appellant was permanently disabled due to her spondylolisthesis and degenerative discopathy, he did not address the issue of causal relationship. In his April 26, 2008 report, he opined that her degenerative disc disease had progressed as a result of her work-related injuries; however, he provided no explanation or medical reasoning as to how the work-related injuries

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<sup>8</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

affected her preexisting degenerative disc disease.<sup>10</sup> Dr. Capen did not explain the process by which the February 3, 1995 stair-tripping incident or the April 23, 2003 parking brake pulling incident would cause or aggravate any preexisting degenerative condition of the lumbar spine or how this resulted in appellant's current spine conditions. Additionally, Dr. Capen provided no reasoning in his October 1, 2008 report for disagreeing with Dr. Ha'Eri's opinion that she no longer had residuals of her work injuries. For these reasons, the Board finds that the medical evidence from Dr. Capen is insufficient to establish appellant's claim for any new employment-related conditions and his report is of limited probative value with regard to whether accepted lumbar strains resolved.

Appellant's representative argued that Dr. Pollis February 9, 2004 second opinion report supported that the April 22, 2003 injury caused or aggravated appellant's degenerative disc condition. Dr. Pollis advised that there were residuals of the accepted lumbar strain and an aggravation of appellant's underlying degenerative disc disease condition. He stated that her degenerative disc disease had progressed since 1995 based upon MRI scan reports. Dr. Pollis, however, did not provide a rationalized medical opinion on causal relationship between appellant's underlying degenerative disc disease condition and her accepted work injuries. He indicated that work duties over time likely aggravated the degenerative condition but he did not explain specifically how her traumatic pulling of a parking brake on April 22, 2003 would have aggravated her underlying degenerative disc disease.<sup>11</sup> Additionally, Dr. Pollis did not clearly explain why appellant's condition at that time was not merely a natural progression of the degenerative process, rather than a result of the April 22, 2003 work injury. Therefore, his opinion on causal relation is of little probative value.<sup>12</sup> Furthermore, Dr. Pollis' opinion predated the medical development that led to the termination of benefits. As such, his opinion did not address whether appellant had employment-related residuals of the accepted conditions on or after March 17, 2008.

Appellant expressed her belief that her alleged back condition resulted from her letter carrier duties. However, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>13</sup> Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>14</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit.

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<sup>10</sup> *Franklin D. Haislah, id.*

<sup>11</sup> The record does not indicate that appellant filed a claim for an occupational disease. *See* 20 C.F.R. § 10.5(q) (defines the term occupational disease or illness); § 10.6(ee) (defines the term traumatic injury).

<sup>12</sup> *See supra* note 9.

<sup>13</sup> *See Joe T. Williams, 44 ECAB 518, 521 (1993).*

<sup>14</sup> *Id.*

Appellant's representative contended that the opinion of Dr. Ha'Eri is deficient and insufficient to carry the weight of the medical opinion evidence. However, the Board finds that Dr. Ha'Eri provided a rationalized medical opinion that the accepted lumbar strains resulting from the February 3, 1995 and April 22, 2003 work incidents have resolved.<sup>15</sup> Dr. Ha'Eri's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He also provided medical rationale for his opinion. There is no medical evidence showing any continuing residuals or disability due to appellant's accepted lumbar strains. The Office met its burden of proof to terminate her benefits as the weight of the medical evidence indicates that residuals of the employment-related conditions had ceased effective March 17, 2008.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation benefits effective March 17, 2008.

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<sup>15</sup> *Michael S. Mina*, 57 ECAB 379 (2006) (in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated February 10, 2009 is affirmed.

Issued: February 1, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board