

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

E.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pompano Beach, FL, Employer**

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**Docket No. 10-226
Issued: October 5, 2010**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 12, 2009 appellant filed a timely appeal from a March 12, 2009 decision of the Office of Workers' Compensation Programs that affirmed 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 case.¹

ISSUE

The issue is whether the Office properly terminated appellant's compensation and medical benefits effective May 8, 2008.

¹ The record contains an October 2, 2009 Office decision, based on appellant's request for reconsideration of the March 12, 2009 decision. The Office found that the request was insufficient to warrant a merit review. As this decision involves the same matter that is presently on appeal before Board, the October 2, 2009 decision is null and void. *She Douglas E. Billings*, 41 ECAB 880 (1990).

FACTUAL HISTORY

On September 30, 2007 appellant, then a 49-year-old casual clerk, sustained a lumbar strain while moving a cage of recycled waste in the performance of duty. She stopped work on October 1, 2007. The record reflects that appellant received wage-loss benefits for disability.

The October 1, 2007 treatment records of Dr. Mylissa Graber, Board-certified in emergency medicine, listed an impression of an acute myofascial lumbar strain that was due to the work incident. Dr. Graber indicated that x-rays were negative. An October 19, 2007 lumbar magnetic resonance imaging (MRI) scan showed mild straightening of the normal lumbar lordosis and no focal disc herniation, nerve root impingement or canal stenosis.

In an October 22, 2007 report, Dr. Naveed Shafi, a Board-certified internist, noted appellant's complaints of cervical and low back pain. Appellant reported pain from her wrists to her outer legs since her injury. Dr. Shafi diagnosed cervical disc disease and low back pain trigger point. He submitted other reports noting appellant's status.

Appellant was terminated from the employing establishment, effective November 5, 2007, for providing false information on her employment application.

In a January 28, 2008 attending physician's report, Dr. Shafi diagnosed cervical spine disc herniation at C6-7 and lumbar strain. He checked a box "yes" to indicate that appellant's conditions were caused by work activity on September 29, 2007. In a February 4, 2008 report, Dr. Shafi recommended that, given appellant's continuing symptoms, without conclusive evidence of anatomical abnormalities on MRI scan or physical examination, she should seek treatment from a pain management specialist. In a February 4, 2007 form report, Dr. Kevin Kessler, a Board-certified orthopedic surgeon and associate of Dr. Shafi, noted work restrictions. He advised that no residual functional loss was anticipated from the work injury and that appellant had been released from care.

Appellant sought treatment from Dr. Christopher A. Brown, a Board-certified orthopedic surgeon. On March 20, 2008 Dr. Brown reviewed the medical history and listed an assessment of lumbar strain and radiculopathy. He recommended physical therapy and that appellant bring her x-rays and MRI scan films on her next visit. In an April 10, 2008 report, Dr. Brown repeated his assessment and recommended additional therapy. He noted that appellant did not bring the MRI scan study with her. On April 24, 2008 Dr. Brown advised that appellant had reached maximum medical improvement for her low back condition. He reviewed the MRI scan film which showed no significant abnormalities. Physical examination revealed no lumbar spasm and normal motor and sensory testing. Dr. Brown listed an assessment of lumbar strain and radiculopathy but noted that appellant's subjective complaints outweighed the objective findings as nothing that he saw on the MRI scan films accounted for her complaints. He advised that appellant did not have any impairment for her low back condition and could return to work without restrictions. In an accompanying April 24, 2008 form report, Dr. Brown noted that no further clinical services were indicated and that appellant had no functional limitations or restrictions. The Office also received an April 22, 2008 physical therapy report.

By decision dated May 8, 2008, the Office terminated appellant's compensation benefits effective that date. It found that the medical evidence supported that all residuals of the accepted lumbar condition had ceased without disability.

On May 13, 2008 appellant's representative requested a telephonic hearing, which was held on August 6, 2008. Appellant addressed the reasons for her dismissal and contended that she also sustained a work-related cervical condition. The Office received additional physical therapy reports dated April 9, 14 and 17, 2008.

In a letter dated August 27, 2008, appellant's representative submitted appellant's medical records from Dr. Kessler. They consist of previously submitted diagnostic testing reports and treatment notes from Drs. Shafi and Kessler. In a March 8, 2008 report, Dr. Shafi noted contacting the Office to request its assistance in locating a pain management specialist for appellant.

By decision dated March 13, 2009, the Office hearing representative affirmed the May 8, 2008 termination decision. The hearing representative found that appellant had not established a cervical condition causally related to the accepted employment injury.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³ The right to medical 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 the claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁴

ANALYSIS

The Office based its decision to terminate appellant's compensation benefits on the opinion of Dr. Brown, appellant's treating physician. On April 24, 2008 Dr. Brown determined that appellant had reached maximum medical improvement and required no further treatment for the accepted lumbar strain. He noted findings on examination that were essentially normal and advised that an MRI scan showed no significant abnormalities. Dr. Brown opined that appellant's subjective complaints were inconsistent with objective findings and recommended that she return to work without physical restrictions. He found no basis to attribute any continuing residuals to the accepted lumbar strain.

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *B.T.*, 60 ECAB ____ (Docket No. 08-1885, issued June 3, 2009).

The Board finds that Dr. Brown's opinion constitutes the weight of medical opinion on appellant's residual disability. Dr. Brown was appellant's treating physician and his opinion that she could return to work without restrictions is unrefuted by any probative medical evidence. His report is rationalized and based upon a proper factual background. The Board finds that the weight of the medical evidence establishes that appellant no longer has any residuals of her accepted employment-related lumbar strain. Furthermore, Dr. Shafi's February 4, 2008 report advised that he had no further treatment to offer appellant in view of her continuing symptoms. He noted the lack of conclusive evidence of any anatomical abnormalities on MRI scan or physical examination. Dr. Shafi did not support that the accepted lumbar strain continued. No other medical evidence contemporaneous with the Office's termination found disability residuals due to the accepted lumbar strain. The Office met its burden of proof to terminate her compensation benefits.⁵

After the Office terminated compensation, appellant did not submit any additional medical evidence to support continuing residuals of the accepted lumbar strain. Most of the medical evidence submitted by appellant was previously of record. Dr. Shafi's March 8, 2008 report, while new to the record, did not address the accepted lumbar strain but noted only that he had contacted the Office to request assistance in locating a pain management specialist for her. He did not address how the need for such treatment was related to the September 30, 2007 lumbar strain.

On appeal appellant contends that her cervical condition is also work related. The Board notes that appellant has the burden of proof to establish that conditions not accepted by the Office are causally related to the employment injury through the submission of rationalized medical evidence.⁶ The Board finds that the medical evidence of record is insufficient to establish that she sustained a cervical condition due to her work injury. Although several medical reports of record diagnose a cervical condition, they lack any opinion on whether this condition was due to the September 30, 2007 work injury or provide inadequate supporting rationale in support of causal relationship. In a January 28, 2008 attending physician's report, Dr. Shafi diagnosed cervical spine disc herniation at C6-7 and checked a box "yes" to indicate that appellant's condition was caused by her work injury. This report is insufficient because Dr. Shafi provided no medical rationale to explain the reasons for his opinion. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value.⁷

Appellant also contends that she was improperly terminated from the employing establishment and was not properly evaluated by physicians or represented by counsel. The Board notes that its review is limited to consideration of the Office's March 12, 2009 decision.

⁵ The Board notes that the Office was not required to provide pre-termination notice in this situation as appellant was not in continuing receipt of wage-loss compensation and the medical evidence indicated that her treatment for her accepted condition was not necessary. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(a), 6(d) (March 1997).

⁶ *T.M.*, 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009).

⁷ *Alberta S. Williamson*, 47 ECAB 569 (1996).

The Board does not have jurisdiction over employing establishment personnel matters or the other issues raised by appellant.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's benefits effective May 8, 2008.

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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