

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

M.G., Appellant)	
)	
and)	
)	Docket No. 10-104
U.S. POSTAL SERVICE, POST OFFICE,)	Issued: September 27, 2010
Indianapolis, IN, Employer)	
)	

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 October 7, 2009 appellant, through counsel, filed a timely appeal of the April 14, 2009 merit decision of the Office of Workers' Compensation Programs affirming the termination of his 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 met its burden of proof to terminate appellant's wage-loss and medical compensation effective April 14, 2009.

FACTUAL HISTORY

On October 4, 2006 appellant, then a 50-year-old letter carrier, sustained a back injury from carrying bins full of mail and twisting his back. Appellant did not stop work. The Office assigned the file claim number xxxxxxxs004 and accepted a lumbosacral sprain. Appellant stopped work on August 11, 2007 and claimed a recurrence of total disability. By decision dated October 26, 2007, the Office denied a recurrence of total disability beginning August 11, 2007. Appellant returned to full-time work with restrictions on February 16, 2008.

On June 10, 2008 appellant filed a traumatic injury claim for a June 9, 2008 injury when he felt a pop in his low back while twisting his back. He noted pain from his groin to his rib cage. Appellant stopped work on June 10, 2008 and returned to restricted work on or about July 10, 2008. The Office assigned the file claim number xxxxxxx624. On August 21, 2008 it accepted a lumbar strain. Appellant stopped work on August 29, 2008 and underwent hernia surgery. He did not return. On November 13, 2008 the employing establishment noted it was unable to accommodate his physical restrictions. The Office doubled the two claims.

In an August 28, 2008 report, Dr. Lawrence D. Bernstein, a Board-certified internist, advised that appellant injured his back and leg at work on June 9, 2008. He first saw appellant on June 12, 2008 when he presented complaints of severe back pain going down both legs. When first examined, appellant was in considerable pain and found to have a hernia that was quite painful. Dr. Bernstein referred appellant to a surgeon regarding his hernia. He stated that appellant continued to have back pain but he was working full time. Dr. Bernstein recommended evaluation by an orthopedic surgeon. In an August 15, 2008 attending physician's report, he opined that appellant's diagnosed lumbosacral strain and inguinal hernia were employment related. Dr. Bernstein submitted additional reports noting appellant's work restrictions due to his back and leg pain.

On August 29, 2008 Dr. Teoman Demir, a Board-certified surgeon, performed a bilateral inguinal hernia repair. After the surgery, appellant was restricted from work. Dr. Bernstein advised that he could perform restricted duties in October 2008.

In a November 10, 2008 report, Dr. Nitin Khanna, a Board-certified orthopedic surgeon to whom appellant was referred to by Dr. Bernstein, noted appellant's history and complaint of severe pain in his back and legs. He noted that appellant filled out an information sheet in a "very peculiar manner with unbelievable amounts of detail and descriptions" regarding his symptoms. Dr. Khanna advised that appellant had not worked and of the August 29, 2008 hernia surgery. Appellant informed Dr. Khanna that his groin pain improved after surgery, but noted complaints of severe pain in his back, legs, upper and lower extremities with the right and left side equally affected. On examination, Dr. Khanna noted that appellant was able to move around the office "quite well" and able to sit in the same position for long periods of time without having to shift or move. Straight-leg raising was negative bilaterally while hip, knee and ankle range of motion were full, nontender and stable. He reviewed x-rays that showed no instability of the lumbar spine while a lumbar spine magnetic resonance imaging (MRI) scan was essentially normal. In assessing appellant's back and leg pain, Dr. Khanna explained that he was unable to verify any symptoms based on objective findings on clinical examination, observed behavior or on the imaging studies. He advised that appellant's wide constellation of symptoms

could “in no which way, shape or form can be explained by any objective findings.” Dr. Khanna noted that appellant might wish to consult a neurologist as well as a psychiatrist but would not recommend any further interventional treatment. He questioned why appellant previously underwent pain management treatment as there was really nothing to treat from a structural standpoint.

In a December 15, 2008 report, Dr. Theodore J. Suchy, a Board-certified orthopedic surgeon and Office referral physician, reviewed the history of injury, medical evidence of record and the statement of accepted facts. He provided an impression of lumbar and thoracic pain with subjective complaints outweighing any objective findings. Dr. Suchy stated there were no objective findings regarding any significant pathology and explained that the back strains appellant sustained would have resolved within six to eight weeks from the date-of-injury. He found appellant had no significant residuals from the June 9, 2008 work injury and would be able to return to regular activity without restrictions, if approved by the surgeon, who performed the hernia repair. Dr. Suchy opined that the June 9, 2008 work injury caused appellant’s hernia as he had no symptoms prior to the injury and was symptom free for a period of about 18 years from a previous hernia repair. He concluded that appellant was not totally disabled from being a city letter carrier and would be able to return to full duties. Dr. Suchy advised there were no significant objective findings regarding his subjective complaints, MRI scans were negative and his clinical examination was negative except for the subjective complaints of pain. There were no diagnostic modalities, diagnostic testing or any significant therapeutic treatment needed for treatment. In a December 31, 2008 report, in response to the Office’s request for clarification, Dr. Suchy advised that appellant was totally disabled from the time of his hernia repair for four weeks. Appellant could have returned to light duty at that time and returned to full duty approximately 12 weeks after the successful hernia repair.

In a December 23, 2008 report, Dr. Pradeep Kalokhe, a Board-certified neurologist, diagnosed a lumbar and cervical strain. He found no clinical evidence of myelopathy or radiculopathy. Dr. Kalokhe indicated that deep tendon reflexes were diminished, but symmetrical while straight-leg raising was to 80 degrees on the right and 70 degrees on the left. He requested a review of the diagnostic testing and indicated that appellant should continue with previous work restrictions.

On January 14, 2009 the Office accepted the claim for bilateral inguinal hernia.

In a January 14, 2009 letter, the Office provided Dr. Khanna with a copy of Dr. Suchy’s reports and asked him to respond. In a February 2, 2009 report, Dr. Khanna stated it was reasonable to return appellant to work at full duty without restrictions. He noted that Dr. Suchy’s findings were very similar to his own.

On March 12, 2009 the Office proposed to terminate appellant’s wage-loss and medical benefits as the weight of the evidence established that the accepted conditions had ceased or were no longer causing disability. It accorded weight to the opinion of Dr. Suchy, the second opinion specialist. Appellant was provided 30 days to submit additional medical evidence or arguments.

In an April 2, 2009 letter, appellant's attorney advised appellant had an appointment with a neurosurgeon on April 17, 2009. He stated that, after this appointment, appellant would provide additional medical evidence to refute the opinions of Dr. Suchy and Dr. Khanna as neither was qualified to treat neurological damage. Appellant provided: 24 pages of handwritten treatment records dated January 2 to November 26, 2007, which appear to be signed by a nurse practitioner; a December 8, 2008 electromyogram (EMG) and nerve conduction velocity report from Dr. Bernstein noting evidence of chronic lower lumbar radicular process in the L4-5; and L5-S1 distribution and copies of previously submitted medical records.

In a decision dated April 14, 2009, the Office terminated appellant's wage-loss and medical benefits effective that day.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² 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.³

ANALYSIS

The Office accepted that appellant sustained lumbar strains as a result of work injuries of October 4, 2006 and June 9, 2008. It also accepted that he sustained a bilateral inguinal hernia as a result of the June 9, 2008 work injury for which he underwent surgery on August 29, 2008. The Office terminated his compensation benefits effective April 14, 2009 on the grounds that the accepted conditions had resolved without disability residuals. It accorded determinative weight to the opinion of Dr. Suchy, the second opinion specialist.

In a December 15, 2008 report, Dr. Suchy reviewed the history of injury, the statement of accepted facts together with the medical records and conducted a physical examination. He found that the effects of appellant's work-related lumbar strains had resolved and there were no objective findings to support disability residual pathology. Dr. Suchy explained the back strains appellant sustained resolved within six to eight weeks from the dates of injury. He advised that there were no significant objective findings regarding appellant's subjective complaints, that MRI scans were negative and the clinical examination was negative except for appellant's subjective complaint of pain. Dr. Suchy advised that appellant had no residuals from the June 9, 2008 work injury and would be able to return to regular work activities without restriction, if approved by the surgeon who performed the hernia repair. He found no need for any further diagnostic modalities, testing or therapeutic treatment. In a December 31, 2008 supplemental

¹ *Jorge E. Sotomayor*, 52 ECAB 105, 106 (2000).

² *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

³ *Frederick Justiniano*, 45 ECAB 491 (1994).

report, Dr. Suchy opined that appellant could have returned to light duty four weeks after his hernia repair and resumed full duty approximately 12 weeks after the hernia surgery.

Furthermore, Dr. Khanna treated appellant at the request of Dr. Bernstein and reported no objective basis for any of appellant's complaints. He stated that appellant moved around his office quite well and was able to sit in the same position for long periods of time without difficulty. Dr. Khanna was unable to verify any of appellant's complaints based on the objective findings from clinical examination, his observed behavior or the imaging studies. He stated that appellant's wide constellation of symptoms could in no which way, shape or form be explained by any objective findings. Dr. Khanna did not attribute any residual condition or disability to appellant's work injuries. In a February 2, 2009 report, he concurred with the finding and conclusion of Dr. Suchy.

After issuance of the pretermination notice, appellant's attorney noted that he was scheduled for examination on April 17, 2009; however, no evidence from a neurosurgeon was received before the April 14, 2009 decision.⁴

Appellant submitted a December 8, 2008 EMG report from Dr. Bernstein who found evidence of chronic lower lumber radicular process. However, Dr. Bernstein did not address whether such radicular process was caused by appellant's accepted work injuries. Other reports from Dr. Bernstein and Dr. Demir predate the termination of benefits or do not address whether any continuing residuals or disability was causally related to the accepted injuries. Dr. Kalokhe's December 23, 2008 report did not address whether appellant's diagnosed condition was due to the accepted employment injuries.⁵

Appellant submitted copies of handwritten progress notes signed by a nurse practitioner. As a nurse practitioner is not a physician as defined under the Act, this evidence is of no probative medical value.⁶

⁴ Office procedures contemplate that, if a claimant states that he or she intends to submit additional evidence, but cannot do so within the 30-day period allowed by a pretermination notice, the Office should issue a decision at the end of the 30-day period. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2-1400.8(b) (March 1997).

⁵ *See S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁶ The definition of a physician under the Act includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practices as defined by State laws. 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

The Board finds Dr. Suchy's second opinion reports are sufficiently rationalized to establish that appellant's employment-related lumbar strains and hernia condition have resolved.⁷ Dr. Suchy'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 appellants accepted conditions. Furthermore, Dr. Khanna, to whom appellant was referred by Dr. Bernstein, concurred with Dr. Suchy and found no objective basis on which to support any of appellant's complaints. The Office met its burden of proof to terminate appellant's compensation benefits.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss and medical benefits effective April 14, 2009.

⁷ *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 April 14, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 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