

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

D.M., Appellant)

and)

U.S. POSTAL SERVICE, LOS ANGELES)
PROCESSING & DISTRIBUTION CENTER,)
Los Angeles, CA, Employer)

Docket No. 10-576
Issued: September 20, 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 December 28, 2009 appellant timely appealed the November 25, 2009 merit decision of the Office of Workers' Compensation Programs, which affirmed the termination of her wage-loss compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office properly terminated appellant's wage-loss compensation and medical benefits effective July 7, 2009.

FACTUAL HISTORY

Appellant, a 50-year-old mail handler, has an accepted traumatic injury claim for lumbar strain, which arose on April 29, 2007.¹ She received wage-loss compensation. Appellant returned to work in a full-time, limited-duty capacity. She sought to have her claim expanded to

¹ Appellant was attempting to connect a wire container to a mule when she strained her lower back.

include L4-5 disc herniation as an accepted condition. Appellant also requested medical authorization for a right hemilaminectomy at L4-5. By decision dated October 16, 2008, the Office denied the disc herniation and request for surgery.² Appellant did not appeal the October 16, 2008 decision.

Dr. Tae M. Shin, a treating physician, examined appellant on September 17, 2008.³ He noted in an October 2, 2008 report that appellant was still complaining of radicular right leg pain from the buttock and thigh to the ankle level. Dr. Shin also noted that an August 29, 2008 lumbar magnetic resonance imaging (MRI) scan showed that appellant's L4-5 disc bulge was much improved. In comparison to her June 7, 2007 lumbar MRI scan, which showed impingement at the L4-5 level, the latest MRI scan showed no significant evidence of nerve impingement. Appellant was still symptomatic with regard to radiating pain from her right buttock and thigh to her ankle. Dr. Shin diagnosed right radiculopathy, rule out neuropathy. He recommended a lower extremity electromyography (EMG) and nerve conduction study (NCS) to rule out neuropathy. Dr. Shin also indicated that, because the recent MRI scan did not reveal evidence of nerve impingement, appellant's herniated disc had resolved to a degree and surgical intervention was not required.

The EMG/NCS studies Dr. Shin recommended were administered on December 16, 2008 and revealed "[n]o electrodiagnostic evidence of lumbar radiculopathy, bilaterally."

On January 7, 2009 appellant continued to complain of low back pain. Dr. Shin reviewed the recent lumbar MRI scan results as well as the December 16, 2008 electrodiagnostic studies. He diagnosed discogenic low back pain at L4-5. Dr. Shin advised that appellant was permanent and stationary and he imposed a 20-pound lifting restriction.⁴ He advised that her current pathology was industrial in nature and arose out of her employment injury.

On February 19, 2009 the Office informed Dr. Shin that the only accepted work-related condition was low back strain. It further advised that appellant's request to expand the claim to include L4-5 herniated disc had been denied on October 16, 2008. Dr. Shin was asked to submit a report addressing whether she continued to have objective residuals of her April 29, 2007 lumbar strain. The Office also inquired as to whether appellant's current restrictions were due to her accepted lumbar strain or the nonindustrial herniated disc.

Dr. Shin examined appellant on March 4, 2009. On March 20, 2009 he noted that objective findings on physical examination were not evident, but back pain was noted. Dr. Shin stated that appellant's current symptoms were related to discogenic back pain and that her

² The Office based its decision on the July 29 and September 8, 2008 reports of Dr. Kenneth R. Sabbag, a Board-certified orthopedic surgeon and impartial medical examiner.

³ Dr. Shin is a Board-certified orthopedic surgeon. He initially evaluated appellant on August 8, 2007 and had previously recommended that she undergo surgery for an L4-5 disc bulge with impingement.

⁴ He reiterated that based on appellant's latest lumbar MRI scan there was no need for any type of surgical intervention. With respect to future medical care, Dr. Shin indicated that appellant may have an exacerbation of her back pain at which point she may benefit from medications or additional physical therapy.

lumbar strain had resolved. Dr. Shin advised that her current work restrictions were related to her subjective back pain.

On June 3, 2009 the Office issued a notice of proposed termination of compensation and medical benefits based on Dr. Shin's reports. It afforded appellant 30 days to submit additional evidence or argument to the extent she disagreed with the proposed termination of benefits.

Appellant responded on June 26, 2009, however, the Office did not receive any additional medical evidence. She argued that the lumbar disc protrusion evident on MRI scans was work related. Appellant noted that as of April 24, 2009 the employing establishment was no longer able to accommodate her work restrictions and sent her home.

In a July 7, 2009 decision, the Office terminated appellant's wage-loss compensation and medical benefits.

Appellant requested a hearing, which was held on October 6, 2009. On October 21, 2009 Dr. Milena D. Zirovich, a Board-certified physiatrist with a subspecialty in pain medicine, stated that it was more likely than not that appellant's right lower extremity pain was secondary to her active radiculopathy at the right S1 nerve root, as confirmed by EMG. She also noted that, prior to the April 29, 2007 work injury, appellant had no radicular complaints and it was likely that the twisting injury she sustained initiated the right lower extremity pain and back pain.

By decision dated November 25, 2009, an Office hearing representative affirmed the July 7, 2009 termination decision.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ Having determined that an employee has a disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has either ceased or that it is no longer related to the employment.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁷ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

ANALYSIS

Based on his March 4, 2009 examination, Dr. Shin advised that appellant's employment-related lumbar strain had resolved and that her subjective complaints were related to discogenic

⁵ *Curtis Hall*, 45 ECAB 316 (1994).

⁶ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁷ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁸ *Calvin S. Mays*, 39 ECAB 993 (1988).

back pain. The 20-pound lifting restriction Dr. Shin imposed was related to her subjective back pain. According to Dr. Shin there were no objective findings on physical examination. He had previously reported that appellant's August 29, 2008 lumbar MRI scan showed a much improved L4-5 disc bulge with no significant evidence of nerve impingement. Moreover, appellant's December 16, 2008 electrodiagnostic studies did not reveal any evidence of radiculopathy. The Board finds that the reports of Dr. Shin, the attending physician, established that appellant's accepted back strain resolved without disability residuals.

Dr. Zirovich's October 21, 2009 progress notes advised that appellant's right lower extremity pain was more likely than not secondary to her active radiculopathy at the right S1 nerve root, as confirmed by EMG. However, Dr. Zirovich did not identify the particular EMG she relied upon and the latest study of record revealed "[n]o electrodiagnostic evidence of lumbar radiculopathy, bilaterally." The claim has not been accepted for lumbar disc disease. Dr. Shin clearly found that the accepted condition of lumbar strain had resolved. His reports are sufficiently documented and well reasoned. Appellant no longer suffers from residuals of her accepted April 29, 2007 employment injury, the Office properly terminated her entitlement to wage-loss compensation and medical benefits effective July 7, 2009. Accordingly, the Office's decision to terminate appellant's compensation and medical benefits shall be affirmed.

CONCLUSION

The Office properly terminated appellant's benefits effective July 7, 2009.

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 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