

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

---

**J.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hollywood, FL, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 12-557  
Issued: June 4, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 13, 2012 appellant filed a timely appeal from a November 23, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) affirming the termination of her wage-loss and medical benefits. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of July 31, 2011.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted new evidence after issuance of the November 23, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1). However, appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

On appeal appellant contends that she cannot physically perform her duties as a letter carrier, because of her back injury. She noted that she was willing to work within her limitations as a modified clerk.

### **FACTUAL HISTORY**

On July 23, 2004 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim alleging that on July 21, 2004 she sprained her back when, while leaning down to deliver mail, she felt something crack in her back. On August 4, 2004 OWCP accepted her claim for lumbar strain.

In an August 14, 2009 report, appellant's treating Board-certified physiatrist, Dr. Bryce Epstein, stated that appellant had a long history of low back pain dating back to July 21, 2004 when she injured her back when she bent over to put some mail in a box and was unable to stand up straight. He listed his impression as history of left lumbar radiculopathy. Dr. Epstein saw appellant on a monthly basis. On April 22, 2010 he stated that a magnetic resonance imaging (MRI) scan of her lumbar spine looked good with no frank disc herniations or stenosis. Dr. Epstein stated that he would return appellant to work and see how she fared. In a September 7, 2010 report, he noted that she had good and bad days concerning her low back and still required medication. Dr. Epstein opined that appellant could not return to work as a letter carrier, but could continue in a light-duty capacity on a permanent basis. In an October 13, 2010 report, he noted that she was laid off from work since the middle of August. Dr. Epstein stated that neurologically, there were no new changes. Although appellant's MRI scan was essentially unremarkable, he did not think she was physically capable of lifting 50 pounds to 75 pounds in a repetitive fashion, which she stated was required to be a letter carrier. Dr. Epstein stated that it was medically necessary for her to continue with her restrictions and to avoid lifting anything more than 20 pounds repetitively. On November 8, 2010 he opined that the lumbar strain had resolved, that appellant had long reached maximum medical improvement, and was currently on a home exercise program to strengthen her back. Dr. Epstein did not believe that appellant was in a condition to be a letter carrier.

On May 6, 2011 OWCP referred appellant to Dr. David B. Lotman, a Board-certified orthopedic surgeon, for a second opinion. In a June 7, 2011 opinion, Dr. Lotman reported that appellant had apparently sustained a lumbar strain on July 21, 2004 that had resolved. He noted that there were no objective findings of any ongoing problem. Dr. Lotman described evidence of symptom magnification.

On June 20, 2011 OWCP proposed terminating appellant's medical benefits and compensation for wage loss for the reason that her accepted condition had resolved.

By letter dated June 29, 2011, appellant disagreed with the proposed termination and contended that she could not return to her position as a letter carrier due to her back injury. She could not bend, kneel, climb or lift over 50 pounds, which was required. Appellant contended that she had pain in both sides of her buttock, piercing down the left side of her leg.

On July 28, 2011 OWCP terminated appellant's medical benefits and wage-loss compensation effective July 31, 2011 for the reason that the weight of the medical evidence of record established that appellant's injury had ceased.

On August 22, 2011 appellant requested review of the written record by an OWCP hearing representative. In an accompanying letter, she stated that she was not able to perform the duties of letter carrier due to back pain, nerve damage and weakness. Appellant could not lift more than 10 pounds intermittently. She also alleged that she was unable to do any climbing, kneeling, bending, twisting, pushing and pulling. Appellant also used narcotic medication which interfered with her ability to function.

By decision dated November 23, 2011, the hearing representative affirmed the July 28, 2011 decision of OWCP.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or was no longer related to the employment.<sup>3</sup> OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>6</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for lumbar strain. It terminated appellant's compensation and medical benefits as of July 31, 2011 for the reason that the lumbar strain had resolved. The Board finds that OWCP met its burden of proof to terminate appellant's medical and compensation benefits. Dr. Lotman, the second opinion physician, opined that appellant's lumbar strain had resolved. He found that the employment-related lumbar strain had resolved and his opinion was in agreement with that of appellant's treating physician, Dr. Epstein. In a November 8, 2010 report, Dr. Epstein also opined that appellant's lumbar strain had resolved. He did note that appellant had work limitations, however, he did not provide any medical

---

<sup>3</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *see also C.B.*, Docket No. 1623 (issued April 11, 2011).

<sup>4</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>5</sup> *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>6</sup> *Id.*

rationale as to why appellant was restricted in her abilities. Furthermore, because Dr. Epstein's opinion does not address the cause of appellant's limitations, it is of little probative value.<sup>7</sup>

The weight of the medical evidence establishes that appellant's accepted injury had resolved without residuals or disability. As such, OWCP properly terminated appellant's wage-loss compensation and medical benefits effective July 31, 2011.

**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 31, 2011.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 23, 2011 is affirmed.

Issued: June 4, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

---

<sup>7</sup> *L.F.*, Docket No. 11-1784 (issued March 6, 2012).