United States Department of Labor
Employees' Compensation Appeals Board

W.O., Appellant	)	
and	)	**Docket No. 06-1715**
	)	**Issued: February 21, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Minneapolis, MN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 20, 2006 appellant filed a timely appeal of a July 11, 2006 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective March 17, 2006.

FACTUAL HISTORY

The case was previously before the Board. By decision dated December 18, 1997, the Board affirmed an October 5, 1995 Office decision regarding a two percent permanent impairment to the left arm.[1] On October 25, 2002 the Board affirmed an August 2, 2001 Office

[1] Docket No. 96-327 (issued December 18, 1997).

determination that appellant had no loss of wage-earning capacity based on his actual earnings.[2] The history of the case, as provided in the prior decisions, is incorporated herein by reference.

Following the wage-earning capacity determination, appellant continued to work in a light-duty position. By letter dated January 25, 2005, the employing establishment indicated that it was able to provide work for one hour per day within appellant's work restrictions. Dr. Nancy Hutchinson, an attending physician, stated in a June 6, 2005 report that appellant continued to have restrictions as outlined in a July 22, 2001 form report (OWCP 5c). By letter dated June 15, 2005, the Office advised the employing establishment that appellant was entitled to wage-loss compensation for seven hours per day as of January 25, 2005.

The Office referred appellant for examination by Dr. Stephen Barron, a Board-certified orthopedic surgeon.[3] In a report dated January 23, 2006, Dr. Barron provided a history and results on examination. He stated,

> "1. [Appellant] exhibits no objective findings on his examination of his cervicothoracic spine, either shoulder or either upper extremity. Because of a lack of objective findings, in my opinion, he is capable of performing his full duties of his date-of-injury position as a mail handler without any limitations or restrictions.
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> "2. Because of a lack of objective findings and normal orthopedic examination, in my opinion, [appellant] does not have any disability from his date-of-injury position as a mail handler attributable to his postal employment."

By letter dated February 16, 2006, the Office advised appellant that it proposed to terminate compensation for wage-loss and medical benefits based on the weight of the medical evidence. Appellant submitted a December 5, 2005 report from Dr. Hutchinson, who described the mechanism of injury as appellant having pain on November 1, 1992 at work that was felt to be a repetitive motion and soft tissue injury. Dr. Hutchinson stated that symptoms had been unchanged since that time and there was no prior history of neck problems. She diagnosed myofascial pain of the neck and arms.

In a decision dated March 17, 2006, the Office terminated compensation for wage-loss and medical benefits. Appellant requested reconsideration and submitted an April 24, 2006 report by Dr. Hutchinson who provided a history and stated that some of the historical statements in Dr. Barron's reports were incorrect as he attributed a number of reports to her that did not occur. Dr. Hutchinson diagnosed myofascial pain neck and arms, stating "I see no change. [Appellant] has the same restrictions outlined by Dr. [Andrew] Will in 2001. His injury is repetitive in nature. I do not see the possibility of return to work since we have tried this on numerous occasions in the past after extensive rehab[ilitation], a work injuries program, and attempts to modify the job."

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[2] Docket No. 01-2040 (issued October 25, 2002).

[3] A November 17, 2005 letter refers to a conflict in the medical evidence. In a December 14, 2005 letter, however, the Office stated that the referral was for a second opinion examination.

By merit decision dated July 11, 2006, the Office denied modification of the March 17, 2006 decision.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[4] The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.[5] 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 require further medical treatment.[6]

ANALYSIS

The Office accepted bilateral arm tendinitis causally related to repetitive activity as a mail handler. Although the Office had found no loss of wage-earning capacity in its August 1, 2001 decision, it did modify that decision by finding that appellant was entitled to compensation for seven hours per day as of January 25, 2005. It is the Office's burden of proof to terminate compensation for wage-loss and medical benefits.

Appellant was referred to Dr. Barron for evaluation. The February 16, 2006 notice of proposed termination refers to a referee examination under 5 U.S.C. § 8123(a), but there was no conflict in the medical evidence.[7] A second opinion examination had been performed in January 2000, but this was of little probative value regarding appellant's current condition. Moreover, it did not appear that Dr. Barron was selected as a referee examiner, as the December 14, 2005 letter identified him as a second opinion examiner. The Board finds that Dr. Barron is a second opinion referral physician in this case.

Dr. Barron provided a reasoned medical opinion based on a complete and accurate background.[8] He offered a detailed review of the medical evidence and also noted the lack of objective findings and a normal examination. Based on the history and results on examination, Dr. Barron opined that appellant could work without restriction or limitation. His report supports

[4] *Jorge E. Stotmayor,* 52 ECAB 105, 106 (2000).

[5] *Mary A. Lowe,* 52 ECAB 223, 224 (2001).

[6] *Frederick Justiniano,* 45 ECAB 491 (1994).

[7] 5 U.S.C. § 8123(a) provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination.

[8] With respect to the medical history, the Board notes that Dr. Hutchinson asserted in her April 24, 2006 report that Dr. Barron's medical history was inaccurate with regard to her reports. She apparently was referring to a treatment note in November 2000 and an April 2001 report regarding permanent impairment that were actually prepared by Dr. Will. Dr. Barron reviewed the relevant medical evidence and the inadvertent attribution to Dr. Hutchinson does not diminish the probative value of his report.

a finding that appellant did not have any disability or continuing medical condition causally related to the accepted employment injury.

On the other hand, Dr. Hutchinson did not provide a reasoned medical opinion. She indicated in her December 5, 2005 and February 2, 2006 report that appellant continued to have the same symptoms since 1992, without providing further detail. The Board notes that Dr. Hutchinson diagnosed myofascial pain, a condition which had not been accepted by the Office. She did not provide a complete history discussing appellant's job duties, or provide a reasoned medical opinion on causal relationship between a continuing disability or condition and the employment injury.

The weight of the medical evidence therefore rested with Dr. Barron, the second opinion examiner. The Board accordingly finds that the Office met its burden of proof to terminate compensation effective March 17, 2006. After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.[9] He submitted an April 24, 2006 report from Dr. Hutchinson that is of little probative value to the issue presented. Dr. Hutchinson stated that appellant continued to have restrictions as outlined in 2001, without providing a reasoned medical opinion on causal relationship between any disability and federal employment. The evidence is not sufficient to establish a continuing employment-related disability or condition after March 17, 2006.

CONCLUSION

The Office met its burden of proof to terminate compensation for wage-loss and medical benefits as of March 17, 2006.

[9] *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 11 and March 17, 2006 are affirmed.

Issued: February 21, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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