

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

W.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Charlotte, NC, Employer**

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**Docket No. 07-1736
Issued: January 10, 2008**

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 June 18, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 19, 2007 merit decision concerning the termination of his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation effective September 4, 2005 on the grounds that he had no residuals of his November 14, 2000 employment injury after that date.

FACTUAL HISTORY

The Office accepted that on November 14, 2000 appellant, then a 49-year-old postal clerk, sustained a groin strain, right inguinal hernia, low back strain and aggravation of degenerative disc disease of the low back while he was attempting to right an overturned pallet

of mailbags.¹ Appellant began working in a limited-duty position for the employing establishment. On January 18, 2001 he underwent right inguinal hernia repair surgery that was authorized by the Office.²

The findings of the October 12, 2001 magnetic resonance imaging (MRI) scan testing of appellant's low back showed degenerative disc disease at L3-4 and L4-5, with no focal disc herniations or spinal canal stenosis and a possible central disc protrusion at T11-12. On October 24, 2001 Dr. James F. Bethea, an attending Board-certified orthopedic surgeon, stated that on examination appellant was able to squat without difficulty, had normal straight leg raising and did not exhibit atrophy of the lower extremities. He diagnosed chronic lumbar strain.

In September 2002, the Office referred appellant to Dr. Gerald D. Schuster, a Board-certified orthopedic surgeon, for further evaluation of his medical condition. On September 19, 2002 Dr. Schuster stated that upon palpation appellant had pain along the entire spine but especially at L4, L5 and the sciatic notch. He indicated that lumbar spine motion was restricted in the last few degrees due to pain. Dr. Schuster diagnosed degenerative intervertebral disc disease at L3-4 and L4-5 with evidence of intermittent sciatic pain, but with no evidence of neurological deficit. On October 9, 2002 he indicated that appellant's "acute lumbar strain" of November 14, 2000 had resolved but that he sustained a permanent aggravation of his preexisting back condition. Dr. Schuster indicated that appellant's restricted range of motion was his only objective finding. The Office requested that Dr. Schuster clarify why he felt that appellant sustained a permanent aggravation of his preexisting back condition. On December 9, 2002 Dr. Schuster responded that appellant's limitation of motion was permanent and that the "aggravation of the chronic back problem made him more symptomatic even though there was no change in objective findings."

In December 2003, the Office referred appellant to Dr. Eugene N. Powell, Jr., a Board-certified orthopedic surgeon, for further evaluation of his medical condition. On February 4, 2004 Dr. Powell stated that on examination appellant exhibited essentially full range of lumbar motion with some pain at the extremes, minor pain on palpation of the lumbar spine, negative straight leg testing and full motor strength and intact sensation of the lower extremities without atrophy. He diagnosed low back pain with degenerative disc disease and indicated that his subjective complaints outweighed his objective findings. Dr. Powell indicated that appellant's November 14, 2000 lumbar strain had resolved and noted: "However, I do feel that aggravation of his degenerative disc disease continues to play a roll in his pain based on pain with prolonged weight bearing and with extremes of motion." He recommend work restrictions such as lifting no more than 40 pounds and limiting activities such as twisting, bending and stooping to four hours per day.

¹ The Office accepted that appellant sustained a right thigh strain on November 13, 1993 and a lumbar sprain on October 18, 1996 but he returned to regular work after these injuries. The Office also previously denied appellant's claim for an employment-related emotional condition under file number 06-728405.

² On February 16, 2001 Dr. Donna Schwartz-Watts, an attending Board-certified psychiatrist and neurologist, stated that appellant had an adjustment disorder with mixed disturbances of conduct and emotion due to pain, embarrassment and mistreatment related to his employment-related groin injury. The record does not contain any claim for an employment-related emotional condition and such a matter is not the subject of the current claim. Beginning in mid 2001, Dr. Schwartz-Watts indicated that appellant was totally disabled due to a sciatic neuropathy.

In September 2004, the Office determined that there was a conflict in the medical evidence between Dr. Powell and Dr. Schwartz-Watts regarding appellant's ability to work. The Office referred appellant to Dr. Charles B. Thomas, a Board-certified orthopedic surgeon, for an impartial medical examination. On December 20, 2004 Dr. Thomas provided a history of the medical treatment of appellant's employment injuries.³ He indicated that on examination appellant was able to go down to a full squat and arise from the squat without difficulty and could reach within four inches of his toes with either hand. There was no spasm over the lumbar spine, no trunk tilt or list and no cutaneous stigmata associated with spinal disease over the lumbar spine. Appellant had 65 degrees of lumbar flexion, could bend his waist 20 degrees to either side and he had normal strength and sensation in his lower extremities without atrophy.

Dr. Thomas stated that there were no electrodiagnostic findings of significant pathology in appellant's back other than age appropriate degenerative disc disease. He indicated that appellant had recovered from his employment-related back injury and noted that "his symptoms are related to his degenerative disc disease exclusively." Dr. Thomas stated that the aggravating condition stemming from his November 14, 2000 injury had resolved, leaving only the baseline degenerative disc disease. He indicated that appellant had subjective complaints that did not correspond with objective findings and that his subjective complaints outweighed his objective findings. Dr. Thomas noted that appellant did not have any work restrictions related to an employment-related back condition. He indicated that appellant could return to his regular work provided that his mental problems, including his adjustment disorder and anger problems, were properly managed.

In February 2005, the Office referred appellant to Dr. Martin Mirra, a Board-certified general surgeon, for a second opinion regarding whether he continued to have residuals of his employment-related groin injury. On March 2, 2005 Dr. Mirra indicated that appellant reported that he did not have many complaints of pain in his right groin area and had not noticed any bulging in that area. Appellant did not report any obstructive symptoms or problems with his bowels. Dr. Mirra indicated that on examination appellant's right inguinal hernia incision was found to be well healed and he did not observe any hernia on the right or left side. There was a subjective complaint of finger point tenderness to moderate palpation at the symphysis but there was no rebound or guarding. Dr. Mirra concluded that appellant's employment-related hernia condition had resolved and had not recurred. He indicated that there was no hernia condition which prevented appellant from returning to his regular work.

In a June 22, 2005 notice, the Office advised appellant that it proposed to terminate his compensation for disability and medical benefits. The Office indicated that the opinions of Dr. Thomas and Dr. Mirra showed that he no longer had residuals of his November 14, 2000 employment injury. The Office provided appellant 30 days to submit evidence showing that he continued to have employment-related residuals.

In a July 14, 2005 letter, appellant contented that Dr. Thomas and Dr. Mirra did not adequately evaluate his medical condition. He alleged that he continued to have residuals of his employment-related back and groin conditions. Appellant submitted a July 7, 2005 letter in

³ Dr. Thomas inadvertently dated his report July 20, 2004 but his report was actually produced on December 20, 2004.

which Dr. Schwartz-Watts questioned the accuracy of the limited examination findings observed by Dr. Thomas. She indicated that she did not have expertise in orthopedic treatment or general surgery and stated that she treated appellant's mental condition. Dr. Schwartz-Watts argued that appellant's compensation claim had been mishandled.

In a September 2, 2005 decision, the Office terminated appellant's compensation effective September 4, 2005. The Office found that the well-rationalized opinions of Dr. Thomas and Dr. Mirra established showed that appellant had no residuals of his November 14, 2000 employment injury after that date. The Office determined that the July 7, 2005 letter of Dr. Schwartz-Watts was of limited probative value.

Appellant requested a hearing before an Office hearing representative. At the January 10, 2007 hearing, he argued that the opinions of Dr. Thomas and Dr. Mira were not well rationalized and did not show that he no longer had employment-related residuals. In a July 7, 2007 letter, Dr. Schwartz-Watts discussed the course of appellant's medical treatment and argued that he continued to have employment-related disability.

In a March 19, 2007 decision, the Office hearing representative affirmed the September 2, 2005 decision. He found that the termination of appellant's compensation was supported by the opinions of Dr. Thomas and Dr. Mirra and determined that Dr. Schwartz-Watts' opinion was of limited probative value. The hearing representative indicated that Dr. Thomas actually served as an Office referral physician, rather than an impartial medical specialist, because there was no conflict in the medical evidence regarding the relevant issue of the present case.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,⁴ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁵ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

Section 8123(a) of the Act provides in pertinent part: "If there is 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 an examination."⁸

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁶ *Id.*

⁷ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ 5 U.S.C. 8123(a).

ANALYSIS

The Office accepted that on November 14, 2000 appellant sustained a groin strain, right inguinal hernia, low back strain and aggravation of degenerative disc disease of the low back. On January 18, 2001 appellant underwent an authorized right inguinal hernia repair. On September 2, 2005 the Office terminated appellant's compensation effective September 4, 2005 on the grounds that he had no residuals of his November 14, 2000 employment injury after that date.

The Board finds that the Office's termination of appellant's compensation effective September 4, 2005 is supported by the well-rationalized opinions of Dr. Thomas, an Office referral physician and Board-certified orthopedic surgeon, and Dr. Mirra, an Office referral physician and Board-certified general surgeon.⁹ Dr. Thomas' opinion establishes that appellant ceased to have residuals of back problems related to his November 14, 2000 injury and Dr. Mirra's opinion shows that he ceased to have residuals of groin problems related to his November 14, 2000 injury.

On December 20, 2004 Dr. Thomas reported essentially normal results on examination of appellant including the ability to squat without difficulty, the lack of spasm over the lumbar spine and normal strength and sensation in the lower extremities without atrophy. He indicated that appellant had recovered from his employment-related back injury and noted that "his symptoms are related to his degenerative disc disease exclusively." Dr. Thomas stated that the aggravating condition stemming from his November 14, 2000 injury had resolved, leaving only the baseline degenerative disc disease. He noted that appellant did not have any work restrictions related to an employment-related back condition. Dr. Thomas indicated that appellant could return to his regular work provided that his mental problems, including his adjustment disorder and anger problems, were properly managed.

Dr. Thomas' 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.¹⁰ He provided medical rationale for his opinion by explaining that appellant's limited objective findings on examination showed that his employment-related back condition had resolved. Dr. Thomas indicated that appellant had subjective complaints that did not correspond with objective findings and that his subjective complaints outweighed his objective findings. He explained that there were no electrodiagnostic findings of significant pathology in appellant's back other than age appropriate degenerative disc disease and indicated that his only disability was related to

⁹ The Office indicated that Dr. Thomas served as an impartial medical specialist because there had been a conflict in the medical evidence between Dr. Powell, an Office referral physician and Board-certified orthopedic surgeon, and Dr. Schwartz-Watts, an attending psychiatrist and neurologist. However, Dr. Schwartz-Watts did not provide any opinion regarding whether appellant continued to have residuals of his employment-related back and groin injuries. Therefore, there was no conflict in the medical evidence regarding the main issue of this case at the time of the referral to Dr. Thomas and he actually served as an Office referral physician. *See supra* note 8 and accompanying text.

¹⁰ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

nonwork-related conditions, *i.e.*, preexisting degenerative disc disease and an emotional condition.

On March 2, 2005 Dr. Mirra indicated that appellant reported that he did not have many complaints of pain in his right groin area and did not have any bowel problems or bulging in his right groin area. He indicated that on examination appellant's right inguinal hernia incision was found to be well healed and he did not observe any hernia on the right or left side. Dr. Mirra concluded that appellant's employment-related hernia condition had resolved and had not recurred. He indicated that there was no hernia condition which prevented him from returning to his regular work. Dr. Mirra's opinion is also based on a proper factual and medical history and contains medical rationale in support of its conclusions. He explained that his opinion on the resolution of appellant's employment-related groin condition was supported by the findings on examination. Dr. Mirra noted that appellant complained of finger point tenderness to moderate palpation at the symphysis, but indicated that this minor subjective complaint did not show the existence of a hernia or other groin problem.

Appellant submitted July 7, 2005 and July 7, 2007 letters of Dr. Schwartz-Watts in support of his contention that he continued to experience residuals of his employment injuries. In these letters, Dr. Schwartz-Watts argued that the Office did not present sufficient medical evidence to justify the termination of his compensation. These letters, however, are of limited probative value on the relevant issue of the present case in that Dr. Schwartz-Watts did not provide adequate medical findings on examination or rationale in support of her opinion.¹¹ She did not adequately describe specific findings on examination and diagnostic testing which supported her conclusions.¹²

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective September 4, 2005 on the grounds that he had no residuals of his November 14, 2000 employment injury after that date.

¹¹ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value if the opinion contained in that report is unsupported by medical rationale). Such medical rationale is particularly necessary in the present case as Dr. Schwartz-Watts' specialties, psychiatry and neurology, are not the most appropriate for evaluating appellant's orthopedic and groin conditions. The Board has held that the opinions of physicians who training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians. *Lee R. Newberry*, 34 ECAB 1294, 1299 (1983).

¹² The record also contains a February 4, 2004 report of Dr. Powell who indicated that appellant's November 14, 2000 lumbar strain had resolved and noted: "However, I do feel that aggravation of his degenerative disc disease continues to play a roll in his pain based on pain with prolonged weight bearing and with extremes of motion." However, this opinion is of limited probative value in that Dr. Powell did not provide adequate findings or otherwise present sufficient medical rationale supporting his conclusions.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 19, 2007 decision is affirmed.

Issued: January 10, 2008
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