United States Department of Labor
Employees' Compensation Appeals Board

N.F., Appellant	)	
and	)	**Docket No. 08-2460**
	)	**Issued: July 1, 2009**
U.S. POSTAL SERVICE, SOUTH SHORE ANNEX, Staten Island, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 15, 2008 appellant timely appealed the August 19, 2008 merit decision of the Office of Workers' Compensation Programs, which terminated his wage-loss compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.[1]

ISSUES

The issue is whether the Office properly terminated appellant's wage-loss compensation and medical benefits effective February 6, 2008.

FACTUAL HISTORY

Appellant, a 52-year-old mail handler, injured himself in the performance of duty on May 16, 2006. He stopped work the day of his injury. The Office accepted his claim for right

[1] The record on appeal includes evidence received after the Office issued its August 19, 2008 decision. The Board cannot consider evidence for the first time on appeal. 20 C.F.R. § 501.2(c) (2008).

groin strain, lumbar sprain and herniated lumbar disc.[2] Appellant received continuation of pay and the Office paid wage-loss compensation beginning July 1, 2006.[3]

In June 2007 Dr. Germaine N. Rowe, an attending physician, reported symptoms of lower back pain radiating into the right groin secondary to disc herniation at the L2-3 level and disc bulging at L3-4 and L4-5. He noted that conservative measures had not provided appellant complete relief and recommended a series of lumbar epidural steroid injections.[4] The first injection was administered on July 10, 2007. During this period, appellant continued with physical therapy and remained off work based on the advice of Thomas Doty, a physician's assistant.[5]

Appellant next saw Dr. Rowe on August 10, 2007 for complaint of lower back pain radiating into the right groin. Dr. Rowe noted that the July 10, 2007 epidural injection had provided some minimal-to-mild relief. He anticipated administering another two injections. However, the Office had yet to authorize any additional epidural steroid treatments. Appellant was scheduled to return to Dr. Rowe once authorization was obtained. That same day he also saw Mr. Doty, who again advised that, he refrain from all work.

Dr. Robert M. Israel, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on August 24, 2007. He found that appellant's lumbar sprain had resolved and appellant was capable of resuming his full-time, regular duties as a mail handler. Dr. Israel explained that appellant had no objective findings, noting that his evaluation was entirely within normal limits. He advised that, appellant had fully recovered and there was no need for further orthopedic care or treatment.

The Office found a conflict in medical opinion between Drs. Rowe and Israel. Dr. Stanley Soren, a Board-certified orthopedic surgeon and impartial medical examiner, saw appellant on November 8, 2007. He reviewed appellant's history, medical records and examined his back, abdomen, groin and lower extremities. Dr. Soren reported that there were no positive clinical findings indicative of any clinical manifestation of a disc herniation, lumbosacral sprain or lumbar strain. He also noted there was no indication of a right groin strain present. Dr. Soren saw no need for further diagnostic testing or any other medical treatment. He advised that appellant was able to return to his regular, full-time duties as a mail handler.

On January 2, 2008 the Office advised appellant that it proposed to terminate all benefits based on Dr. Soren's report. Appellant was afforded 30 days to submit additional evidence or argument in response to the proposed termination.

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[2] Appellant's June 27, 2006 lumbar magnetic resonance imaging (MRI) scan revealed, among other things, a diffuse herniated nucleus pulposus at L2-3 deforming the thecal sac and bilateral L3 nerve roots.

[3] The Office placed appellant on the periodic compensation rolls effective August 6, 2006.

[4] Dr. Rowe is a Board-certified physiatrist with a subspecialty in pain medicine.

[5] Mr. Doty is associated with Dr. Joseph A. Suarez and Dr. Deborah A. Henley. Dr. Suarez initially examined appellant on May 16, 2006, and both physicians previously authored reports regarding appellant's medical condition.

The Office continued to receive regular updates from Mr. Doty as well as physical therapy treatment records.

In a decision dated February 6, 2008, the Office terminated appellant's wage-loss compensation and medical benefits effective that day. It acknowledged receipt of the physical therapy records and Mr. Doty's various reports, but found that this information was of limited probative value because it had not been submitted by a qualified physician.

Appellant timely requested a hearing, which was held on June 10, 2008. He submitted recent treatment notes and a March 13, 2008 report from Dr. Suarez, a Board-certified orthopedic surgeon. The Office also received additional physical therapy treatment records.

On January 25, 2008 Dr. Suarez reported that appellant was being seen for a long-standing back problem. After examining appellant and reviewing his MRI scan findings, Dr. Suarez advised that appellant had chronic degenerative changes and bulging discs in the lumbar spine, which represented a chronic permanent problem. Dr. Suarez noted that appellant had a moderate disability of the lumbar spine and was only capable of performing sedentary work.

In a March 13, 2008 report, Dr. Suarez reviewed his initial May 16, 2006 findings and provided a chronology of the treatment appellant received through January 2008. He explained that appellant had tried multiple conservative treatments, including physical therapy, pain medication and an epidural injection, but failed all treatment options. Dr. Suarez found that appellant had reached maximum medical improvement and was currently unable to perform the normal duties of his job. He stated that appellant was unable to lift and carry heavy objects, unable to bend and twist and unable to stand or sit for prolonged periods, all of which were required for his normal tasks.

In treatment notes dated May 16, 2008, Dr. Suarez indicated that appellant continued to complain of lumbosacral spine pain. He noted pain on range of motion, including lateral bending and forward flexion. Dr. Suarez indicated that appellant was totally disabled and could not work. He essentially reiterated those same findings when he saw appellant on June 13, 2008.

By decision dated August 19, 2008, the hearing representative affirmed the February 6, 2008 decision terminating benefits.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[6] Having determined that an employee has a disability causally related to his federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[7] The right to medical benefits for an accepted condition is not limited to the period of entitlement

[6] *Curtis Hall*, 45 ECAB 316 (1994).

[7] *Jason C. Armstrong*, 40 ECAB 907 (1989).

to compensation for disability.[8] 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.[9]

ANALYSIS

The Office properly found that there was a conflict of medical opinion between appellant's physician, Dr. Rowe, and the Office referral physician, Dr. Israel. Based on this conflict, the Office referred appellant to an impartial medical examiner to resolve the issue of whether there were any remaining residuals of the accepted employment injury.[10] Dr. Soren, the impartial medical examiner, noted that there were no positive findings indicative of any clinical manifestation of the disc herniation, lumbosacral sprain, lumbar strain or right groin strain. Based on the absence of positive clinical findings, Dr. Soren found no need for further diagnostic testing or any other medical treatment. He advised that appellant was able to return to his regular, full-time duties without restriction. Dr. Soren's opinion is sufficiently well reasoned and based upon a proper factual background. Accordingly, the Board finds that the Office properly accorded determinative weight to Dr. Soren's November 8, 2007 findings, as he was the impartial medical examiner.[11]

Dr. Suarez's subsequent reports do not undermine Dr. Soren's opinion. In medical reports dated January through June 2008, Dr. Saurez noted that appellant was being treated for a long-standing back problem, which included chronic degenerative changes and bulging discs as evidenced by lumbar MRI scan. In January 2008 Dr. Suarez characterized appellant's disability as moderate, with him being capable of performing only sedentary work. But by May 2008, appellant's condition apparently worsened to the point where he was totally disabled. Dr. Suarez provided no explanation for this decline. The latest treatment notes merely indicate that appellant experienced pain on range of motion, including left and right lateral bending and forward flexion. Dr. Suarez's most recent reports also fail to provide a well-reasoned opinion on causal relationship. The mere fact that appellant has a low back condition of long-standing

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

[9] *Calvin S. Mays*, 39 ECAB 993 (1988).

[10] The Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[11] Where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

duration does not establish that his current complaints are causally related to the May 16, 2006 employment injury.[12]

The Board notes that appellant submitted physical therapy records and various other reports and treatment records from Mr. Doty. A physical therapist or physician's assistant is not a "physician," as defined under the Federal Employees' Compensation Act.[13] Therefore, the opinions offered by such healthcare professionals are not considered competent medical evidence for purposes of determining entitlement to benefits.[14]

The weight of the medical evidence, as represented by the impartial medical examiner's November 8, 2007 report, establishes that appellant no longer has residuals of the May 16, 2006 employment injury. The Office properly terminated appellant's wage-loss compensation and medical benefits effective February 6, 2008.

CONCLUSION

The Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits.

[12] Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[13] *See* 5 U.S.C. § 8101(2) (2006).

[14] *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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