

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

S.B., Appellant

and

**U.S. POSTAL SERVICE, RESEARCH
TRIANGLE PARK STATION, Durham, NC,
Employer**

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**Docket No. 09-1996
Issued: March 24, 2010**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2009 appellant, through his attorney, filed a timely appeal from a July 15, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim for continuing compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he continues to experience any residuals or disability causally related to his accepted April 11, 2002 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on appeal. The facts and the history of the case are incorporated by reference. The relevant facts are briefly set forth below.

The Office accepted that on April 11, 2002 appellant, then a 39-year-old express mail messenger, sustained a lumbar strain when he slipped and fell on steps while carrying a tub of mail. By decision dated June 27, 2005, which was affirmed by an Office hearing representative on September 28, 2006, it terminated medical and wage-loss benefits based on the report of

Dr. Donald Gertz, a Board-certified orthopedic surgeon and second opinion physician, who found that appellant could return to work without restriction. On June 21, 2007 the Board affirmed the September 28, 2006 hearing representative's decision, finding that the Office properly terminated appellant's compensation benefits on June 27, 2005 and that appellant did not establish a continuing disability or residuals from his work-related lumbar strain.¹ Appellant subsequently requested reconsideration and submitted medical reports dated September 26, 2006 and February 20, 2007 from Dr. Scot E. Reeg, a Board-certified orthopedic surgeon. By decision dated April 22, 2008, the Office denied modification on the grounds that appellant did not provide sufficient medical evidence to establish a continuing work-related disability. On March 10, 2009 the Board affirmed this decision.²

On June 15, 2009 appellant, through his representative, filed a request for reconsideration. He resubmitted the September 26, 2006 and February 20, 2007 medical reports from Dr. Reeg.

In a February 3, 2009 medical report, Dr. Reeg stated that he was following appellant for his low back condition. He diagnosed polymyositis for which appellant was taking steroids and avascular necrosis (AVN) in the hips. Dr. Reeg opined that appellant seemed to be doing well and that he was holding off on any joint replacements until he obtained a second opinion regarding his AVN.

By decision dated July 15, 2009, the Office denied modification, finding that the new medical evidence did not establish that appellant had any continuing disability or residuals from his employment-related condition.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the employee. In order to prevail, the employee must establish by the weight of the reliable, probative and substantial evidence that he or she has an employment-related condition, which continued after termination of compensation benefits.⁴

ANALYSIS

The Office accepted that appellant sustained an employment-related lumbar strain on April 11, 2002 resulting in temporary total disability. On a prior appeal, the Board determined that the Office properly terminated appellant's compensation benefits on June 27, 2005. The issue is whether appellant met his burden of proof to establish that he continues to experience residuals or disability due to his April 11, 2002 employment-related injury.

¹ Docket No. 07-606 (issued June 21, 2007).

² Docket No. 08-1741 (issued March 10, 2009).

³ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Anna M. Blaine*, 26 ECAB 351, 353-54 (1975). See *Fred Foster*, 1 ECAB 127 (1948).

⁴ *I.J.*, *id*; *Gary R. Sieber*, 46 ECAB 215 (1994). See *Wentworth M. Murray*, 7 ECAB 570 (1955).

Appellant submitted September 26, 2006, February 20, 2007 and February 3, 2009 medical reports from Dr. Reeg. The Board, in the March 10, 2009 decision, previously evaluated the September 26, 2006 and February 20, 2007 medical reports and found that they did not establish any residuals from the employment injury. Therefore, the only new evidence is the February 3, 2009 medical report. There, Dr. Reeg stated that he was following appellant's low back condition. He diagnosed polymyositis and AVN. Dr. Reeg did not provide any opinion as to the cause of the polymyositis or AVN or opine as to whether these conditions were related to appellant's accepted lumbar strain. As he did not provide an opinion addressing whether appellant continued to experience residuals or disability from his employment-related condition, his report is insufficient to establish appellant's claim.⁵

CONCLUSION

The Board finds that appellant did not establish that he continues to experience any residuals or disability due to his employment-related condition.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁵ See *I.R.*, 61 ECAB ____ (Docket No. 09-1229, issued February 24, 2010); *Manuel Gill*, 52 ECAB 282 (2001).