

U.S. DEPARTMENT OF LABOUR  
Office of Workers' Compensation Programs

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DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of Robert Davis, Claimant; Employed by the U. S. Postal Service in Florence, South Carolina. Case No. 062048438.

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the District Office dated January 7, 2005 has been reversed for the reasons set forth below.

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The issue for determination is whether the accepted work related lumbar strain ceased no later than November 3, 2003.

The claimant, born January 9, 1959, is employed as a Manual Clerk for the U. S. Postal Service in Florence, South Carolina. On November 6, 2001, he filed timely notice of a traumatic injury sustained on October 26, 2001 when he injured his back while lifting a package from a mail hamper.

The claimant sought treatment at the emergency room on November 6, 2001. He was diagnosed with musculoskeletal back pain.

X-rays of the thoracic spine dated November 6, 2001 revealed degenerative changes in the lower cervical spine.

X-rays of the lumbar spine dated November 16, 2001 were negative.

On February 11, 2002, the Office denied the claim for the reason that the evidence failed to establish that the claimant sustained an injury as alleged. The claimant disagreed with the decision and requested an oral hearing which was held on August 15, 2002. On December 12, 2002, the Hearing Representative affirmed the Office's decision.

On July 25, 2002, Dr. Rakesh Chokshi, an orthopedist, examined the claimant. He diagnosed possible left intercostals neuritis; T9 hemangioma; and chronic myofascial chest wall pain.

On November 3, 2003, Dr. Kerri Kolehma submitted a review of the claimant's medical records. He stated that based on his review, the claimant's original injury was on March 7, 1998 with complete resolution of the strain on March 30, 1998. Three years later, on October 26, 2001, the claimant suffered a new injury at work. Dr. Kolehma opined that the claimant did reinjure his back in October 2001 with left leg sciatica that was slowly resolving. He opined that the abnormal findings of the thoracic MRI were not work related.<sup>1</sup> He concluded that the claimant has a history of chronic back sprains. He opined that the October 2001 strain should have resolved.

The claimant requested reconsideration of the Hearing Representative's decision. On March 29, 2004, the Office vacated the prior decision and accepted the claim for a lumbar strain.

On December 13, 2003, the Office issued an acceptance letter advising that the claim was accepted for a lumbar strain, resolved as of November 3, 2003.

On January 7, 2005, the Office issued an amended acceptance letter and attached appeal rights because benefits were terminated effective November 3, 2003.

The claimant disagreed with the decision and requested an oral hearing before an OWCP representative. I find that this case is not in posture for a hearing. Based on my review of the file, the decision of the District Office dated January 7, 2005 should be reversed. I do not find that the Office met its burden of proof in terminating medical benefits for the accepted low back condition.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an

<sup>1</sup>An MRI of the thoracic spine dated March 11, 2002 revealed abnormal triangular shape high signal in the posterior inferior endplate of the T9 vertebral body. The MRI was obtained from case 062101728 which has also been denied, and the claimant has requested an oral hearing on that claim.

<sup>2</sup>Bruce Chameroy, 42 ECAB (Docket No. 90-0923, issued October 4, 1990).

employment-related condition that require further medical treatment.<sup>3</sup>

In the present case, the Office accepted that the October 26, 2001 work injury resulted in a lumbar strain. A review of the medical evidence indicates ongoing medical treatment for the accepted condition. The claimant underwent physical therapy along with a work hardening program and medication management. He continued to perform limited duty work after the injury.

On August 20, 2004, McLeod Occupational Health diagnosed chronic myofascial pain with intermittent left leg radiculopathy. He began work hardening shortly after this examination.

Medical notes dated September 20, 2004 stated that the work hardening made the claimant's back pain even worse and that his back condition remained the same.

Treatment notes dated November 15, 2004 diagnosed chronic low back pain and noted that the claimant has had no change in his condition.

As recent as January 20, 2005, the claimant continued to seek treatment at McLeod Occupational Health for his low back condition.

On November 3, 2003, Dr. Kolehma reviewed the claimant's medical records. It was Dr. Kolehma's opinion that the accepted work related strain would have resolved by the time of his review of the records. However, Dr. Kolehma did not physically examine the claimant at that time. Therefore, his opinion is speculative, especially in light of the ongoing medical evidence after he rendered his opinion which established that the claimant was still seeking medical care for his low back condition.

The medical opinion of a physician who has had the opportunity to personally examine a claimant has greater probative value than a physician who has not performed a personal examination. Although appellant's physician supported total disability, he acknowledged that he did not examine appellant and his opinion of total disability was not based upon examination findings. Appellant stated that his physician told him not to come into the doctor's office for examination. This indicated to the

<sup>3</sup>Frederick Justiniano, 45 ECAB (Docket No. 93-558, issued February 24, 1994).

Board that the opinion of appellant's physician was based solely on a telephone conversation with appellant.<sup>4</sup>

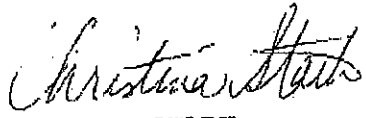
In the case of *Alfredo Rodriguez*, the medical evidence did not establish that appellant's work-related condition had ceased as periodic reports from appellant's physician indicated that appellant received continuing treatment and medication. As the medical evidence did not contain objective clinical findings determining that appellant's work-related condition had ceased, the Office did not meet its burden to terminate medical benefits.<sup>5</sup>

I do not find that the medical evidence in the present case establishes that the claimant's accepted work related condition has resolved. The claimant continued to seek medical care after the date of the medical record review and continued through at least January 2005. None of the claimant's treating physicians has ever opined that the work related condition has ceased. The Office did not meet its burden of proof in terminating medical benefits.

Upon return of the file, the Office should reinstate medical benefits for the accepted low back condition retroactive to the date of termination.

Consistent with the above findings, the decision of the District Office dated January 7, 2005 is REVERSED and the case file is returned for further action as described above.

DATED: AUG 26 2005  
WASHINGTON, D.C.

  
CHRISTINA STARK  
Hearing Representative  
For  
Director, Office of Workers'  
Compensation Programs

<sup>4</sup>Dean E. Pierce, 40 ECAB 1989) [89-1119 issued August 28].  
<sup>5</sup>47 ECAB (Docket No. 94-1357, issued March 11, 1996).