

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID R. BAIRD and U.S. POSTAL SERVICE,  
POST OFFICE, Whitley City, KY

*Docket No. 01-1356; Submitted on the Record;  
Issued April 22, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's benefits with respect to his July 1, 1994 employment-related orthopedic condition.

On July 1, 1994 appellant, then a 35-year-old rural carrier, was involved in an employment-related motor vehicle accident. The Office accepted appellant's claim for cervical strain, lower extremity contusion and multiple cuts and bruises. The Office subsequently expanded appellant's claim to include major depression as a consequence of his cervical strain.

In a decision dated June 10, 1999, the Office terminated appellant's benefits with respect to his accepted orthopedic condition. The Office based its determination on the November 10 and December 10, 1998 reports of Dr. Howard D. Markowitz, a Board-certified orthopedic surgeon and Office referral physician, who found that appellant's orthopedic condition had resolved.

Appellant requested an oral hearing, which was held on February 29, 2000. Appellant also submitted a March 14, 2000 report from his treating physician, Dr. Emanuel H. Rader, who stated that appellant continued to suffer from his employment-related cervical strain.

In a decision dated May 25, 2000, the Office hearing representative determined that, while the Office had properly relied on Dr. Markowitz's opinion as a basis for terminating benefits, Dr. Rader's recent opinion created a conflict. Thus, while the hearing representative affirmed the prior decision dated June 10, 1999, she remanded the case to resolve the newly created conflict of medical opinion.<sup>1</sup>

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<sup>1</sup> Although appellant filed an appeal with the Board, he subsequently requested that the appeal be withdrawn. By order dated September 28, 2000, the Board dismissed the appeal. Docket No. 00-2372.

The Office subsequently referred appellant for an independent medical evaluation with Dr. David E. Muffly, a Board-certified orthopedic surgeon. In a report dated January 18, 2001, Dr. Muffly found that, while appellant's subjective complaints were consistent with muscular pain, his objective examination and testing had all been normal. In a supplemental report dated February 6, 2001, Dr. Muffly indicated that in his prior examination he had not detected any acute cervical strain. He further stated that the examination findings were the somatic presentation of an underlying psychological pain diagnosis.

By decision dated March 6, 2001, the Office determined that the weight of the medical evidence established that appellant's accepted orthopedic condition had resolved. Accordingly, the Office found that appellant was no longer entitled to benefits with respect to his July 1, 1994 employment-related orthopedic condition.

The Board finds that the Office met its burden of proof in terminating appellant's benefits with respect to his July 1, 1994 employment-related orthopedic condition.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>2</sup> Having determined that an employee has a disability causally related to his or her 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.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>4</sup> 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.<sup>5</sup>

In the instant case, the Office determined that a conflict of medical opinion existed based on the opinions of Drs. Markowitz and Rader. Therefore, the Office properly referred appellant to an impartial medical examiner who concluded that appellant no longer had any continuing disability or residuals related to his July 1, 1994 employment-related orthopedic condition.<sup>6</sup> The Board finds that the Office properly relied on the impartial medical examiner's opinion as a basis for terminating benefits.<sup>7</sup> Dr. Muffly's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. Muffly also reported accurate medical and employment histories.

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<sup>2</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>5</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>6</sup> The Federal Employees' Compensation 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).

<sup>7</sup> In cases 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).

Accordingly, the Office properly accorded determinative weight to Dr. Muffly's findings. Moreover, Dr. Muffly's opinion is supported by Dr. Markowitz's opinion. Therefore, the weight of the evidence establishes that appellant no longer suffers from residuals of his July 1, 1994 employment-related orthopedic condition.

The March 6, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 22, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member