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

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| **D.S., Appellant** | ) | |
| **and** | ) | **Docket No. 07-1460** |
| | ) | **Issued: November 2, 2007** |
| **U.S. POSTAL SERVICE, WALDORF DDC, Waldorf, MD, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

Oral Argument October 4, 2007

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On March 14, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 25, 2006 which terminated her wage-loss compensation and a December 29, 2006 decision which found that she had abandoned a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUES***

The issues are: (1) whether the Office met its burden of proof to terminate appellant's wage-loss compensation effective September 3, 2006 on the grounds that she no longer suffered residuals of the accepted condition; and (2) whether appellant abandoned a telephonic hearing scheduled for December 18, 2006.

### ***FACTUAL HISTORY***

On February 18, 2005 appellant, then a 41-year-old letter carrier, filed a Form CA-1, traumatic injury claim, alleging that she injured her lower back reaching down to reload trays of

mail. She stopped work that day. On June 9, 2005 the Office accepted that appellant sustained an employment-related sprain/strain of the lumbar region and she was placed on the periodic rolls. An August 12, 2005 computerized tomography (CT) scan of the lumbar spine demonstrated no acute abnormality and minimal degenerative disease at L5-S1.

Appellant came under the care of Dr. Hampton J. Jackson, Jr., Board-certified in orthopedic surgery, and in reports dated August 30 and September 27, 2005 and January 27, 2006, he noted the history of injury and appellant's complaints of back and leg pain. Dr. Jackson advised that appellant was totally disabled and had a consequential chronic pain syndrome and right knee injury. On March 3, 2006 he advised that her complaints were compatible with an L3-4 disc injury.

On March 9, 2006 the Office referred appellant to Dr. Robert Allen Smith, a Board-certified orthopedist, for a second opinion evaluation. In a March 24, 2006 report, Dr. Smith noted the history of injury, appellant's complaints and his review of the medical record including a May 10, 2005 magnetic resonance imaging (MRI) scan of the lumbar spine that demonstrated a small disc bulge at L3-4 with no evidence of acute herniation or stenosis. Following physical examination, he opined that appellant's current complaints were not objectively supported and advised that her accepted condition had completely resolved and that she could return to regular duty without restriction.

Finding that a conflict in medical opinion had been created between the opinions of Drs. Jackson and Smith regarding whether appellant's employment injury had resolved, the Office referred appellant to Dr. Hamid Quraishi, also Board-certified in orthopedics, for an impartial evaluation. In a May 26, 2006 report, Dr. Quraishi described the employment injury, appellant's medical treatment and his review of the medical record including MRI scan and CT scan findings. He noted her complaints of pain radiating down the right leg with sitting, standing, bending and walking limited by pain. Dr. Quraishi stated that she described a lot of pain when asked to stand or to lie down on the examining table and examination of the lumbosacral spine showed tenderness but no muscle spasm. He advised that range of motion was voluntarily restricted and that neurological examination of both lower extremities demonstrated no sensory or motor changes. Dr. Quraishi diagnosed lumbosacral strain, resolved and facet joint arthropathy at L5-S1, minimal degenerative changes in the lumbar area and degenerative arthritic changes at the lower dorsal spine, as found on x-ray that day. He noted that appellant had had very extensive treatment including physical therapy, narcotic medication and epidural blocks which did not help her pain. Dr. Quraishi stated that he agreed with Dr. Smith that appellant's current symptoms appeared to be exaggerated and would not be related to the soft tissue strain that occurred at work more than one year previously. He concluded that appellant had no residuals of the February 16, 2005 employment injury and no work-related disability or limitations. Dr. Jackson continued to submit reports advising that appellant was totally disabled.

By letter dated July 18, 2006, the Office proposed to terminate appellant's compensation benefits on the grounds that she no longer suffered residuals of the accepted conditions. In response, appellant submitted reports dated July 11 and August 8, 2006 in which Dr. Jackson advised that appellant could not work. In a decision dated August 25, 2006, the Office finalized the proposed termination, effective September 3, 2006. On September 13, 2006 appellant requested a teleconference or hearing, and submitted an August 17, 2006 report from

Dr. Martin R. McLaren, a Board-certified anesthesiologist who had treated appellant for pain management with epidural injections and advised that she could return to work. Appellant also submitted additional reports from Dr. Jackson including a November 3, 2006 treatment note in which he advised that she could have a return to work trial of limited duty.

In a letter dated November 14, 2006, the Office informed appellant that a telephone hearing was scheduled at 10:30 a.m. on December 18, 2006 and provided instructions for placing the telephone call. By decision dated December 29, 2006, the Office found that appellant had abandoned her hearing request.

## ***LEGAL PRECEDENT -- ISSUE 1***

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[1] The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[2]

Section 8123(a) of the Federal Employees' Compensation Act[3] provides that, 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.[4]

## ***ANALYSIS -- ISSUE 1***

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation effective September 3, 2006. The Office determined that a conflict in the medical evidence had been created between the opinions of Dr. Smith, an orthopedic surgeon who provided a second opinion evaluation for the Office, and Dr. Jackson, an attending orthopedist, regarding whether appellant's employment injury had resolved. The Office then properly referred appellant to Dr. Quraishi, Board-certified in orthopedic surgery, for an impartial evaluation.[5] In a comprehensive report dated May 26, 2006, Dr. Quraishi described the employment injury, appellant's medical treatment and his review of the medical record including MRI scan and CT scan findings. He noted her complaints of back and radiating leg pain, that her physical activity was limited by pain, and that on examination she described a lot of pain when asked to stand or to lie down on the examining table. Dr. Quraishi's examination of the lumbosacral spine showed tenderness but no muscle spasm, voluntarily restricted range of motion and no sensory or motor changes on neurological examination of both lower extremities.

[1] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[2] *Id.*

[3] 5 U.S.C. §§ 8101-8193.

[4] 5 U.S.C. § 8123(a).

[5] *Id.*

He diagnosed lumbosacral strain, resolved and facet joint arthropathy at L5-S1, minimal degenerative changes in the lumbar area and degenerative arthritic changes at the lower dorsal spine, as found on x-ray that day. Dr. Quraishi advised that appellant's current symptoms appeared to be exaggerated and would not be related to the soft tissue strain that occurred at work more than one year previously. He concluded that appellant had no residuals of the February 16, 2005 employment injury with no work-related disability and no limitations.

The Board finds that, as Dr. Quraishi provided a comprehensive, well-rationalized evaluation in which he clearly advised that any residuals of appellant's February 16, 2005 sprain/strain of the lumbar region had resolved, his report is entitled to the special weight accorded an impartial examiner and therefore constitutes the weight of the medical evidence.[6] The Office therefore met its burden of proof to terminate appellant's compensation benefits effective September 3, 2006.

## ***LEGAL PRECEDENT -- ISSUE 2***

The Office's regulations address the requirements for obtaining a hearing and provide that a teleconference may be substituted for the oral hearing at the discretion of the hearing representative.[7] Scheduling is at the sole discretion of the hearing representative and is not reviewable.[8] The legal authority governing abandonment of hearings rests with the procedure manual of the Office which provides that a hearing can be considered abandoned only under very limited circumstances.[9] The following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. Under these circumstances, the Office will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.[10]

## ***ANALYSIS -- ISSUE 2***

In the present case, on September 13, 2006 appellant requested a hearing and indicated that she was open to the option of a teleconference. By letter dated November 14, 2006, the Office mailed appellant a notice that a telephone hearing was scheduled at 10:30 a.m. on December 18, 2006 and provided instructions for contacting the Office.

The Board finds that the November 14, 2006 Office communication put appellant on notice that a telephone hearing had been scheduled. Appellant did not communicate with the Office either before or within 10 days after the scheduled hearing to request a postponement or explain

[6] *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

[7] 20 C.F.R. §§ 10.615, 10.616.

[8] 20 C.F.R. § 10.622(b).

[9] *Claudia J. Whitten*, 52 ECAB 483 (2001).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *D.F.*, 58 ECAB ____ (Docket No. 06-1815, issued November 27, 2006).

why she did not telephone the Office for the scheduled hearing. The record thus supports that appellant did not request a postponement of the December 18, 2006 hearing, that she failed to appear by not participating in the scheduled teleconference and that she failed to provide any notification for such failure within 10 days of the scheduled date of the telephone hearing. As this meets the conditions for abandonment specified in the Office's procedure manual, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.[11]

## ***CONCLUSION***

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 3, 2006 and that she abandoned a telephonic hearing scheduled for December 18, 2006.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 29 and August 25, 2006 be affirmed.

Issued: November 2, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[11] *Claudia J. Whitten, supra* note 9.