

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY R. McGRAW and U.S. POSTAL SERVICE,  
POST OFFICE, Greenville, S.C.

*Docket No. 96-495; Oral Argument Held January 7, 1998;  
Issued August 25, 1998*

Appearances: *Paul McChesney, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that his back condition was aggravated by factors of his federal employment.

The Board has duly reviewed the case record in the present appeal and finds that this case is not in posture for decision due to an unresolved conflict in the medical opinion evidence.

On July 26, 1993 appellant, a retired letter carrier,<sup>1</sup> filed an occupational disease claim (Form CA-2) assigned number A6-0575859 alleging that on September 28, 1988 he first realized that his federal employment aggravated his preexisting degenerative disc disease.<sup>2</sup>

The Office accepted appellant's claim for aggravation of his degenerative disc disease.

An Office medical adviser reviewed appellant's medical records and opined in a September 2, 1993 medical report, that there was no aggravation of appellant's degenerative lumbar spine and disc disease by factors of his federal employment.

By letter dated October 19, 1993, the Office referred appellant along with a statement of accepted facts, medical records and a list of specific questions regarding appellant's condition to

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<sup>1</sup> The record reveals that appellant retired on disability from the employing establishment on November 30, 1989.

<sup>2</sup> Previously, appellant filed a claim assigned number A6-324378 for a bruised right knee and cervical strain resulting from an automobile accident while driving an employing establishment jeep on May 16, 1983. In a decision dated May 8, 1991, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish a causal relationship between appellant's back condition and the May 16, 1983 employment injury.

Dr. John P. Evans, a Board-certified orthopedic surgeon, for a second opinion examination. By letter of the same date, the Office advised Dr. Evans of the referral.

The Office received Dr. Evans' October 29, 1993 medical report revealing that appellant's impairment was a combination of a 1983 motor vehicle accident and degenerative disc disease at L4-5. By letter dated January 27, 1994, the Office advised Dr. Evans to clarify his opinion and to provide medical rationale for his conclusion. The Office further advised Dr. Evans to answer specific questions regarding the nature and extent of appellant's impairment due to aggravation of degenerative disc disease.

In response, Dr. Evans submitted a medical report dated February 8, 1994, indicating that appellant's impairment was totally due to the preexisting degenerative joint disease and appellant's chronic pain syndrome.

By letter dated March 24, 1994, the Office advised Dr. Evans to clarify his opinion regarding whether appellant's current condition was caused or aggravated by his federal employment. The Office also advised Dr. Evans that if he determined that appellant's condition was aggravated by his employment, then explain the nature of the aggravation. In response, Dr. Evans submitted an April 11, 1994 report, revealing that appellant's impairment was neither caused by his employment nor was his impairment and degenerative disc disease aggravated by his employment.

In a May 12, 1994 memorandum to the file, the Office determined that Dr. Evans' second medical opinion created a conflict with the medical opinion of Dr. Thomas W. Westmoreland, a Board-certified family practitioner and appellant's treating physician, who opined that appellant's degenerative disc disease was aggravated by factors of his federal employment. Thus, the Office referred appellant along with a statement of accepted facts, medical records and a list of specific questions regarding appellant's condition to Dr. Robert Adams Blake, a Board-certified orthopedic surgeon, for an impartial medical examination. By letter of the same date, the Office advised Dr. Blake of the referral. Dr. Blake submitted a June 1, 1994 medical report indicating that appellant's employment did not aggravate his back condition.

By decision dated June 28, 1994, the Office found the evidence of record insufficient to establish that appellant's current condition was aggravated by factors of his federal employment. In an accompanying memorandum, the Office accorded greater weight to Dr. Blake's opinion.

In a July 20, 1994 letter, appellant, through his counsel, requested an oral hearing before an Office representative.

The Office received an April 24, 1995 medical note from Dr. Glenn Scott, a Board-certified orthopedic surgeon, revealing that factors of appellant's employment aggravated his back condition based on appellant's clinical examination, history and x-ray findings.

By decision dated September 28, 1995, the hearing representative affirmed the Office's June 28, 1994 decision. The hearing representative accorded greater weight to Dr. Blake's medical opinion.

Section 8123(a) of the Federal Employees' Compensation Act<sup>3</sup> in pertinent part, provides: "[i]f there is a 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."

In the present case, appellant submitted the September 1, 1992 medical report of Dr. Westmoreland revealing that appellant's degenerative disc disease was aggravated by factors of his federal employment. Dr. Evans' April 11, 1994 second opinion report revealed that appellant's condition was not aggravated by factors of his federal employment. The Office properly found that Dr. Westmoreland's opinion created a conflict with the second opinion of Dr. Evans thus, requiring further development of the case record.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based upon a proper factual background, is entitled to special weight.<sup>4</sup> The Board has held that in a situation where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.<sup>5</sup> If that supplemental report is not forthcoming or if it fails to clarify the ambiguities of the original report, referral to a second impartial examiner is required.

In the instant case, Dr. Blake's June 1, 1994 impartial medical report revealed a history of appellant's May 1983 employment injury, a review of the medical records and his findings on physical examination. Dr. Blake diagnosed degenerative disc disease at L4-5 with localization primarily to the right, degenerative disc disease at L5-S1, facet joint osteoarthritis at L4-5, exogenous obesity and manic depressive disorder. In response to the Office's questions, Dr. Blake opined that appellant's condition was complicated by his obesity and that appellant's employment duties had no significant contributing factor to the progression of the process. Dr. Blake also opined that appellant had no current condition directly attributable to his federal employment, that appellant's current condition was caused by the May 1993 jeep accident and that appellant was unable to continue his job as a letter carrier or a job that involved lifting, carrying greater than 10 pounds, rapid bending and twisting maneuvers. Dr. Blake further opined that appellant would have difficulty riding in a car or performing sedentary type work. Dr. Blake concluded that appellant should retire due to his condition.

Although Dr. Blake set forth in his medical report a complete and accurate factual and medical history, the report does not contain sufficient rationale explaining why he concluded that there was no basis, on which to attribute appellant's degenerative disc disease to appellant's federal employment. Dr. Blake merely noted that appellant's condition was complicated by his obesity and opined that appellant's employment duties had no significant contributing factor to

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<sup>3</sup> 5 U.S.C. § 8123(a).

<sup>4</sup> *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

<sup>5</sup> *Harold Travis*, 30 ECAB 1071 (1979).

the progression of the process. The Board finds that this opinion is conclusory and of little probative value.<sup>6</sup> Because of the lack of supporting rationale, Dr. Blake's opinion is not entitled to the special weight which may be accorded to the opinion of an impartial specialist. Therefore, the Board finds that Dr. Blake's opinion is of diminished probative value in determining the issue of causal relationship,<sup>7</sup> and is insufficient to resolve the conflict in medical opinion.

Because the conflict in rationalized medical opinion evidence has not been resolved, this case must be remanded for further development. On remand, the Office must seek clarification and elaboration of Dr. Blake's opinion to resolve the conflict.<sup>8</sup> Further, the Office should revise the statement of accepted facts to include a more detailed description of appellant's work duties. After such further development as the Office deems necessary, it should issue an appropriate decision.

The September 28, 1995 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office for further development in accordance with this decision.

Dated, Washington, D.C.  
August 25, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> See *Edgar L. Colley*, 34 ECAB 1691 (1983).

<sup>7</sup> *Id.*

<sup>8</sup> *Harold Travis*, 30 ECAB 1071 (1979).