

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANTHONY B. HOLT and DEPARTMENT OF THE NAVY,  
MARINE CORPS LOGISTIC BASE, Albany, Ga.

*Docket No. 97-164; Submitted on the Record;  
Issued December 2, 1998*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective September 6, 1995.

On May 20, 1992 appellant, then a 27-year-old material handler, sustained an injury to his back in the performance of duty when he slipped on the floor. The Office accepted the claim for a lumbar sprain and paid appropriate compensation benefits.

On April 21, 1993 Dr. William E. Mayher, III, a Board-certified orthopedic surgeon, examined appellant and found little evidence of neurological deficit. He noted that appellant provided poor effort on strength testing and that there was a subjective loss of sensation in the left L5 dermatome and the right S1 dermatome. Dr. Mayher stated that the findings were conflicting and suggestive of functional overlay. His examination of appellant's back revealed no abnormalities.

The Office subsequently referred appellant to Dr. William L. Hornback, III, a Board-certified orthopedic surgeon. Dr. Hornback examined appellant on May 31, 1993 and opined that he had a ruptured disc at L5-S1. Dr. Hornback requested additional objective testing, but indicated that appellant's symptoms and his clinical findings were compatible with the accepted injury. In a supplemental report dated August 4, 1993, Dr. Hornback noted a positive straight leg raise on the left, weakness in the extensor hallucis function on the left, and a decrease in touch sensation over the dorsum of the left foot. He indicated that appellant's lumbar strain had probably resolved, but that an aggravation of a preexisting condition remained. Dr. Hornback opined that appellant's herniated disc was related to his accepted injury and appellant remained disabled from work. On January 12, 1994 he reviewed a lumbar myelogram and computerized axial tomography, and stated that appellant demonstrated a relative spinal stenosis at the L3-4 level consistent with his clinical findings and symptomology. Dr. Hornback related appellant's symptoms to his May 1992 accepted injury because appellant had no previous history of such problems prior to the injury.

On March 21, 1994 Dr. Phillip G. Benton, a Board-certified orthopedic surgeon, recommended that appellant undergo a one level fusion and discectomy on the left at L5-S1. The Office then referred appellant to Dr. Donald W. Blair, a Board-certified neurologist, for a second opinion regarding the surgery. Dr. Blair indicated that appellant's response to pin testing was inconsistent with his injury. He also noted an absence of sciatic pain and no evidence of focal neurological problem related to the L5-S1 disc problem. Dr. Blair indicated that the myelogram showed no evidence of disc pathology. He concluded that medical evidence failed to support the proposed surgery.

The Office then referred appellant to Dr. Robert A. Nelson, a Board-certified orthopedic surgeon. Dr. Nelson examined appellant on January 6, 1995 and indicated that there were no objective findings to support appellant's complaints. He stated that appellant demonstrated no atrophy, loss of strength, sensation deficit, or reflex loss. He concluded that appellant had recovered from his accepted injury in May 1992. Dr. Nelson diagnosed chronic low back pain with secondary degenerative disc disease and significant pathological overlay.

On March 23, 1995 Dr. Benton diagnosed a mild L5-S1 disc rupture, but stated that appellant's symptoms were excessive for the problem. He noted, however, that while myelograms have false positives, appellant's magnetic resonance imaging (MRI) revealed a mild central herniation at L5-S1.

The Office subsequently found that a conflict in the medical opinion evidence existed concerning whether appellant had any continuing disability causally related to his accepted employment injury. The Office therefore referred appellant, along with a statement of accepted facts, to Dr. Sidney H. Yarbrough, III, a Board-certified orthopedic surgeon, for a referee medical opinion examination. In a report dated March 24, 1995, Dr. Yarbrough reviewed appellant's history, treatment, and his findings on examination conducted on March 20, 1995. He found evidence of back pain and noted a narrow spinal canal. Dr. Yarbrough requested additional objective testing to clarify his opinion. An MRI dated May 17, 1995 showed early disc degeneration at L5-S1 without focal component. Electromyography and nerve conduction studies taken on the same date, however, were normal. On June 19, 1995 Dr. Yarbrough reviewed the additional objective evidence and diagnosed back pain which could be caused by the May 1992 injury, but which could also be due to subsequent injuries. He stated that the aggravation was stationary and that his physical findings do not support appellant's degree of disability. Dr. Yarbrough opined that appellant's myelogram revealed a narrow canal in the lumbar spine and that degenerative disc disease was proven by MRI. He stated, however, that appellant's complaints were out of proportion with the objective findings and that appellant should return to work without any disability or additional surgery. Dr. Yarbrough then completed a work-capacity evaluation form indicating that appellant had no disability or impairment.

On August 3, 1995 the Office issued a "Notice of Proposed Termination of Compensation" based on the opinion of Dr. Yarbrough.

On August 14, 1995 Dr. Benton stated that appellant had an L5-S1 small central herniation with internal disc disruption at L5-S1 related to his accepted injury. He found that

although appellant's psychological overlay contributed to his disability, appellant was disabled from his May 1992 accepted injury.

By decision dated September 6, 1995, the Office terminated appellant's compensation benefits.

Appellant subsequently requested an oral hearing which was held on March 28, 1996. At the hearing appellant maintained that the medical evidence supported continued disability from his May 1992 accepted injury.

By decision dated July 11, 1996, the Office hearing representative affirmed the Office's September 6, 1995 decision terminating benefits. The hearing representative found that the weight of the evidence rested with Dr. Yarbrough, the referee medical examiner.

The Board finds that the Office met its burden in terminating appellant's compensation benefits effective September 6, 1995.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.<sup>2</sup> Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.<sup>3</sup> To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.<sup>4</sup>

In the present case, the Office accepted the claim for a lumbar sprain and authorized appropriate compensation. The well-reasoned reports of Dr. Hornback, a Board-certified orthopedic surgeon, and Dr. Benson, a Board-certified orthopedic surgeon, supported appellant's continued disability from his May 1992 accepted employment injury. These opinions, however, were contradicted by the well-reasoned opinions of Dr. Mayher, a Board-certified orthopedic surgeon, Dr. Nelson, a Board-certified orthopedic surgeon, and Dr. Blair, a Board-certified neurologist, who each opined that appellant's disability from his May 1992 injury had resolved. Because of the conflict between these reports, the Office referred appellant to Dr. Yarbrough, a Board-certified orthopedic surgeon, for an impartial medical examination pursuant to section 8123 of the Federal Employees' Compensation Act.<sup>5</sup>

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<sup>1</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>2</sup> *Id.*

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. § 8128 *et seq.*

In situations where there are opposing medical reports of virtually equal weight and the case is referred to an impartial specialist, the opinion of such a specialist will be given special weight if the opinion is based on proper factual background and well rationalized.<sup>6</sup> In this case, Dr. Yarbrough thoroughly reviewed appellant's medical history, performed an orthopedic examination, and reviewed appellant's objective testing. He concluded that based on the clinical findings, magnetic resonance imaging, and myelogram appellant's accepted conditions had resolved. Because Dr. Yarbrough's opinion was based on a proper factual background and supported by medical rationale his opinion, as that of the impartial specialist, constitutes the weight of the evidence.

Accordingly, the decision of the Office of Worker's Compensation Program dated July 11, 1996 is affirmed.

Dated, Washington, D.C.  
December 2, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> See *Jack R Smith*, 41 ECAB 691 (1990).