U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY D. OVERMAN and U.S. POSTAL SERVICE,
POST OFFICE, San Jose, Calif.

Docket No. 97-1141; Oral Argument Held November 4, 1998;
Issued February 1, 1999

Appearances: *Larry Overman, pro se*; *Catherine P. Carter, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective May 29, 1994 on the grounds that he had no further disability causally related to his May 12, 1982 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective May 29, 1994 on the grounds that he had no further disability causally related to his May 12, 1982 employment injury.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[1] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[2] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[3]

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[1] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[2] *Id.*

[3] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In the present case, the Office accepted that appellant sustained an employment-related low back strain on May 12, 1982 and paid him compensation for total disability.[4] By notice dated March 29, 1994, the Office advised appellant that it proposed to terminate his compensation on the grounds that he had no continuing disability due to his May 12, 1982 employment injury and, by decision dated May 2, 1994, the Office terminated appellant's compensation benefits effective May 29, 1994. The Office determined that the weight of the medical evidence regarding appellant's employment-related disability rested with the well-rationalized opinion of Dr. George Sims, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation. In a decision dated February 23, 1996, an Office hearing representative affirmed the Office's May 2, 1994 decision.

In 1984 the Office referred appellant to the Parnassus Heights Disability Service for an evaluation by a group of physicians regarding the extent, if any, of his employment-related disability. In a report dated May 25, 1984, the physicians concluded that appellant could work with limitations on lifting between 50 and 75 pounds. The physicians noted that a computerized tomography (CT) scan obtained on April 19, 1984 showed a herniated disc at L4-5 without clinical substantiation. The physicians stated:

> "The history is most suggestive of a minor musculoligamentous sprain or strain injury from which [appellant] has long since recovered. The abnormal CT scan gives some credibility to [his] subjective complaints. However, there is currently no clinical evidence to substantiate an L4-5 herniation."

In a report dated May 24, 1991, Dr. Thomas McDonough, an Office referral physician, diagnosed chronic lumbar strain with "[n]o clinical evidence of a herniated nuclues pulposus." He concluded that appellant had no objective evidence of disability and could return to work in a modified position.

On December 20, 1992 the Office referred appellant to Dr. Sims for an evaluation.[5] In a report dated January 25, 1993, Dr. Sims discussed the history of injury, reviewed the medical records, and listed normal findings on physical examination. He noted that appellant had "extremely mild" subjective complaints and referred him for a magnetic resonance imaging (MRI) scan of the lumbar spine.

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[4] By decision dated November 27, 1984, the Office found that the evidence established that appellant had no further disability causally related to his accepted employment injury. In a decision dated March 21, 1985, the Office vacated its November 27, 1984 decision on the grounds that the Office had not met its burden of proof to terminate appellant's compensation benefits.

[5] The determination of the need for an examination, the type of examination, the choice of locale, and the choice of medical examiners are matters within the province and discretion of the Office. The only limitation on this authority is that of reasonableness. *Daniel F. O'Donnell*, 46 ECAB 890 (1995). The Office's regulation at 20 C.F.R. § 10.407(a) provides that an injured employee "shall be required to submit to examination by a U.S. Medical Officer or by a qualified private physician approved by the Office as frequently and at such times and places as in the opinion of the Office may be reasonably necessary." The Office further has special procedures to follow before referring an appellant for an impartial medical examination; *see Daniel Alan Patrick*, 46 ECAB 1020 (1995); however, as this case involves a second opinion physician, the procedures regarding an impartial medical examination are not applicable.

In a supplemental report dated October 25, 1993, Dr. Sims related that an MRI scan revealed a central L4-5 disc herniation "indenting the dural sack but with no involvement of the neural foramina which suggests no nerve root compression." He found that appellant had no objective findings of a disc herniation on physical examination due to the lack of nerve root compression and further opined that he could return to his usual employment. In a follow-up report dated January 10, 1994, Dr. Sims related that the MRI scan findings "may be of long standing and, therefore, not significant since the MRI scan findings do not match [appellant's] physical findings on examination. I fe[el] that he could return to his usual and customary employment without modification."

By letter dated February 3, 1994, the Office requested further clarification from Dr. Sims regarding whether MRI scan findings of a herniated disc were causally related to his May 12, 1982 employment injury.

In a report dated May 7, 1994, Dr. Sims related that the disc herniation was not due to appellant's May 12, 1982 employment injury as the MRI scan did not reveal evidence of calcification. He stated that appellant's April 1984 CT scan showed an L4-5 disc hernation causing entrapment of the right nerve root but that appellant's complaints were of problems in the left lower extremity. Dr. Sims stated, "The herniation at this time at L4-5 is in the central portion and does not involve the right nerve root. Therefore, this is further evidence that the present MRI scan findings are not related to the 1982 injury."

The Board has carefully reviewed the opinion of Dr. Sims and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Sims reviewed the case record, examined appellant thoroughly and provided a detailed and well-rationalized explanation of why the accepted condition had resolved and appellant has no continuing disability. The Board therefore finds that Dr. Sims' opinion represents the weight of the medical evidence.[6]

Further, the record contains no medical evidence indicating that appellant has any continuing disability and thus, Dr. Sims opinion is unchallenged by contemporaneous medical evidence. Appellant indicated that he continued to experience problems related to his employment injury and challenged Dr. Sims' medical findings; however, statements of a lay person concerning the medical evidence are of no probative value.[7]

For these reasons, the Office properly relied upon the opinion of Dr. Sims to terminate appellant's compensation effective May 29, 1994.

The decision of the Office of Workers' Compensation Programs dated February 23, 1996 is hereby affirmed.

[6] *See Samuel Theriault*, 45 ECAB 586 (1994) (finding that a physician's opinion was thorough, well rationalized and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

[7] *James A. Long*, 40 ECAB 538 (1989).

Dated, Washington, D.C.
February 1, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member