

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD PENNACCHINI and DEPARTMENT OF THE NAVY,
NAVAL EDUCATION & TRAINING CENTER, Newport, R.I.

*Docket No. 98-2598; Submitted on the Record;
Issued June 11, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective March 30, 1997.

On July 23, 1987 appellant, then a 59-year-old pipefitter, filed a notice of traumatic injury and claim for compensation, alleging that on July 7, 1987 while lifting and fitting pipes he injured his back. The Office accepted the claim for a low back strain.¹ Appellant received continuation of pay and compensation based on total disability from July 27, 1987 until May 9, 1988, when he returned to light duty. Appellant subsequently filed a claim for a recurrence of disability on July 14, 1988. He stopped work on July 18, 1988 and was placed on the periodic compensation rolls. He has not worked since that date.

In a series of intermittent patient notes, attending physician reports and work evaluation reports dated from August 1987 to December 1996, Dr. John Hayes, a Board-certified orthopedic surgeon, treated appellant for severe low back pain and reported that he was totally disabled.

In a November 22, 1988 report, Dr. Vincent P. Genovese, a Board-certified orthopedic surgeon and an Office referral physician, opined that appellant did not appear to have any residual permanent structural damage as a result of the lumbar strain he sustained on July 7, 1987. He noted appellant's previous work-related back injuries and diagnosed that appellant suffered from cumulative deconditioning of the spine. Dr. Genovese suggested that the effects of appellant's work injuries were a "temporary aggravation" and that appellant showed normal, age-related changes to the spine. He concluded that appellant would benefit from strengthening exercises.

¹ Appellant previously filed claims for lower back pain on March 9, 1972, September 22, 1978, January 4 and March 10, 1982 which were accepted by the Office.

On September 14, 1993 the Office requested an updated medical report from Dr. Hayes asking him to explain the basis of appellant's continuing disability.

In a September 23, 1993 report, Dr. Hayes noted that while a back strain such as appellant's was in and of itself a temporary condition, in appellant's case, the back condition was superimposed on degenerative disc disease. He opined that appellant's ongoing orthopedic disability was primarily related to degenerative arthritis of the lumbar spine, but noted that appellant was also disabled by chronic obstructive pulmonary disease. Dr. Hayes concluded that appellant's disability was permanent in nature.

By letter dated October 1, 1996, the Office forwarded a copy of the case record and a statement of accepted facts to Dr. Edward Spindell, a Board-certified orthopedic surgeon and scheduled appellant for a second opinion examination.

In a report dated October 22, 1996, Dr. Spindell noted appellant's history of periodic low back sprains since 1977 related to his work as a pipefitter. He noted that appellant presented to the examination with an oxygen tank to his side, although appellant volunteered that he did not need the oxygen constantly. According to Dr. Spindell, appellant was able to walk without a limp and he showed no objective evidence of any significant impairment to the lower back. While he suspected underlying degenerative arthritis, Dr. Spindell indicated that the condition was not manifested by any acute inflammatory findings. He advised that an acute low back strain generally lasts over a period of 4 to 6 weeks with no permanent sequelae. Dr. Spindell specifically opined that appellant's degenerative changes in the spine confirmed computerized tomography (CT) scan were related to a normal aging process and were unrelated to the 1987 work injury. He recommended that appellant avoid heavy lifting as well as excessive or repetitive bending due to his underlying degenerative arthritis. Dr. Spindell concluded that appellant had no residual impairment due to the 1987 work-related lumbar strain.

The Office issued a proposed termination of benefits on December 9, 1996, advising appellant of his right to submit additional evidence.

In response to the notice of proposed termination, appellant submitted a December 18, 1996 report from Dr. Hayes. He opined that a significant contributing factor to appellant's present disability related to his severe degree of degenerative disc disease of the lumbar spine. Dr. Hayes specifically disagreed with Dr. Spindell that appellant's degenerative arthritic condition was normal for a man his age and opined that the severity of his condition was a direct result of appellant's repeated lower back work injuries. He further noted that appellant was disabled in part due to chronic obstructive pulmonary disease unrelated to appellant's employment.

By letter dated December 27, 1996, the Office notified appellant of the conflict in the medical evidence and scheduled him for an impartial medical examination with Dr. Steven L. Blazar, a Board-certified orthopedic surgeon.

In a report dated January 30, 1997, Dr. Blazar reviewed the case record and a statement of accepted facts, noting appellant's history of back pain beginning in 1972 and his ongoing treatment with Dr. Hayes. He reported physical findings and described appellant's July 7, 1987

work injury as having occurred when appellant was lifting “an 18 foot plastic pipe and felt a pulling sensation in his lower back.” Dr. Hayes further noted appellant’s complaints of constant dull pain in the low back with radiation to the posterior aspect of the left thigh. According to Dr. Blazar, appellant’s physical examination was consistent with that of a sedentary, deconditioned, 67-year-old male. He diagnosed chronic degenerative disc disease and chronic obstructive pulmonary disease. With respect to the issue of causal relationship, Dr. Blazar noted that there was no evidence indicating a relationship between appellant’s degenerative disc disease and his employment injuries. He specifically stated:

“The injury of [July 7, 1997] would not have caused the abnormalities noted two months later in [the September 22, 1987] CT scan, showing L5-S1 degenerative disc disease. Likewise, the lifting injuries in the past would not have caused him to have developed lumbar degenerative disc disease ... out of proportion to that one can expect in the general population.... I do not relate his current back difficulties to a lifting injury in 1987, as the natural history of such injuries regardless of whether they are superimposed upon a lumbar degenerative disc disease, would not continue to cause the difficulties of a subjective nature that are currently being experienced by this gentleman, some [nine] years later.”

Dr. Blazar concluded that appellant was totally disabled due to his underlying chronic obstructive pulmonary disease but not the L5-S1 degenerative disc disease. He further opined that, from a strictly orthopedic standpoint, appellant was capable of sedentary activities.

In a decision dated March 19, 1997, the Office terminated appellant’s compensation and authorization for medical treatment effective March 30, 1997 on the grounds that the weight of the evidence established that appellant’s disability related to the July 7, 1987 employment injury had ceased by that date.

Appellant thereafter requested a hearing before an Office hearing representative.

Appellant next submitted a February 3, 1998 report from Dr. Hayes, wherein he reiterated that he had been treating appellant for approximately 20 years, beginning with a work-related low back injury on September 29, 1978. Dr. Hayes noted that appellant sustained numerous back injuries in the course of his employment and that his symptoms increased with each incident. He stated “as is typical of degenerative arthritis of a traumatic etiology, caused by multiple lower back injuries, [appellant] has had a progression of his clinical findings, subjective symptoms and radiographic findings.” Dr. Hayes disputed that appellant’s present back condition was due to age-related degenerative arthritis, noting that appellant became more functionally impaired after each back injury. He concluded that appellant’s continuing disability was related to the cumulative effects of appellant’s previous back injuries.

By decision dated March 13, 1998, an Office hearing representative affirmed the Office’s March 19, 1997 decision terminating benefits.

The Board finds that the Office met its burden of proof in terminating appellant’s compensation effective March 30, 1997.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

In the present case, the Office properly found that there was a conflict in the medical evidence between Dr. Hayes and Dr. Spindell. As such the Office referred appellant to Dr. Blazar who opined that appellant no longer suffered any disability from his accepted, employment-related lower back strain and that appellant's ongoing back condition was due to degenerative arthritis with no residual effects from the July 7, 1987 work injury.

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Blazar.⁵ He reviewed the evidence of record, provided an accurate factual and medical background and reached conclusions which comported with the relevant history as well as his own findings on examination. Dr. Blazar further provided adequate medical rationale for his conclusion that appellant's back condition is no longer related to the July 7, 1987 work injury. Thus, inasmuch as he opined that appellant has no residual disability due to his employment injury, the Board finds that the Office properly terminated benefits.

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

⁴ *Gary R. Sieber*, 46 ECAB 215 (1994); *Jack R. Smith*, 41 ECAB 691 (1990); *James P. Roberts*, 31 ECAB 1010 (1980).

⁵ Appellant submitted the December 1988 report from Dr. Hayes subsequent to the receipt of Dr. Blazar's opinion. Dr. Hayes' December 1988 report essentially repeated his prior opinion that appellant is disabled at least in part due to the July 7, 1987 employment injury and is therefore insufficient to overcome Dr. Blazar's report; *see Thomas Bauer*, 46 ECAB 257 (1994) (The Board found that an additional report from appellant's physician, which essentially repeated his earlier findings and conclusions, was insufficient to overcome the weight accorded to an impartial medical examiner's report where appellant's physician had been on one side of the conflict that the impartial medical examiner resolved).

The decision of the Office of Workers' Compensation Programs dated March 13, 1998 is hereby affirmed.

Dated, Washington, D.C.
June 11, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member