U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSE DALTON and DEPARTMENT OF THE ARMY,
ARMY CORPS OF ENGINEERS, Louisville, KY

Docket No. 03-542; Submitted on the Record;
Issued May 7, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation.

On September 5, 1980 appellant, then a 53-year-old lockmaster, sustained a right eye injury when he was struck in the eye by a tractor bolt. He returned to full duty on September 10, 1980.[1] The Office accepted appellant's claim for corneal abrasion and traumatic macular degeneration in the performance of duty.

This case has previously been before the Board on appeal. In an October 6, 1987 decision, the Board found that there existed a conflict in the medical evidence as to whether appellant's peripheral vision loss was causally related to his employment injury and, if so, whether it prevented appellant from safely performing the duties of a locksman. The Board remanded the case for referral of appellant to an appropriate impartial medical specialist for an examination, diagnosis of appellant's condition and opinion. The facts of the case as set forth in that decision are incorporated herein by reference.[2]

The record reflects that appellant subsequently received appropriate compensation and benefits.

In a report dated December 21, 1987, Dr. Charles Bloch, a Board-certified ophthalmologist, indicated that the vision in appellant's right eye was 20/40 with correction and 20/60 without correction. For the left eye he indicated that it was 20/25 with correction and 20/40 without correction. Dr. Bloch explained that, because of his field loss and because no changes were found in his retina, a magnetic resonance imaging scan was performed to rule out

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[1] Appellant began disability retirement in October 1981.

[2] Docket No. 87-245 (issued October 30, 1987).

any optic nerve or brain pathology. He reported that the right optic nerve showed some atrophy which was probably caused by the injury he received when a wrench hit him in the right eye and orbit. Dr. Bloch opined that he believed the field loss and visual deficiency in appellant's right eye was related to the injury. He noted a corrected vision of 20/40 in the right eye. Dr. Bloch indicated that this would equate to a 29 percent loss in the right eye and a 20 percent loss in the left eye for a 22 percent loss to the visual system or a whole person loss of 21 percent. He opined that appellant could perform his job with the limitation of climbing or walking a narrow passageway in an elevated position. Dr. Bloch further opined that with the finding of optic atrophy only in the injured eye, the injury caused the field loss of his visual acuity in his right eye.

In a report dated May 8, 1995, Dr. John A. Lewis, an optometry, noted that appellant's diagnosis was retrobulbar optic atrophy due to blunt trauma and opined that appellant was legally blind in the right eye.

By letter dated September 11, 1995, appellant's attorney requested an additional schedule award for appellant as he was now legally blind in the right eye.

In a report dated May 9, 1996, Dr. Lewis noted that unaided visual acuities were: right eye at 20/400, (down from 20/200 in 4/95) and left 20/20. He indicated that manifest retraction revealed pano O.U. with no improvement in acuity possible for the right eye. Dr. Lewis noted that intraocular pressures were within normal limits and the retinas appear unchanged from previous examination. He concluded a diagnosis of retrobulbar optic atrophy and legal blindness due to blunt trauma to the right eye.

In a report dated May 5, 1998, Dr. Lewis noted that manifest retraction revealed pano (no improvement possible) for the right eye. He provided a diagnosis of legal blindness and retrobulbar optic atrophy due to blunt trauma to the right eye plus mild to moderate nuclear sclerosis.

On December 24, 1999 appellant filed a claim for an increased schedule award.

In a report dated March 20, 2000, Dr. Lewis again concluded a diagnosis of legal blindness as of March 14, 2000 and retrobulbar optic atrophy directly due to blunt trauma to the right eye. In a March 23, 2000 work capacity evaluation, Dr. Lewis opined that appellant would never be able to return to work.

In a June 21, 2000 report, Dr. John W. Collins, a Board-certified ophthalmologist, noted that he saw appellant on June 5, 2000, although it was unclear that he was doing a disability examination. Dr. Collins noted appellant's history of injury. He indicated that, on examination of the right eye, appellant's visual acuity was of hand motion to light perception and 20/20-2 in the left eye. Dr. Collins noted that appellant's eyelids and brows were normal, the pupils were round and reactive to light directing and consensual, the muscle balance was orthophoric and his extraocular movements were full. He indicated that the intraocular pressure was 12 and 13; the Slit lamp examination showed the cornea was clear; the anterior chamber was deep with cellular flare and the iris was flat; the lens was 1+ and nuclear sclerotic in both eyes; and the dilated fundus examination revealed the disc to be flat with cup to disc ration of 0.3. Further, the

maculat, the periphera and the vessels were all normal. Regarding the visual fields, he explained that the right visual field was completely black and the left was full. Dr. Collins opined that appellant had long-term visual loss secondary to retrobulbar optic nerve injury. He indicated that appellant had lost all vision in his right eye, which equated to a 25 percent total body disability.

By letter dated August 17, 2000, the Office requested additional information from Dr. Collins.[3]

By report dated August 11, 2000, Dr. Collins noted that, regarding the optic nerve, on dilated examination done on June 5, 2000, the optic nerve in both eyes was flat without evidence of edema and the cup to disc ration was 0.3 and the color appeared normal.

By report dated August 29, 2000, Dr. Collins noted pupillary examination on July 14, 2000 showed the pupils were equally round and reactive to light and showed no afferent pupillary defect.

On September 20, 2000 the Office referred appellant along with a statement of accepted facts and a copy of the case record to Dr. Douglas G. Owen, a Board-certified ophthalmologist for a second opinion examination.

In a report dated November 29, 2000, Dr. Owen noted appellant's history of injury and treatment. At the initial appointment, he indicated that his overall impression was that appellant had cataracts in both eyes, early macular degeneration in both eyes which was mild and he had no light perception vision in his right eye. Dr. Owen advised that, because some of the peculiars of his examination were not exactly consistent with his visual findings, appellant was advised to return for further testing. He stated that appellant returned on October 27, 2000 and at that time he clearly exhibited no light perception vision in the right eye and 20/25-3 in the left. Dr. Owen indicated that there was no afferent papillary defect obtained from the right eye and the slit lamp examination again, was significant for cataracts and regarding the Worth 4dot, he saw three green only and no red, explaining that the red is typically placed over the right eye and appellant was evidently using one eye only, which was inconsistent with his stereo depth perception that was performed by a technician. He explained that the four-base or six-base out prism test did not cause any eye movement in either eye. Dr. Owen stated that appellant returned for further examination on November 9, 2000 to reconfirm some of the conflicting examination results. He found that appellant's visual acuity remained the same, his muscle balance was orthophoric by Hirschberg and appellant did not show any afferent papillary defect. Dr. Owen explained that again, there was no eye movement in either eye when the four-base out prism was done. He stated that, upon reviewing his records, he noted that, when Dr. Steen saw him on September 22, 1980, his vision in the right eye was corrected to 20/25 and the left eye remained at 20/20. Dr. Owen found that the amsler grid revealed some metamorphopsia essentially in the right eye and the remainder of the examination was unremarkable. He noted that in October of that year his visual acuity remained 20/25 in the right eye and there was noted to be slight macular mottling in the right eye but no comment was made with regard to the left eye. Dr. Owen noted

[3] The record reflects that the Office medical adviser called Dr. Collins on August 8, 2000.

that there were no significant changes in the metamorphopsia and the changes were attributed to his injury. He indicated that, with regards to medical improvement, this was difficult to answer because he has had no light perception vision in the right eye, noting that this occurred some time after the injury but was attributed to the injury. Dr. Owen explained that the objective findings he had, did not support that level of vision and explained that one: "being orthophoric and not having any strabismus problem; two, from loss of fixation to being able to have some stereopsis to the level he exhibited on tests; and three, not having any afferent papillary defect at all contrary to the level of vision that has been indicated. He opined that the visual field on that eye showed no loss of fixation but showed a large media density and, of course, there was essentially no response and a totally black visual field." Dr. Owen indicated that, in regard to the ability to fuse, his stereopsis gave an example of his ability to fuse, which was highly unlikely without the use of both eyes. He explained that you cannot fuse images without using both eyes whether you wear glasses or not, and appellant's retinal examination was quite good considering he did have some mild macular changes in both eyes that were about equal and suggestive of macular degeneration but no significant degeneration that might be traumatic in style. Dr. Owen found that there was no sympathetic involvement with regards to the pathology of this problem and that with regard to the effects of this injury being resolved, he stated "the answer would be no." He indicated "[a]t this point in time it is not clear to me because of the inconsistencies that exist between the subjective findings and the objective findings." Dr. Owen indicated that the subjective complaints definitely out weighed the measurable defects on the objective findings. He explained that they could categorize the level of permanent impairment based on the subjective finding of no light-perception in one eye and appellant's overall impairment would be approximately, when evaluating the visual loss of the visual system and then calculate that out based on the charts for the percent of whole body impairment. Dr. Owen stated that the impairment was 29 percent and the results considering the entire body were 27 percent. However, he explained that this was with the consideration that he has no light perception vision, which is not consistent with the examination and strongly recommended that appellant undergo "electrophysiologic testing to really get a full concept of what kind of vision he has in that eye because there is just too much conflicting information."

On March 23, 2001 the Office requested clarification from Dr. Owen regarding the further testing performed on appellant subsequent to the November 29, 2000 evaluation.

In a July 11, 2001 report, Dr. Owen concluded that the additional testing showed that his visual potential suggested that there was impaired visual acuity but normal central vision pathways which was not consistent with no light perception vision. He noted that he was unable to state whether the visual loss was due to the 1980 work-related injury or age-related macular degeneration. Dr. Owen noted that appellant's level of macular degeneration did not support that level of vision. He recommended an evaluation by a neuroophthalmologist.

On August 7, 2001 the Office referred appellant to Dr. Karl C. Golnik, a Board-certified ophthalmologist, for a new second opinion examination.[4]

[4] The record reflects that Dr. Owen was unable to answer the question of continuing injury causation.

In a report dated August 23, 2001, Dr. Golnik noted appellant's history of injury and treatment. He concluded:

> "In summary, [appellant] has a confusing examination. He claims to have no light perception in the right eye, but both pupils are briskly reactive. It is not possible that his vision is as bad as he is claiming. Pupillary reaction should be abolished in the right eye if that were the case. Furthermore, there is no asymmetry in the way the pupils react and fundoscopy is normal. Thus, visual loss cannot be due to optic neuropathy or severe retinal damage. He does have a moderate cataract, which could be limiting the vision. During the exam[ination], the patient said that he likes to 'tell it like it is' and thus, I will do the same. I do not believe [appellant] has visual loss anywhere near whatever he is claiming. There were several occasions where his testing results would be impossible if his claimed level of vision were correct. Furthermore, the visual field testing done in 1985 showed nonphysiologic constriction. I am not entirely sure what his exact vision is, however, and it is possible that there is some degree of visual loss unrelated to the cataract, but I suspect the cataract is the main problem."

In a report dated October 10, 2001, Dr. Golnik provided additional information in response to the Office's request for clarification. He explained that it was difficult to assess what appellant's actual vision was and that it could not be as bad as he was claiming. Dr. Golnik indicated that, on examination in August 2001, appellant claimed to have no light perception vision in the right eye and the left eye was completely normal at that point. He explained that both pupils reacted briskly to light and this was not possible in the setting of no light perception vision. Thus, Dr. Golnik concluded that appellant must be able to see something from the right eye. Furthermore, he indicated that there was testing that could be done with prism to prove that the vision is better. Dr. Golnik indicated that he was sure that appellant's vision was at least in the 20/50 range in the right eye; however, he offered that it was "hard for me to tell exactly what his vision is with the examination that we obtained." He offered that regarding the perception of partial permanent impairment of the right eye, he really did not know. Dr. Golnik indicated that appellant had at least 20/50 vision in that eye and perhaps normal vision, but clearly, appellant did not have the vision that he was claiming. Further, regarding whether or not there was any visual loss given the recovery of vision following the injury in the early 1980's, he indicated that he did not think that any of appellant's visual loss would be due to that injury even if he was sure that he had visual loss, which he was not. Finally, Dr. Golnik concluded that he could find no pathological condition in either eye other than cataracts, which had nothing to do with any previous injury and the subjective complaints outweighed any measurable defects. He added there are no objective abnormalities other than the cataracts.

On November 16, 2001 the Office issued a proposed notice of termination of compensation. The Office advised appellant that his compensation for wage-loss and medical benefits was being terminated because he no longer had any continuing injury-related disability. The Office indicated that the weight of the medical evidence, as demonstrated by the opinion of Dr. Golnik demonstrated that appellant's work injury had resolved. Appellant was given 30 days to submit additional evidence or argument.

Appellant submitted additional medical evidence from Dr. Collins and a copy of June 2000 visual field testing results.

In a report dated January 10, 2002, Dr. Collins noted that, in the examination of December 21, 2001, appellant related visual acuity of no light perception in the right eye and 20/30 in the left eye. He indicated intraocular pressures were 12 OU and external examination revealed the lid position to be satisfactory. Dr. Collins found the pupil examination showed the pupil to be round and reactive to light without afferent defect and the slit lamp examination showed the cornea to be clear. He indicated: the anterior chambers were deep and the iris was flat; the lens showed 2+ unclear sclerosis (early cataract); a Dilated fundus examination revealed the disc to be flat with normal color and cup-disc ration of 0.3 which was normal; macula showed decreased reflex and the rest of the fundus examination was normal. Dr. Collins stated that he did not repeat visual fields, but they were done in June 2000 with the right visual field showing a black field or no vision, and the left visual field being normal. He opined that appellant had a blind right eye, the etiology of which I have been unable to discern. In an addendum dated January 10, 2002, Dr. Collins corrected his statement regarding the etiology of appellant's right eye. He explained that a further review of the "old record in his chart, reveals that this occurred after a traumatic injury to the eye sometimes in the 1980s."

By decision dated March 14, 2002, the Office finalized its proposed termination of benefits. The Office indicated that Dr. Golnik's opinion remained the weight of the medical evidence.

By letter dated March 18, 2002, appellant requested a hearing, which was held on August 6, 2002.

In a decision dated November 5, 2002, the Office hearing representative affirmed the March 14, 2002 decision, finding that appellant no longer suffered any residuals of his September 5, 1980 injury.

The Board finds that the Office improperly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[5] 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.[6] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[7] To

[5] *Lawrence D. Price*, 47 ECAB 120 (1995).

[6] *Id; see Patricia A. Keller*, 45 ECAB 278 (1993).

[7] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[8]

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.[9]

In the present case, the Office based its decision to terminate appellant's compensation on the August 23 and October 10, 2001 reports, of Dr. Golnik, a Board-certified ophthalmologist, to whom the Office referred appellant for an examination and second opinion.

Dr. Golnik opined in his August 23, 2001 report that he was not entirely sure what appellant's exact vision was; however, it was possible that there was some degree of visual loss unrelated to the cataract, but he suspected that the cataract was the main problem. In his October 10, 2001 report, he again indicated that it was difficult to assess what appellant's exact vision was and it could not be as bad as he was claiming. Further, Dr. Golnik indicated that he was sure that appellant's vision was at least in the 20/50 range in the right eye; however, he offered that it was "hard for me to tell exactly what his vision is with the examination that we obtained." He offered that regarding the perception of partial permanent impairment of the right eye, he really did not know. Dr. Golnik indicated that appellant had at least 20/50 vision in that eye and perhaps normal vision, but clearly, appellant did not have the vision that he was claiming. Further, regarding whether or not there was any visual loss given the recovery of vision following the injury in the early 1980s, he indicated that he did not think that any of appellant's visual loss would be due to that injury even if I was sure he had visual loss, which I am not. Finally, Dr. Golnik concluded that he could find no pathological condition in either eye other than cataracts, which had nothing to do with any previous injury and the subjective complaints outweighed any measurable defects. He added that there are no objective abnormalities other than the cataracts.

Dr. Collins, appellant's treating physician, indicated in his June 21, 2000 report that appellant had lost all vision in his right eye, which equated to a 25 percent total body disability, he discussed the examination he undertook and in his January 10, 2002 reports, indicated that appellant had a blind right eye which occurred after a traumatic injury to the eye in 1980.

There existed, therefore, a conflict in the medical evidence at the time of the March 14, 2002 termination. Dr. Golnik concluded that appellant's blind right eye was unrelated to his employment incident and there was no objective evidence to support any further medical treatment. On the other hand, Dr. Collins opined that appellant was blind in the right eye and this was caused by the traumatic employment incident. Since this is an unresolved conflict in the

[8] *Id.*

[9] *See Connie Johns*, 44 ECAB 560 (1993).

medical evidence on whether appellant's condition had resolved, the Office has not met its burden of proof in establishing that appellant's disability due to the employment injury had ceased.

The November 5 and March 14, 2002 decisions of the Office of Workers' Compensation Programs are hereby reversed.

Dated, Washington, DC
May 7, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member