

FACTUAL HISTORY

On October 15, 1985 appellant, then a 44-year-old machinist, filed a claim for a traumatic injury to his low back sustained on October 11, 1985 by pulling a propeller shaft into a boat. He was examined at the employing establishment clinic and a lumbar strain was diagnosed.¹ Appellant continued to work until he used sick leave from October 25 to 29, 1985.

On November 1, 1985 appellant was examined by Dr. Gordon W. Philip, an orthopedic surgeon, who diagnosed an acute lumbar sprain and possible early herniated nucleus pulposus and imposed work tolerance limitations. On December 3, 1985 Dr. Philip stated that appellant could resume regular work and on December 17, 1985 he stated that appellant had no restrictions for work.

On February 3, 1986 appellant was again seen at the employing establishment's clinic for continuing low back pain. Appellant did not work from February 5 to 28, 1986, using leave without pay. In a March 20, 1986 report, Dr. Edward Reifel, a Board-certified neurosurgeon, stated that x-rays of appellant's lumbar spine showed mild changes compatible with age and diagnosed mild disc injury, probably protrusion without clear-cut radiculopathy versus severe persistent lumbosacral strain or sprain. A computerized tomography scan on March 21, 1986 was read as normal with no evidence of a bulging or herniated disc.

On March 16, 1988 appellant filed a claim for a recurrence of disability on which he stated that his condition seemed to be getting worse. Appellant did not stop work until April 8, 1988 from which date he claimed compensation. On that date he resigned his position at the employing establishment, giving the reason of "Alaska job opportunity."

In a March 21, 1988 report, Dr. Philip diagnosed chronic mechanical low back pain. In a September 13, 1988 report, Dr. Ercil R. Bowman, Jr., a Board-certified orthopedic surgeon, noted that appellant had radiation of his pain to the right calf when he lifted and numbness of the right thigh and calf.

On December 20, 1988 the Office advised appellant that it had accepted that he sustained a low back strain on October 11, 1985 but that there was no evidence of disability. A magnetic resonance imaging (MRI) scan on January 3, 1989 was read as showing slight scoliosis and mild protrusions at L1-2, L2-3 and L3-4. In a January 30, 1989 report, Dr. Bowman stated that he could not explain appellant's severe symptoms with an innocuous MRI scan and examination. In a March 6, 1989 report, Dr. Jack M. Hutton, a Board-certified neurologist, stated that the MRI scan showed no evidence of nerve root involvement, that a neurological examination was completely unremarkable and that diagnostically appellant had radiculopathy. In a March 21, 1989 report, Dr. Sherwood F. Young, a Board-certified physiatrist, stated that appellant's problem was a chronic low back strain and aggravation of soft tissues and that increased activity resulted in increased irritation and referral of pain to the lower extremity.

On July 13, 1989 the Office referred appellant to Dr. Stanley Bigos, a Board-certified orthopedic surgeon, for an evaluation of his condition and its relation to his employment injury.

¹ It is not clear whether the providers of treatment were physicians.

In a July 28, 1989 report, Dr. Bigos stated that he was not able to state a diagnosis to establish the problem, but that appellant's back and leg pain were related to his October 11, 1985 injury. An electromyogram (EMG) done on August 9, 1989 showed no evidence for radiculopathy in the right lower extremity. In response to an Office request for clarification, Dr. Bigos stated in a November 2, 1989 report that the diagnosis was low back strain and added that he did not question the integrity of everyone who complained of low back pain with no significant bone, joint or nerve abnormality. In a February 23, 1990 report, Dr. Hutton stated that the nature of appellant's injury was sufficient to explain his low back symptoms, that the best diagnosis four to five years after the injury was chronic pain syndrome and that appellant was unlikely to return to work as a machinist. In a March 2, 1990 report, Dr. Hutton stated that appellant stopped work because of back pain secondary to his injury.

On April 16, 1990 the Office advised appellant that it had accepted that his current back condition was related to his October 11, 1985 injury and that he was unable to work as a machinist as of March 6, 1989. The Office began payment of compensation for temporary total disability on March 6, 1989.

In an April 20, 1990 report, Dr. David W. Stedman, a chiropractor, stated that he examined and x-rayed appellant on April 4, 1988 and diagnosed severe sprain/strain with subluxation complex of lumbar vertebrae and ilia with disc inflammation, which was a result of his October 1985 employment injury. In a May 21, 1990 report, Dr. Stedman stated that degenerative spinal changes of the nature seen in appellant were usually the result of trauma and that the October 1985 injury was the precipitating factor in his 1988 condition.

On July 16, 1991 appellant's supervisor stated that he had great difficulty accommodating appellant's limited duty due to the nature of the work. A functional capacity evaluation on June 25, 1991 concluded that appellant could perform light work gradually working up to medium. The Office paid appellant compensation retroactive to April 9, 1988, the day after he stopped work at the employing establishment.

In a January 30, 1997 report, Dr. Richard Lynn, a Board-certified internist, stated that he was not appellant's doctor for his back disorder but was his primary care physician. Dr. Lynn stated that appellant was disabled from full-time heavy work and that his diagnosis was radiculopathy with back pain and right sciatica.

On September 24, 1999 the Office referred appellant, prior medical reports and a statement of accepted facts to Dr. David S. Whitney, a Board-certified orthopedic surgeon, for an evaluation of his condition and its relation to his October 11, 1985 employment injury. In a November 8, 1999 report, Dr. Whitney stated that examination showed no significant abnormal physical findings and no pain behavior. Dr. Whitney diagnosed lumbar strain related to the October 11, 1985 injury by direct cause and stated that appellant could not return to work as a machinist. In a March 20, 2000 report, Dr. Lynn stated that appellant was disabled by a low back strain. In an October 22, 2001 report, Dr. Lynn diagnosed low back pain, with leg pain radiation, directly connected to the October 11, 1985 injury. In an October 25, 2001 report, Dr. Lynn set forth work tolerance limitations of lifting 20 pounds and sitting, walking, standing and reaching one-half hour.

On April 11, 2002 the Office referred appellant, prior medical reports and a statement of accepted facts to Dr. Patrick Bays, an osteopath, for an evaluation of his condition and its relation to his injury. In a May 1, 2002 report, Dr. Bays diagnosed lumbosacral sprain/strain by history, with completely normal physical examination, related to appellant's work injury. He concluded that appellant had no residuals of his injury and could perform the duties of a machinist.

On May 9, 2002 the Office issued a notice of proposed termination of compensation on the basis that the residuals of appellant's employment injury had resolved. Appellant disagreed with the proposed termination and submitted additional medical evidence. In a May 23, 2002 report, Dr. Lynn stated that appellant's injury left him unable to lift up to 75 pounds, or to perform static standing for long periods. In a May 30, 2002 report, Dr. Whitney stated that he agreed with Dr. Bays that there were no objective findings on physical examination, but that appellant had an abnormal MRI scan and functional capacity evaluation. In a June 18, 2002 report, Dr. Solomon Kamson, a Board-certified anesthesiologist specializing in pain management, diagnosed probable discogenic pain and disc protrusion with multilevel spondylosis and stated that appellant's radicular symptoms may be due to a combination of disc and facet hypertrophy. Dr. Kamson stated that appellant had objective findings to account for his disability, which unfortunately had not been documented until a May 30, 2002 MRI scan and the current examination and that his injury was due to the cumulative effect of time and delay of definitive treatment following his October 11, 1985 work injury.

By decision dated January 3, 2003, the Office terminated appellant's compensation, effective January 3, 2003, on the basis that the weight of the medical evidence established that he had no residuals of his October 11, 1985 employment injury.

On January 16, 2003 appellant requested a hearing. At a hearing held on November 18, 2003 appellant testified that he moved items that weighed more than 75 pounds. He submitted statements from coworkers that machinists were required to lift items weighing up to 150 pounds. Appellant submitted an October 28, 2003 report from Dr. Kamson, stating that he reviewed Dr. Bays' report and disagreed that appellant could perform the duties of a machinist and did not need treatment. Dr. Kamson stated that a normal EMG did not rule out radiculopathy completely and concluded appellant's disc and facet pathologies at L2-5 were related to his employment injury and were causing his pain.

By decision dated January 14, 2004, an Office hearing representative found that the Office met its burden of proof to terminate appellant's compensation based on the report of Dr. Bays that concluded there was no objective evidence of continuing injury-related disability. The hearing representative further found that the October 28, 2003 report from Dr. Kamson that appellant submitted at the hearing created a conflict of medical opinion with the report of Dr. Bays, as Dr. Kamson attributed the L2-5 disc and facet joint changes seen on a May 30, 2002 MRI to appellant's 1985 employment injury. The Office hearing representative found that reinstatement of compensation was not required and instructed the Office to amend the statement of accepted facts to reflect that appellant lifted up to 150 pounds. He directed that appellant be referred to an impartial medical specialist to resolve the conflict of medical opinion.

On March 10, 2004 the Office referred appellant, an amended statement of accepted facts and the case record to Dr. Donald D. Hubbard, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion. In a March 30, 2004 report, Dr. Hubbard set forth appellant's history, reviewed the prior medical evidence, including the diagnostic tests and stated that historically low back symptoms had been consistently present subjectively since the 1985 injury. Dr. Hubbard stated that appellant could not lift greater than 50 pounds given the evidence of degenerative changes on his MRI scan but that this limitation was not due to his work injury. He answered "No" to the Office's question whether appellant now had a medical condition medically connected to his work injury. He stated:

"[Appellant] has age-related and behavior-induced degenerative disc disease and degenerative facet joint disease of the lumbosacral spine established by objective diagnostic tests. Whether the first pathologic processes begin in the intervertebral disc, in the facet joint, in the disc and facet joints simultaneously, is not known. In some individuals with low back pain the muscles, fascia and ligaments of the spine are tender, in spasm and/or atrophic following strain/sprain injuries. Whether this begins the domino effect of degeneration of the spinal elements is also not known, although most clinicians do not support this theory.

"Furthermore, it is unknown whether these changes first occur in one motion segment and then are propagated to adjacent motion segments or whether they affect several segments spontaneously, in the manner of a generalized diathesis (or multilevel degenerative spine) as evidence on appellant's last MRI [scan]."

In a May 24, 2004 report, Dr. Lynn stated that continuing reinjury from heavy lifting at work for two and one-half years after the injury contributed to appellant's degeneration. In a June 6, 2004 report, Dr. Kamson stated that appellant's lumbar spondylosis and facet dysfunction were at least in part related to his injury and were accelerated and aggravated by repetitive injuries and by the October 1985 traumatic injury.

By decision dated August 30, 2004, the Office found that the termination of appellant's compensation was proper, as the impartial medical specialist's report constituted the weight of the medical evidence and established that appellant had no residuals of his October 11, 1985 employment injury.

LEGAL PRECEDENT – ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.² However, for conditions not accepted by the Office, appellant retains the burden of proving by the weight of the substantial, reliable and probative evidence that such conditions are related to his employment.³

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *Bernice M. Swartz*, 31 ECAB 1525 (1980).

ANALYSIS –ISSUE 1

The only condition accepted by the Office as causally related to his October 11, 1985 traumatic injury was a low back strain. The medical evidence establishes that this condition resolved by January 3, 2003, the date the Office terminated his compensation. In a May 1, 2002 report Dr. Bays diagnosed lumbosacral sprain/strain by history, and concluded that appellant had no residuals of his injury, based on a completely normal physical examination.

The most recent report indicating that appellant was disabled by his low back strain –a March 20, 2000 report from Dr. Lynn -- provided no explanation for this opinion and was prepared almost three years before the Office terminated appellant's compensation.⁴ The reports more contemporaneous to Dr. Bays' report, especially Dr. Kamson's June 18, 2002 report, attributed appellant's disability to degenerative changes of his lumbar spine, a condition not accepted by the Office. Dr. Hubbard also stated that appellant had work restrictions due to these degenerative changes, but concluded that the degenerative changes were not related to appellant's October 11, 1985 employment injury. The weight of medical opinion evidence establishes that the low back strain accepted by the Office was resolved by January 3, 2003.

LEGAL PRECEDENT – ISSUE 2

The Board has held that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion evidence, the opinion of such specialist, if sufficiently well-rationalized and based on a proper medical background, must be given special weight.⁵ The Board has also held that in a situation where the Office secures an opinion from an impartial medical specialist 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.⁶

ANALYSIS –ISSUE 2

A conflict in medical evidence was created as to whether the degenerative changes of appellant's lumbar spine were related to the 1985 injury. The case was referred to Dr. Hubbard, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion. The Board finds, however, that his report is not sufficient to resolve the conflict. The conflict found by the Office hearing representative was on the question of whether the degenerative changes seen on a May 30, 2002 MRI scan were related to appellant's employment injury, as Dr. Kamson stated. This conflicted with Dr. Bays' opinion that appellant had no residuals of the employment injury.

⁴ This report is also contradictory to Dr. Lynn's initial report, dated January 30, 1997, which indicated appellant was disabled by radiculopathy and sciatica.

⁵ *James P. Roberts*, 31 ECAB 1010 (1980).

⁶ *Harold Travis*, 30 ECAB 1071 (1979).

Dr. Hubbard's opinion was based on a proper factual background⁷ and a review of the prior medical evidence including the diagnostic tests. Dr. Hubbard concluded, by answering "No" to an Office question, that appellant's condition was not connected to his employment injury. Dr. Hubbard, however, did not provide sufficient rationale for this opinion. He provided no explanation for his statement that appellant's degenerative disease of the lumbosacral spine was related to age and the Board is unable to ascertain what he meant by saying this disease was also behavior induced. The remainder of this physician's statements on the origins of degenerative disc and facet disease were of general application. Dr. Hubbard has provided insufficient explanation why he believed appellant's degenerative disc and facet disease, to which he attributes the lifting limitation, was related to age rather than to the employment injury. The case will be remanded for the Office to obtain a supplemental opinion from Dr. Hubbard.

CONCLUSION

The Office met its burden of proof to terminate appellant's compensation. There remains an unresolved conflict of medical opinion on the question of whether the degenerative changes seen on a May 30, 2002 MRI scan were related to appellant's October 11, 1985 employment injury.

⁷ On appeal, appellant's attorney contends that the Office's statement of accepted facts was incomplete in that it did not address appellant's work duties after his return to work following the October 11, 1985 employment injury. This was not part of appellant's claim and was not the issue adjudicated by the Office.

ORDER

IT IS HEREBY ORDERED THAT the August 30 and January 14, 2004 decisions of the Office of Workers' Compensation Programs are affirmed with regard to the termination of appellant's compensation. The August 30, 2004 Office decision is set aside with regard to the issue of whether the degenerative changes of appellant's lumbar spine are causally related to his October 11, 1985 employment injury. The case is remanded to the Office for action consistent with this decision of the Board.

Issued: August 22, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board