United States Department of Labor
Employees' Compensation Appeals Board

JOHN OZGA, Appellant	)	
and	)	**Docket No. 05-611**
	)	**Issued: August 10, 2005**
U.S. POSTAL SERVICE, NORTHWEST BRANCH POST OFFICE, Miami, FL, Employer	)	

Appearances:
John Ozga, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On January 18, 2005 appellant filed a timely appeal from an October 21, 2004 decision of the Office of Workers' Compensation Programs, which denied modification of a December 15, 2003 decision in which an Office hearing representative affirmed a finding that appellant's compensation benefits were properly terminated effective July 22, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits, effective July 22, 2003, on the grounds that he no longer had a diagnosed condition causally related to his employment injuries; and (2) whether appellant established that he had any continuing employment-related disability after July 22, 2003. On appeal, appellant argues that the reports of Dr. Steven Lancaster, Board-certified in orthopedic surgery, should be excluded because he did not have access to his medical records back to the time of injury in 1972.

FACTUAL HISTORY

On July 6, 1972 appellant, then a 27-year-old distribution clerk, sustained employment-related dorsal and lumbosacral strains while pushing a parcel float. He returned to limited duty on July 10, 1972 sustained a recurrence of disability on July 3, 1976 and has not worked since that time. On August 27, 1976 the Office accepted that appellant sustained an employment-related depressive reaction to his employment injury.[1]

The Office continued to develop the claim and on August 21, 2002 referred appellant to Dr. Lancaster for a second opinion evaluation. In a report dated September 11, 2002, Dr. Lancaster noted the history of injury, his review of the medical record and examination findings. His diagnostic impression was history of lumbar strain. He stated that there were no objective findings to support a diagnosis of lumbar strain and advised that appellant needed

[1] Appellant came under the care of Drs. Alan A. Gumer, a psychiatrist, Rush K. Acton and David G. Lehrman, Board-certified orthopedists and Drs. James G. Stewart, Jr., and Kenneth C. Fischer, Board-certified neurologists. A 1976 tomogram revealed no evidence of disc disease and a September 15, 1977 myelogram was reported as normal. Appellant moved to California in 1985. In a June 1986 report, Dr. Christine Phan, a Board-certified physiatrist, noted findings of muscle spasm on examination. She advised that electromyography of the lower limits was within normal limits and x-ray of the lumbosacral spine showed no evidence of compression or displacement and no narrowing of the intervertebral space. In 1986 the Office referred appellant for second-opinion evaluations by Drs. Joe Lavi, an orthopedic surgeon and Herbert I. Kupper, a Board-certified psychiatrist, who provided a July 3, 1986 report in which he diagnosed atypical psychosis and mixed personality disorder but advised that these were not related to his July 6, 1972 injury. In a July 3, 1986 report, Dr. Lavi diagnosed chronic lumbar complaint and advised that appellant had no residuals of his employment injury and could work without restrictions. He stated that appellant did not need further orthopedic care. The Office determined that a conflict in medical evidence had been created between appellant's physicians and the second-opinion examiners and referred appellant to Dr. Cynthia Ruth, Board-certified in psychiatry and Dr. Stanley G. Robboy, Board-certified in orthopedic surgery, for impartial evaluations regarding appellant's accepted orthopedic and psychiatric conditions. In a February 26, 1986 report, Dr. Robboy diagnosed chronic lumbosacral myofascial strain, opining that it was caused by the July 6, 1972 employment injury, advised that appellant did not require active medical care and could return to work at once. Dr. Ruth also provided a February 26, 1986 report in which she diagnosed dysthemic disorder and mixed personality disorder, advising that appellant's psychiatric disability was preexisting and not related to his federal employment. In a work restriction evaluation dated April 15, 1987, Dr. Robboy advised that appellant could work eight hours per day with restrictions. In an undated work restriction evaluation stamp received by the Office on July 20, 1988, Dr. Robboy advised that appellant could work eight hours per day without restrictions. Appellant came under the care of Dr. Robert Karm, a Board-certified internist, who provided a treatment note dated November 29, 1988, in which he noted findings on examination and diagnosed low back pain, etiology undefined and anxiety neurosis. In a work restriction evaluation dated December 5, 1988, he provided restrictions to appellant's physical activity and advised that he could work four hours per day. In February 1989, appellant was referred for vocational rehabilitation and in January 1990 graduated from a technical institute, having received approved travel agent training. The record indicates that, in February 1990, appellant stopped cooperating with the rehabilitative process and, by letter dated April 9, 1990, the Office informed him of the consequences of his failure to participate. There is no indication in the record that appellant resumed cooperation. In December 1989, the Office again referred appellant to Drs. Robboy and Ruth. In a January 11, 1990 report, Dr. Ruth diagnosed panic disorder with agoraphobia, status postdysthemic disorder, resolved and mixed personality disorder. She again advised that appellant's psychiatric diagnoses had a nonindustrial basis and opined that he should gradually be transitioned into employment. In a January 12, 1990 report, Dr. Robboy noted examination findings and reiterated his diagnosis and conclusions. In a May 11, 1990 report, Dr. Fred Batkin, a Board-certified physiatrist, noted findings on examination and diagnosed chronic back pain syndrome secondary to myofascial pain and a history of significant depression and anxiety. In February 1996, appellant moved back to Florida. In a January 7, 1997 report, Dr. Markus Kornberg, a Board-certified orthopedic surgeon, noted good range of motion and tenderness on examination. Straight leg raising was positive bilaterally. Dr. Kornberg diagnosed chronic pain.

psychiatric evaluation. In an attached work capacity evaluation, the physician noted that appellant could work 8 hours per day with restrictions of 1 hour walking and standing, 30 minutes of reaching above the shoulder and a 10-pound, 1-hour restriction on pushing, pulling and lifting. He advised that appellant should not twist, squat, kneel or climb and should have five-minute breaks hourly. Dr. Lancaster further advised that psychiatric conditions would limit appellant's ability to work.

On January 17, 2003 the Office referred appellant to Dr. Anjali A. Pathak, Board-certified in psychiatry.[2] In a February 14, 2003 report, she noted her review of the history of injury, the medical record and appellant's complaints, noting that he had no anxiety attacks for two years. Dr. Pathak diagnosed an undifferentiated somatoform disorder and personality disorder, opining that these were not employment related and preexisted appellant's 1972 employment injury. She found no need for psychiatric treatment. In an attached psychiatric work capacity evaluation, Dr. Pathak advised that appellant could work eight hours per day, opining that from a psychiatric perspective there were no work restrictions.

In a report dated January 22, 2003, Dr. Lancaster noted his review of surveillance videos done by the Postal Inspection Service from May to August 2002. He advised that, based on these videos, appellant had no physical restrictions for work and provided a work capacity evaluation stating this. The Postal Inspection Service provided an investigative memorandum dated March 17, 2003 in which it noted that periodic surveillance of appellant was begun in April 2002 and that appellant was interviewed on August 1, 2002.[3]

By letter dated June 13, 2003, the Office informed appellant that it proposed to terminate his compensation benefits on the grounds that the employment-related conditions and disability had ceased. Appellant disagreed with the proposed termination and submitted articles regarding fibromyalgia. In a decision dated July 21, 2003, the Office terminated appellant's compensation benefits, effective July 22, 2003, on the grounds that the medical evidence established that he no longer had residuals of his employment-related conditions.

On August 19, 2003 appellant requested a review of the written record. In a decision dated December 15, 2003, an Office hearing representative affirmed the prior decision. On June 23, 2004 appellant requested reconsideration and submitted additional medical evidence including a November 13, 2003 magnetic resonance imaging (MRI) scan of the lumbar spine in which Dr. Kevin Jones, Board-certified in diagnostic and neuroradiology, noted a focal extraforaminal disc protrusion on the right at L4-5 with no significant foraminal narrowing. In a treatment note dated November 13, 2003, Dr. A.N. Reddy, Board-certified in internal medicine with subspecialties in geriatric medicine and rheumatology, noted that appellant presented with a chief complaint of fibromyalgia. In a January 29, 2004 report, Dr. Alan R. Berger, Board-certified in neurology, noted appellant's complaints of pain from his back into his right leg. On examination the physician found normal muscle bulk and strength in the lower extremities and a normal sensory examination to light touch, rub, vibration and joint position sense. Limb

[2] Drs. Lancaster and Pathak were provided with a statement of accepted facts, the medical record and a set of questions.

[3] The surveillance videos are on CD-ROMs contained in the case record.

coordination and gait were normal and deep tendon reflexes in the arms and legs were 2/4. Lower extremity electrophysiologic study and electromyography were normal. Dr. Berger concluded that appellant had clinical symptoms suggestive of radicular irritation. In an April 8, 2004 treatment note, Dr. Reddy noted trigger points on musculoskeletal examination and diagnosed fibromyalgia, abnormal MRI scan of the lumbar spine and depression. He discharged appellant from his care and advised that he follow up with a family physician. Appellant also submitted an additional article regarding fibromyalgia. By decision dated October 21, 2004, the Office denied modification of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[4] The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

ANALYSIS -- ISSUE 1

Regarding appellant's argument on appeal that Dr. Lancaster's reports should be excluded because he did not review the complete medical record, the case record before the Board indicates that Dr. Lancaster was furnished with a complete copy of appellant's medical record dating back to the 1972 injury and, in his September 11, 2002 report, the physician noted his review of the medical records. The Board thus finds that his report should not be excluded and that the weight of the medical opinion evidence rests with his opinion and that of Dr. Pathak as their second-opinion evaluations are sufficient to meet the Office's burden of proof to terminate appellant's compensation.

In a comprehensive report dated September 11, 2002, Dr. Lancaster advised that there were no objective findings to support a diagnosis of lumbar strain. In an attached work capacity evaluation, he advised that appellant could work eight hours per day with restrictions. In a report dated January 22, 2003, Dr. Lancaster noted his review of surveillance videos done by the Postal Inspection Service from May to August 2002. He advised that, based on these videos, appellant had no physical restrictions for work and provided a work capacity evaluation stating this.

In her February 14, 2003 report, Dr. Pathak noted her review of the history of injury, the medical record and appellant's complaints, noting that he had no anxiety attacks for two years. She diagnosed an undifferentiated somatoform disorder and personality disorder that were not employment related and preexisted his 1972 employment injury. She found no need for psychiatric treatment. In an attached psychiatric work capacity evaluation, Dr. Pathak advised that appellant could work eight hours per day, opining that from a psychiatric perspective there were no work restrictions.

[4] *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[5] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

The accepted conditions in this case are dorsal and lumbosacral strains and depressed reaction. The medical evidence, as represented by the opinions of Drs. Lancaster and Pathak, supports a finding that at the time the Office terminated appellant's compensation benefits on July 22, 2003 he had no continuing residuals of either his orthopedic of psychiatric conditions. Appellant submitted no probative medical evidence contemporaneous with the Office's termination. In fact, the record shows that no medical reports were received between Dr. Kornberg's January 7, 1997 report and the Office termination six-and-one-half years later. Furthermore, Dr. Kornberg merely diagnosed chronic pain and provided no opinion regarding the cause of this condition or whether it was disabling.

For a condition to be accepted as employment related, the employee must submit rationalized medical evidence supporting a causal relationship[6] in which the physician reviews the employment factors identified by appellant as causing his or her condition and, taking these factors into consideration as well as findings upon examination and the medical history, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.[7] In this case, a pain condition has not been accepted as employment related. Furthermore, medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship[8] and newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.[9] The record therefore does not support that appellant had residuals of his accepted dorsal strain and depressed reaction. Accordingly, the Office met its burden of proof to terminate appellant's compensation benefits effective July 22, 2003.[10]

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits effective July 22, 2003, the burden shifted to him to establish that he had any continuing disability causally related to his accepted injuries.[11] To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[12] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical

[6] *Manuel Gill*, 52 ECAB 282 (2001).

[7] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004).

[8] *Michael E. Smith*, 50 ECAB 313 (1999).

[9] *Willie M. Miller*, 53 ECAB 697 (2002).

[10] *See Gloria J. Godfrey*, *supra* note 4.

[11] *Manuel Gill*, *supra* note 6.

[12] *Id.*

evidence.[13] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[14]

ANALYSIS -- ISSUE 2

The medical evidence submitted by appellant after July 22, 2003[15] includes a November 13, 2003 MRI scan of the lumbar spine in which Dr. Jones noted a focal extraforaminal disc protrusion on the right at L4-5 with no significant foraminal narrowing. In treatment notes dated November 13, 2003 and April 8, 2004, Dr. Reddy noted trigger points on musculoskeletal examination and diagnosed fibromyalgia, abnormal MRI scan of the lumbar spine and depression. He discharged appellant from his care and advised that he follow up with a family physician. In a January 29, 2004 report, Dr. Berger noted appellant's complaints of pain from his back into his right leg. On examination the physician found normal muscle bulk and strength in the lower extremities and a normal sensory examination to light touch, rub, vibration and joint position sense. Limb coordination and gait were normal and deep tendon reflexes in the arms and legs were 2/4. Lower extremity electrophysiologic study and electromyography were normal. Dr. Berger concluded that appellant had clinical symptoms suggestive of radicular irritation.

The Board notes that a disc protrusion, radicular irritation and fibromyalgia have not been accepted as employment related and none of the physicians provided an opinion regarding the cause of these conditions or their relationship to the July 6, 1972 employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16] As appellant has submitted insufficient medical evidence establishing that he continues to be disabled from the accepted employment-related conditions, he has not met his burden of proof.[17]

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective July 22, 2003. The Board further finds that appellant failed to

[13] *Donna L. Mims*, 53 ECAB 730 (2002).

[14] *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[15] Appellant also submitted an additional article regarding fibromyalgia, but as noted previously and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment. *Willie M. Miller, supra* note 9.

[16] *Willie M. Miller, supra* note 9.

[17] *Leslie C. Moore, supra* note 14.

meet his burden of proof to establish that he had any disability after July 22, 2003 causally related to his accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 21, 2004 be affirmed.

Issued: August 10, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board