United States Department of Labor
Employees' Compensation Appeals Board

PAUL T. GLASPER, Appellant	)	
and	)	**Docket No. 04-2135**
	)	**Issued: February 10, 2005**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Oakland, CA, Employer	)	

Appearances:
Paul T. Glasper, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 1, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated February 25 and June 1, 2004 terminating his compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that he no longer had any disability or medical residuals causally related to his December 23, 2000 employment injury.

FACTUAL HISTORY

On December 29, 2000 appellant, then a 46-year-old motor vehicle operator, performing modified limited-duty work, filed a traumatic injury claim alleging that on December 23, 2000 he slipped in the performance of duty and injured his right hip. The Office accepted appellant's

claim for right hip strain on February 12, 2001. Appellant briefly returned to his modified work but stopped work on February 23, 2001 and has not returned.

Appellant's attending physician, Dr. R. Scott Forster, a Board-certified orthopedic surgeon, referred appellant to Dr. Thomas G. Sampson, a Board-certified orthopedic surgeon, who diagnosed chondral fracture or labral tear and recommended hip arthroscopy. On December 12, 2001 Dr. Sampson performed a right hip arthroscopic partial labrectomy and debridement due to a degenerative tear with some fraying of the anterolateral and lateral labrum. Dr. Sampson supported appellant's total disability for work through January 7, 2003. He noted that appellant's complaints were unchanged, that he continued to experience right hip anterior groin pain and discomfort and that he continued to use a crutch or cane for ambulation. Dr. Sampson found that appellant had pain with straight leg raising and on rotation of the right hip. He recommended a pain clinic.

On February 21, 2003 the Office referred appellant for a second opinion evaluation with Dr. Philip Wirganowicz, a Board-certified orthopedic surgeon. In a report dated April 1, 2003, he noted appellant's history of injury and described his findings on physical examination as no muscular atrophy of the lower extremities, and limited range of motion of the hip due to pain. Dr. Wirganowicz stated that appellant had an extremely awkward limp involving the right leg and that he frequently overreacted with the examination. He noted that appellant described back pain in a nondermatomal pattern, pain to palpation even with light touch, truck axial rotation and that his gait was awkward and seemed volitional. Dr. Wirganowicz stated that appellant appeared to have subjective residuals of the injury which were not substantiated by objective evidence. He provided work restrictions indicating that appellant could perform all activities for four hours a day.

The Office found a conflict of medical opinion evidence between Dr. Sampson, appellant's attending physician, who found that appellant was totally disabled and Dr. Wirganowicz, the second opinion physician, who found that appellant could return to work with restrictions. The Office referred appellant to Dr. Clarence A. Boyd, a Board-certified orthopedic surgeon, for a impartial medical examination.

In a report dated May 1, 2003, Dr. Sampson noted that appellant continued to have significant right hip and low back pain. He noted that appellant used a cane, that he had good range of motion of the hip with pain and diagnosed ongoing right hip pain.

Dr. Boyd submitted a report dated June 20, 2003 noting appellant's history of injury and history of medical treatment. He found that appellant had full range of motion of his hips, no muscle atrophy, and that appellant's x-rays and magnetic resonance imaging (MRI) scans were normal. Dr. Boyd concluded that there were no objective findings consistent with residuals of the December 23, 2000 employment injury. He stated that any recommendations for modified work would be based solely on subjective complaints and that the subjective complaints must be reasonably correlated with his normal physical examination. Dr. Boyd felt that appellant could work eight hours a day, sitting for eight hours and walking or standing for a total of four hours. He concluded that there was no need for further medical treatment.

The Office proposed to terminate appellant's compensation and medical benefits based on Dr. Boyd's report in a letter dated July 7, 2003. Appellant responded to this letter on July 11, 2003 and stated that Dr. Boyd had previously examined him in connection with his shoulder claims.

Dr. Forster completed a report on July 14, 2003 and recommended a total hip replacement. He stated that there was "good reason" to believe that the pain was emanating from the hip joint itself. On July 31, 2003 Dr. Sampson stated that appellant was totally disabled until September 11, 2003 due to right hip pain and to rule out L3-4 disc herniation.

The Office confirmed that Dr. Boyd had previously examined appellant in connection with another claim on August 20, 2001. On September 25, 2003 the Office referred appellant, a statement of accepted facts and a list of specific questions for an impartial medical examination to Dr. John Batcheller, a Board-certified orthopedic surgeon.

Dr. Sampson completed a report on October 30, 2003 and noted that appellant continued to experience a great deal of pain and weakness. He stated that appellant seemed to have a lot of symptom magnification. Dr. Sampson recommended an MRI scan of the hip.

Dr. Batcheller completed a report on December 15, 2003 describing appellant's history of injury, noting his medical treatment and providing findings on physical examination. He found that appellant had full range of motion of his hips, with pain at extremes on rotational motion. Dr. Batcheller noted that appellant's lower extremities had normal motor function and strength with no visible lower extremity circumferential asymmetry. He mentioned appellant's continued complaints of right hip pain. Dr. Batcheller stated, "After review of the extensive records available for this man and his complaints, I would conclude that there is virtually no objective reason or finding for his continued and unremitting complaints." He opined that appellant's employment injury should have resolved by now. Dr. Batcheller stated that appellant could work four to six hours a day at semi-sedentary work activities with no lifting over 30 pounds, no standing, walking or sitting for more than an hour without a short break and no carrying over 30 pounds. He limited appellant to occasional squatting and kneeling. Dr. Batcheller concluded that appellant had reached maximum medical improvement and that appellant did not require further medical treatment. He stated that appellant exhibited a considerable amount of psychological overlay or frank secondary gain elements. On the work restriction evaluation, Dr. Batcheller indicated that appellant could work six hours a day and stated that appellant could not work eight hours a day due to his subjective complaints of pain.

The Office proposed to terminate appellant's compensation benefits in a letter dated January 15, 2004. Appellant responded on January 30, 2004 and submitted a January 14, 2004 right hip MRI scan which demonstrated a sclerotic density in the right ilium and recommend a nuclear bone scan. He also submitted a November 24, 2003 report from Dr. Andrew V. Slucky, a Board-certified, noting appellant's history of injury and finding no clear etiology of appellant's painful conditions.

By decision dated February 25, 2004, the Office terminated appellant's compensation and medical benefits effective March 21, 2004 and February 25, 2004, respectively.

Appellant requested reconsideration on May 15, 2004. He submitted emergency room notes indicating that he had slipped and sustained additional strains. In a report dated April 6, 2004, Dr. Sampson noted that appellant's most recent MRI scan demonstrated changes in the form of a bony lump on the femoral neck and blunted labrum of the right hip. He diagnosed right hip femoral acetabular impingement with blunted labrum and probably a tear. Dr. Sampson recommended further surgery.

By decision dated June 1, 2004, the Office denied modification of its termination decision.[1]

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.[3] 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.[4] The right to medical benefits for an accepted condition is not limited to the period of entitlement of disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.[5]

Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.[6] When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.[7] It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background must be given special weight.[8]

---

[1] Following the Office's June 1, 2004 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

[2] *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

[3] *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

[4] *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

[5] *Mary A. Lowe, supra* note 3.

[6] *Thomas J. Fragale*, 55 ECAB ___ (Docket No. 04-835, issued July 8, 2004); 5 U.S.C. § 8123(a).

[7] *Id.*

[8] *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

ANALYSIS

As appellant's treating physician, Dr. Sampson, a Board-certified orthopedic surgeon, continued to support his total disability for work due to his accepted right hip condition as well as the need for further medical treatment and as the Office's second opinion physician, Dr. Wirganowicz, a Board-certified orthopedic surgeon, found that appellant was capable of working four hours a day with restrictions and made no recommendation for further medical treatment, the Office properly found that there was an existing conflict of the medical opinion evidence and referred appellant for an impartial medical examination.[9]

In his December 15, 2003 report, Dr. Batcheller, a Board-certified orthopedic surgeon, provided a review of appellant's medical treatment and described the circumstances of his employment injury. He then performed a physical examination noting that appellant had full range of motion in his hips with pain at extremes on rotational movement, and his lower extremities were normal in motor function, circumference and reflexes. Dr. Batcheller noted that appellant used a cane for ambulation and walked in a slow, awkward and labored fashion favoring the right lower extremity. He also found that squat was about one half of normal with complaints of apprehension and right hip discomfort. In addressing appellant's residuals and disability, Dr. Batcheller stated that there was "virtually no objective reason or finding for his continued and unremitting complaints" and that his condition had "essentially resolved except for his subjective complaints." He then opined that appellant could work four to six hours a day with restrictions on lifting, standing, walking, squatting and kneeling. Dr. Batcheller recommended a short break every hour. On the form report, Dr. Batcheller stated that appellant's work restrictions were due to his subjective complaints of right hip pain. He found that appellant did not require "further specific treatment" and noted that appellant seemed to have a considerable amount of psychological overlay or frank secondary gain elements.

The Board finds that Dr. Batcheller's report is not sufficiently detailed and rationalized to meet the Office's burden of proof to terminate appellant's compensation benefits. The statement of accepted facts upon which Dr. Batcheller based his opinion did not include a description of appellant's modified truck driver position in sufficient detail to determine whether the duties of this position are within appellant's current work restrictions as provide by Dr. Batcheller. Furthermore, Dr. Batcheller never stated that appellant's disability for work had ceased, as found in the Office's February 25, 2004 decision. He instead indicated that appellant had "virtually" no objective findings, but concluded that he only could return to light-duty work for six hours a day with extensive restrictions. Later in his report, Dr. Batcheller stated that appellant's work restrictions were based entirely on his subjective complaints of pain and that he required no further specific medical treatment. These statements are inconsistent and require further clarification from Dr. Batcheller. These issues are especially relevant as no physician of record has released appellant to return to full-time work without restrictions. Finally, Dr. Batcheller did not offer any explanation for the extent of his restrictions on walking, standing, squatting and kneeling if he felt that appellant had no further underlying objective condition.

[9] As Dr. Boyd, a Board-certified orthopedic surgeon, had previously examined appellant in conjunction with another claim, the Office properly found that he was not an impartial medical specialist in accordance with Board precedent and the Office's procedures and could not resolve the existing conflict of medical opinion evidence. *See Wallace B. Page*, 46 ECAB 227, 230 (1994).

CONCLUSION

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits as the report of the impartial medical specialist was internally inconsistent and did not support the conclusions of the Office's February 25 and June 1, 2004 decisions.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 1 and February 25, 2004 are reversed.

Issued: February 10, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member