

FACTUAL HISTORY

The Office accepted that, on November 7, 1976, appellant, then a 39-year-old mail handler, sustained a lumbar strain and herniated nucleus pulposus at L4-5 when lifting a sack of mail. A November 17, 1977 entry on the nonfatal summary (Form CA-800) for the November 7, 1976 injury lists "Discectomy September 29, 1977 L5-S1 R[ight]" as a condition caused by the injury.¹ The Office also accepted recurrences of disability from September 14, 1977 to June 7, 1978 and for periods commencing June 15, 1979 and July 7, 1980.² The Office also accepted that, on October 3, 1982, appellant sustained an acute lumbosacral strain, following which he was limited to light-duty work.³ The Office also accepted a May 10, 1989 recurrence of disability. The record indicates that appellant did not work after February 1989. He received wage-loss compensation on the daily and periodic rolls as well as medical benefits.

Appellant received continuous treatment for his lumbar condition. In a January 23, 1986 report, Dr. Edward M. Hanley, Jr., an attending orthopedic surgeon, diagnosed chronic narrowing of the L5-S1 interspace as documented in November 1982 studies, due to the September 1977 laminectomy. In reports through June 15, 1989, Dr. Hanley diagnosed chronic degenerative disc disease with scar tissue at L5-S1 related to the November 7, 1976 lumbar sprain and 1977 laminectomy. Appellant was treated in 1989 and 1990 by Dr. Jeffrey A. Baum, a Board-certified orthopedic surgeon, who diagnosed disc degeneration from L3-S1. In a January 10, 1991 report, Dr. Mark Van Dyke, an attending osteopath Board-certified in occupational medicine, diagnosed discogenic back pain attributable, in part, to the 1977 laminectomy. In reports from February 4, 1992 to May 6, 1993, Dr. Paul B. Steele, Jr., an attending Board-certified orthopedic surgeon, diagnosed osteoarthritis and degenerative lumbosacral disc disease. He opined that appellant continued to be disabled for work due to sequelae of the November 7, 1976 injury.

In a February 1, 1995 report, Dr. Richard S. Gehl, an attending Board-certified orthopedic surgeon, diagnosed arachnoiditis secondary to the September 1977 laminectomy and noted that appellant remained disabled for work. The Office then accepted arachnoiditis as occupationally related.

In a June 21, 1995 report, Dr. Douglas S. Skura, a Board-certified orthopedic surgeon performing examinations for the employing establishment, diagnosed chronic low back pain and degenerative disc disease. He opined that appellant's back problems were not work related and that he could perform full-time sedentary work.⁴

¹ The laminectomy was noted by the Office in statements of accepted facts dated January 6, 1984 and April 9, 1986.

² The Office initially denied the claim for recurrence of disability in a February 21, 1985 decision, later vacated by decision dated September 11, 1986.

³ The claim for the October 3, 1982 lumbar injury was initially developed as under a separate case number from the file pertaining to the November 7, 1976 injury. Thus, the nonfatal summary (Form CA-800) for the October 3, 1982 claim notes that the September 29, 1977 lumbar laminectomy was a concurrent condition.

⁴ A January 31, 1995 functional capacity evaluation found appellant capable of sedentary work but noted that he exhibited a submaximal effort.

To determine the nature and extent of appellant's work-related disability, the Office appointed Dr. Yanchus, a Board-certified orthopedic surgeon, as a second opinion physician. The Office sent Dr. Yanchus an August 3, 1995 statement of accepted facts, which noted the November 7, 1976 injury and a September 14, 1977 recurrence, with "intermittent periods of disability due to recurring symptoms from 1979 through 1980." The statement of accepted facts also notes the October 3, 1982 back injury and subsequent recurrence of disability through September 1986. The accepted conditions listed were "acute lumbosacral strain, herniated nucleus pulposus at L4, L5 on the left, and arachnoiditis." The statement of accepted facts did not mention the 1977 laminectomy.

In a September 20, 1995 report, Dr. Yanchus reviewed the record and noted the November 7, 1976 and October 3, 1982 lumbar strains and September 29, 1977 L5-S1 discectomy. On examination, Dr. Yanchus found postural abnormalities and hypersensitivity to paraspinal palpation. He opined that the October 3, 1982 lumbar strain had "long since resolved" and that appellant could return to full duty lifting up to 70 pounds.

The Office then found a conflict of medical opinion between Dr. Gehl, for appellant, and Dr. Yanchus, for the government. To resolve this conflict of opinion, the Office appointed Dr. Laing, a Board-certified orthopedic surgeon, as impartial medical examiner. The Office provided Dr. Laing with portions of the case record and the August 3, 1995 statement of accepted facts.

In a March 15, 1996 report, Dr. Laing noted that, "[a]ccording to the [s]tatement of [a]ccepted [f]acts dated August 3, 1995, [appellant] ha[d] been diagnosed with acute lumbosacral strain, herniated nucleus pulposus at L4-5 left, and arachnoiditis." Dr. Laing mentioned a 1959 back injury, the November 7, 1976 injury, the September 29, 1977 laminectomy and the October 3, 1982 lumbar sprain. On examination, Dr. Laing found limited range of lumbar motion without spasm. He obtained x-rays showing degenerative disc disease at L5-S1 and degenerative osteophytes from L2 to L4. Dr. Laing opined that appellant made a "full recovery from all the lumbosacral strains ... and from the effects of his lumbar surgery." He found appellant capable of performing full-time, unrestricted work as a mail handler.

By notice dated May 1, 1996, the Office advised appellant that it proposed to terminate his compensation benefits based on Dr. Laing's March 15, 1996 opinion that he no longer had residuals of the accepted injuries. In response, appellant submitted a May 21, 1996 report from Dr. Gehl diagnosing lumbar pain with radiation into both lower extremities. Dr. Gehl noted that appellant experienced numbness and tingling in both great toes and throughout his legs with any activity and had diminished lower extremity strength and reflexes. Dr. Gehl diagnosed a lumbosacral strain, osteoarthritis of the lumbosacral spine and arachnoiditis with neurologic deficits. He opined that appellant would need modified employment.

The Office then sent Dr. Gehl's May 21, 1996 report to Dr. Laing for review.⁵ In a June 3, 1996 note, Dr. Laing stated that Dr. Gehl's new report did not alter his opinion.

By decision dated June 17, 1996, the Office terminated appellant's compensation effective June 22, 1996 on the grounds that residuals of the October 3, 1982 lumbar injury had resolved, based on Dr. Laing's opinion as the weight of the medical evidence.

Appellant then requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held January 31, 1997. At the hearing, appellant asserted that the Office should have considered injuries to both knees and his upper extremities under a separate claim in addition to his lumbar injuries. He submitted additional evidence as well as reports previously of record.

In reports dated July 15, 1996 and from February 16 to April 28, 2004, Dr. Gehl diagnosed chronic, intractable lumbosacral strain, with arachnoiditis secondary to the September 1977 laminectomy. Dr. Gehl found appellant unable to squat, stoop, bend, kneel or perform heavy lifting.⁶

Appellant also submitted reports dated from August 1996 to May 1997 by Dr. William Keith Petrella, an attending osteopath, who noted the November 7, 1976 injury and September 29, 1977 laminectomy. He diagnosed a lumbar injury, lumbar strain pattern, postlaminectomy syndrome, radiculitis and arachnoiditis requiring pain medications and colchicine injections. Dr. Petrella found appellant capable of sedentary duty.⁷

A January 31, 1997 nerve conduction velocity (NCV) study showed L5 nerve root irritation due to "residual symptoms from low back surgery" or peripheral neuropathy.

By decision dated and finalized April 18, 1997, an Office hearing representative affirmed the June 17, 1996 decision terminating appellant's compensation. The hearing representative found Dr. Laing's reports sufficient to establish that appellant had fully recovered from the accepted lumbar strains and could perform unrestricted duty. The hearing representative noted that the issue of appellant's bilateral knee condition, processed under a separate claim, was not before him at the hearing.

In a January 29, 2004 letter, appellant requested reconsideration of the April 18, 1997 decision. He asserted that the Office committed dispositive legal error by relying on the reports

⁵ In its June 17, 1996 decision, the Office referred to Dr. Gehl as Dr. Milton J. Klein, an osteopath not associated with appellant's claim. In a June 28, 1996 letter, the Office apologized for this error. At the January 31, 1997 hearing, appellant again asserted that the Office erred by referring to Dr. Milton J. Klein. In the April 18, 1997 decision, the Office found that this was harmless error as Dr. Laing clearly reviewed Dr. Gehl's May 21, 1996 report. The Board concurs that the Office's mention of Dr. Milton J. Klein was a harmless, nondispositive clerical error.

⁶ Appellant also submitted unsigned November and December 1994 chart notes.

⁷ Appellant also submitted test results. A November 7, 1989 lumbar x-ray showed a narrowed L5-S1 disc space. A March 29, 1990 bone scan showed degenerative disease at T7, T8 and L3.

of Dr. Yanchus and Dr. Laing as they were based on an inaccurate, incomplete statement of accepted facts that omitted the September 29, 1977 laminectomy.

By merit decision dated April 22, 2004, the Office denied modification of the April 16, 1997 decision. The Office noted that, as a result of accepted November 7, 1976 lumbar strain, “he sustained a herniated disc at L4-5 and eventually underwent surgery to correct this condition on September 29, 1977.” The Office asserted that both Dr. Yanchus and Dr. Laing “clearly indicate[d]” their awareness of the laminectomy and did not “refer to this surgery as not work related.”

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proof to justify a termination or modification of compensation benefits.⁸ After it has determined that an employee has a 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.⁹ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition requiring further medical treatment.¹⁰

ANALYSIS

The Office accepted that appellant sustained lumbosacral strains on November 7, 1976 and October 3, 1982, a September 1977 L5-S1 laminectomy related to the November 7, 1976 lumbar strain, and arachnoiditis related to the laminectomy. Appellant received wage-loss compensation and medical benefits pursuant to the accepted injuries. By decision dated June 17, 1996, the Office terminated appellant’s wage-loss compensation and medical benefits effective June 22, 1996 on the grounds that the accepted conditions had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.¹¹

The Office based its termination of appellant’s compensation benefits on the opinion of Dr. Laing, a Board-certified orthopedic surgeon and impartial medical examiner. The Office appointed Dr. Laing to resolve a conflict in medical opinion that arose between appellant’s attending physician, Dr. Gehl, and the Office referral physician, Dr. Yanchus, both Board-certified orthopedic surgeons, regarding the duration and extent of appellant’s injury-related disability.¹² Where the Office refers a case to an impartial medical specialist to resolve a conflict

⁸ *Willa M. Frazier*, 55 ECAB ___ (Docket No. 04-120, issued March 11, 2004).

⁹ *Carol S. Masden*, 54 ECAB ___ (Docket No. 02-1667, issued January 8, 2003).

¹⁰ *John F. Glynn*, 53 ECAB ___ (Docket No. 01-1184, issued June 4, 2002).

¹¹ *Willa M. Frazier*, *supra* note 8.

¹² Section 8123(a) of the Federal Employees’ Compensation 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. 5 U.S.C. § 8123(a); *Robert W. Blaine*, 42 ECAB 474 (1991).

between appellant's physician and a physician for the government, the specialist's opinion, if based upon a proper factual background and sufficiently well rationalized, must be given special weight.¹³

The Board finds that the Office properly accorded Dr. Laing's opinion the weight of the medical evidence in the case. First, Dr. Laing's reports are based upon a complete and accurate factual background.¹⁴ The Office provided Dr. Laing relevant portions of the case record and a statement of accepted facts. In his March 15, 1996 report, Dr. Laing set forth a complete history of appellant's back problems beginning in 1959. He also noted appellant's treatment history, including the September 29, 1977 laminectomy. Second, Dr. Laing provided medical rationale, based on a thorough clinical examination, lumbar x-rays, the medical record and statement of accepted facts, explaining that appellant had fully recovered from the lumbosacral strains and "the effects of his lumbar surgery." He therefore concluded that appellant could perform full-time, unrestricted duty as a mail handler. In a June 3, 1996 addendum, Dr. Laing noted that Dr. Gehl's May 21, 1996 report finding lumbar pain with neurologic abnormalities of the lower extremities did not alter his previous opinion. The Board finds that Dr. Laing provided sufficient rationale of reasonable medical certainty to support his opinion that appellant's work-related conditions had ceased.¹⁵

The Board notes that, pursuant to his January 29, 2004 request for reconsideration and on appeal, appellant asserted that the Office committed dispositive legal error by relying on the reports of Dr. Laing and Dr. Yanchus, as they were predicated on an incomplete statement of accepted facts. The Office provides physicians with a statement of accepted facts to assure that the medical specialist's report is based upon a proper factual background.¹⁶ The statement of accepted facts must include the date of injury, claimant's age, the job held on the date of injury, the employer, the mechanism of injury and the claimed or accepted conditions.¹⁷ The Board has held, however, that it is not necessary that the statement of accepted facts provided to the referral physician contain a complete medical history where the claim was accepted, the physician was provided with the relevant medical evidence and was aware of appellant's medical history.¹⁸

In this case, the Office accepted appellant's lumbar injury claims. The August 3, 1995 statement of accepted facts provided to Dr. Yanchus and Dr. Laing set forth the accepted injuries and conditions but omitted the September 29, 1977 L5-S1 laminectomy, which the Office had accepted as work related and as causing the accepted arachnoiditis. However, both physicians

¹³ *Guiseppa Aversa*, 55 ECAB ____ (Docket No. 03-2042, issued December 12, 2003).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Helen Casillas*, 46 ECAB 1044, 1052 n.15 (1995); *see also Henry J. Smith, Jr.*, 43 ECAB 524 (1992), *reaff'd on recon.*, 43 ECAB 892 (1992).

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.12 (June 1995). *See also Darletha Coleman*, 55 ECAB ____ (Docket No. 03-868, issued November 10, 2003).

¹⁸ *Darletha Coleman, id.*

noted the laminectomy in their reports as they were provided with appropriate portions of the medical record. In his September 20, 1995 report, Dr. Yanchus reviewed the medical record and noted the September 29, 1977 laminectomy. He opined that appellant's lumbar strain had "long since resolved." In his March 15, 1996 report, Dr. Laing noted the September 29, 1977 laminectomy and opined that appellant had fully recovered from its effects. Also, neither physician indicated that the laminectomy was not work related. Thus, the Board finds that the Office's omission of the laminectomy from the statement of accepted facts used by Dr. Yanchus and Dr. Laing constitutes harmless error, as both physicians reviewed the medical record regarding the surgery and included the laminectomy in their reports.¹⁹

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation for his back condition on the grounds that his work-related condition had ceased. The opinion of Dr. Laing, the impartial medical specialist, was sufficiently rationalized to meet the Office's burden of proof to terminate appellant's wage-loss compensation and medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁹ *Id.*