

disability beginning August 5, 1989. The Office accepted the recurrence of disability and paid appropriate wage-loss compensation, placing appellant on the periodic rolls.

Appellant's treating physician, Dr. Brian M. Golden, a Board-certified orthopedic surgeon, referred him for a consultation with Dr. Marx G. Bowens, a Board-certified neurosurgeon. On December 12, 1989 Dr. Bowens performed an anterior cervical disc excision and fusion at C4-5.¹ Drs. Golden and Bowens maintained that appellant's cervical disc condition was employment related. For more than 10 years following his 1989 surgery, Dr. Golden limited appellant to performing only part-time, sedentary work. On March 21, 2001 Dr. Golden indicated that appellant was "essentially unemployable."

An April 25, 2001 employing establishment investigative report revealed that on February 7, 2001 appellant accompanied his wife to a local Home Depot where he was observed pushing carts full of home repair items for approximately two hours and forty-five minutes. The report further indicated that appellant was seen loading materials into his truck, including plywood, two-by-fours and a sink/toilet. On March 7, 2001 appellant was observed operating a snow blower for approximately one hour and fifteen minutes. He reportedly did not display any discomfort or evidence of pain while performing these activities. The employing establishment videotaped appellant's activities on February 7 and March 7, 2001 and provided the Office a copy of the surveillance tape.

In a November 14, 2001 report, Dr. Gordon F. Lupien, a Board-certified orthopedic surgeon and Office referral physician, found that appellant sustained at most a minor muscular strain as a consequence of the April 1, 1989 employment incident. Dr. Lupien explained that appellant recovered from the minor muscular strain within a few days. He further indicated that appellant's entire subsequent course of clinical attention was symptom driven and medically unnecessary other than to treat his preexisting cervical spondylosis. Dr. Lupien also disagreed that appellant sustained a disc herniation at C4-5, noting that the December 12, 1989 operative report did not indicate that a disc herniation had been found. Dr. Lupien noted that there was no objective evidence that appellant experienced any period of physical incapacitation as a consequence of the reported incident of April 1, 1989.²

In an April 24, 2002 report, Dr. Golden noted that he reviewed the surveillance videotape and from his perspective appellant performed necessary activities in a proper way, taking precautions to avoid aggravating his condition. He also reviewed Dr. Lupien's findings and took issue with the statement that Dr. Bowen's December 12, 1989 surgical report did not reveal evidence of a herniated disc at C4-5. Dr. Golden also noted that appellant's preexisting cervical osteoarthritis was not relevant because he was asymptomatic prior to the April 1, 1989 employment incident. He further stated that appellant's current and persistent discomfort was causally related to the April 1, 1989 injury and he remained "essentially unemployable."

¹ Appellant had previously undergone a left carpal tunnel release on September 26, 1989. Although the Office initially declined authorization for surgery, the Office eventually paid for the December 12, 1989 surgical procedure.

² Dr. Lupien also reviewed the February 7 and March 7, 2001 surveillance videotape and described appellant's activities. He did not otherwise comment on what, if any, significance he may have accorded this information in his assessment of appellant's condition.

The Office found a conflict in medical opinion based on the reports of Dr. Lupien and Dr. Golden, and referred appellant for evaluation by Dr. Charles A. DiCecca, a Board-certified orthopedic surgeon.³ In a report dated June 4, 2002, the impartial medical examiner noted his agreement with Dr. Lupien's assessment that the existence of a C4-5 disc herniation was not supported by evidence of the record; particularly Dr. Bowens' 1989 surgical reports and his pre- and postoperative findings. Dr. DiCecca also noted that for years Dr. Golden adamantly defended the diagnosis of C4-5 disc herniation despite the fact that the record did not support confirmation of a disc herniation at the C4-5 level.

Dr. DiCecca also reviewed the surveillance videotape and noted that it revealed appellant participating in a "variety of rather strenuous and physical activities" involving "fairly heavy manual labor." He further commented that the activities depicted on the videotape "did not demonstrate an individual affected by pain, physical incapacity or reservations about physical exertion." Dr. DiCecca described appellant's current physical examination as "essentially unremarkable." He stated that the videotape suggested that appellant not only exhibited an unremarkable physical examination, but he also retained normal physical capacities in terms of manual labor.

Dr. DiCecca indicated that it was conceivable that appellant's numerous cervical symptoms could be explained in terms of chronic cervical spine degenerative disease, but they could not be explained in terms of a herniated cervical disc causally related to the April 1, 1989 employment incident. He also noted that there were no current findings of neurological deficit and no diagnostic studies that actually offer an explanation for appellant's ongoing complaints. Dr. DiCecca stated that appellant had long since reached maximum medical improvement and regardless of what affected him in 1989, appellant had recovered from that experience and trauma. According to Dr. DiCecca, appellant should have returned to work following his injury and certainly within two years of the 1989 surgical procedure. Based on the current assessment, appellant retained significant physical capacity and could work as a postal clerk with only a 25-pound lifting restriction. Dr. DiCecca indicated that further diagnostic treatment or additional therapeutic intervention was unnecessary.

Dr. Golden reviewed Dr. DiCecca's findings and in a report dated September 24, 2002 stated his disagreement. He reiterated that appellant was totally disabled and his current condition was the result of his April 1, 1989 employment injury.

On February 3, 2003 the Office issued a notice of proposed termination of compensation and medical benefits based on the impartial medical examiner's June 4, 2002 opinion.

In a February 5, 2003 report, Dr. Golden reiterated his disagreement with Drs. Lupien and DiCecca. Dr. Golden submitted a similar report on February 24, 2003. He also encouraged the Office to contact the now-retired Dr. Bowens in order to verify his postoperative findings.

³ The Office previously referred appellant for an impartial medical evaluation with Dr. John L. Doherty, Jr., a Board-certified orthopedic surgeon. Although he submitted two reports dated May 25 and July 28, 2000, the Office was unable to utilize Dr. Doherty's findings because he was unresponsive to repeated requests for clarification regarding the cause and extent of appellant's cervical condition.

In a decision dated April 1, 2003, the Office terminated appellant's wage-loss compensation and medical benefits effective immediately.

Appellant requested an oral hearing, which was held on October 22, 2003. He submitted three additional reports from Dr. Golden dated April 8, May 7 and October 20, 2003. The doctor asserted that there was sufficient objective evidence to establish appellant's continuing employment-related disability. Appellant also resubmitted numerous earlier medical reports.

By decision dated January 20, 2004, the hearing representative affirmed the April 1, 2003 decision terminating benefits.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁶ To 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.⁷

ANALYSIS

The Office accepted appellant's claim only for acute left cervical strain with left cervical radiculitis. Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.⁸ Appellant's treating physician, Dr. Golden maintained that appellant also sustained a disc herniation at C4-5 as a result of the April 1, 1989 injury. The December 12, 1989 disc excision and fusion at C4-5 did not resolve appellant's problem and Dr. Golden was of the opinion that appellant's ongoing cervical problems arose from the April 1, 1989 employment injury. Dr. Lupien, an Office referral physician, disagreed with the diagnosis of a C4-5 disc herniation. He characterized appellant's April 1, 1989 employment injury as at most a minor muscular strain, which appellant recovered from within a few days. Dr. Lupien attributed appellant's December 12, 1989 surgery and subsequent treatment to his preexisting cervical spondylosis.

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁷ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁸ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

The Office determined that a conflict of medical opinion existed based on the opinions of Drs. Golden and Lupien. The Office properly referred appellant to an impartial medical examiner.⁹ Dr. DiCecca reported that appellant was misdiagnosed with a C4-5 disc herniation. He also noted that it was conceivable that appellant's numerous cervical symptoms could be explained in terms of chronic cervical spine degenerative disease, but they could not be explained in terms of an employment-related herniated cervical disc. Additionally, there were no current findings of neurological deficit and no diagnostic studies that could explain appellant's ongoing complaints. Dr. DiCecca further indicated that appellant had long since reached maximum medical improvement and additional diagnostic treatment or therapeutic intervention was unnecessary. He also stated that, regardless of what affected appellant in 1989, he had recovered from that experience and trauma. According to Dr. DiCecca, appellant should have returned to work following his injury and certainly within two years of the 1989 surgical procedure.¹⁰

The Board finds that the Office properly relied on the impartial medical examiner's opinion as a basis for terminating wage-loss compensation and medical benefits. Dr. DiCecca's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. DiCecca also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiner's June 4, 2002 findings.¹¹

Dr. Golden reviewed Dr. DiCecca's report and expressed disagreement with his findings. He submitted a total of six additional reports following Dr. DiCecca's June 4, 2002 impartial medical evaluation. The reports from a physician who was on one side of a resolved conflict of medical opinion are generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.¹² The Board finds that Dr. Golden's additional reports are insufficient to overcome the weight properly accorded the impartial medical examiner's opinion as he essentially reiterated his opinion. As the weight of the medical evidence establishes that appellant's April 1, 1989 employment injury has resolved, the Office properly terminated wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective April 1, 2003.

⁹ The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹⁰ Although Dr. DiCecca noted a current lifting restriction of 25 pounds, it is clear from his June 4, 2004 findings that this restriction is unrelated to appellant's April 1, 1989 accepted injury of acute left cervical strain with left cervical radiculitis.

¹¹ Where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹² *Richard O'Brien*, 53 ECAB 234, 242 n.6 (2001).

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 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