

**United States Department of Labor
Employees' Compensation Appeals Board**

CARL CRAWFORD, Appellant)

and)

DEPARTMENT OF THE NAVY,)
PHILADELPHIA NAVAL BUSINESS)
CENTER, Philadelphia, PA, Employer)

Docket No. 05-363
Issued: October 21, 2005

Appearances:
Carl Crawford, 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 November 30, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 30, 2004, terminating his wage loss and medical benefits effective September 5, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the termination decision.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits effective September 5, 2004, on the basis that he no longer had a continuing medical condition causally related to his December 16, 1987 employment injury.

FACTUAL HISTORY

On December 17, 1987 appellant, then a 46-year-old pipe fitter, sustained a work-related injury when he was struck in the back of the head by a falling chain. The Office accepted the claim for concussion, cervical and lumbar strain and cervical and lumbar radiculopathy.

Appellant stopped work on December 16, 1987, returned to duty on December 23, 1987 and stopped again on January 23, 1988. Appellant was eventually placed on the automatic rolls for total disability.

In a report dated November 28, 2000, Dr. Arnold S. Lincow, appellant's attending physician and a Board-certified internist specializing in pain management, advised that appellant developed a neuropathic pain syndrome secondary to his traumatic injuries, which were sustained on December 16, 1987 and that appellant's symptomatology to reflex sympathetic dystrophy and post-traumatic arthritis had progressed. Dr. Lincow stated that appellant required various medications for his pain, spasm and inflammation and requested that further diagnostic studies be completed regarding his radiculopathies and reflex sympathetic dystrophy. Dr. Lincow also continued to opine that appellant was totally disabled and that his conditions were directly and causally related to the incident of December 16, 1987.

In a letter dated January 12, 2001, the Office stated that the conditions of reflex sympathetic dystrophy and post-traumatic arthritis had not been accepted as being related to the December 16, 1987 work injury. The Office requested that Dr. Lincow provide further information as to the continued medical necessity of trigger point injections and diagnostic tests on appellant's accepted conditions.

In a report dated January 17, 2001, Dr. Lincow stated that appellant had severe injuries due to the December 16, 1987 trauma, which included progressive disc herniation of the cervical spine at C3-4, unresolved traumatic seizure disorder, degenerative disc and facet disease, which preexisted the December 16, 1987 trauma, chronic complex pain syndrome with causalgia and bilateral cervical radiculopathy. Dr. Lincow opined that appellant's degenerative disc disease became activated as a result of the December 16, 1987 trauma and this has been well documented in the record. Dr. Lincow stated that it was not unreasonable to state that appellant developed post-traumatic arthritis secondary to his severe trauma as he was asymptomatic prior to his trauma with the herniated disc and disc degeneration. He further stated that appellant developed reflex sympathetic dystrophy as evidenced by appellant's last diagnostic studies performed July 22, 1999 and opined that all of appellant's diagnostic studies were medically appropriate. He also noted that appellant's treatment was palliative in nature.

In a February 27, 2001 report, Dr. Robert D. Aiken, a Board-certified neurologist and Office referral physician, noted examining of appellant and reviewed the medical evidence. Dr. Aiken diagnosed chronic cervical strain, cervical spondylosis, lumbar sprain and strain, which he stated were chronic conditions based on appellant's subjective pain complaints in the neck and low back. Dr. Aiken opined that the neck and low back pain were initially caused by the work-related accident of December 1987, but stated that there were no objective findings to indicate a neurological impairment. He opined that appellant had fully recovered from the work-related injury of December 17, 1987. He stated that appellant's persistent complaints of his neck and low back and restricted range of motion were the result of age-related degenerative disease.

In a March 8, 2001 report, Dr. Anthony W. Salem, a Board-certified orthopedic surgeon and Office referral physician, reviewed the statement of accepted facts, the medical evidence of file and noted his findings. Dr. Salem diagnosed underlying degenerative arthritis of the cervical and lumbosacral spine. He opined that a diagnosis of a contusion and concussion was justified at

the time of the injury, but stated that all symptoms should have disappeared within several months. He stated that appellant was normal neurologically. He stated that appellant's underlying degenerative arthritis may have been aggravated by the work injury, but there was no acceleration as noted by recent x-rays and examination. Dr. Salem also stated that appellant's preexisting arthritis was not necessarily disabling and recommended that appellant undergo a cervical and lumbosacral exercise program. He also recommended a psychiatric examination, noting that appellant had spent the previous 14 years collecting workers' compensation. He opined that further diagnostic studies were not indicated and stated that, although trigger point injections and anti-inflammatories may be of benefit, they were not related to his work injury. In a March 8, 2001 work capacity evaluation, Dr. Salem opined that appellant was able to work an eight-hour day with minimal restrictions as a result of his preexisting nonwork-related conditions. In an April 9, 2001 report, Dr. Salem stated that he reviewed his prior report along with Dr. Aiken's neurological report of February 27, 2001 and reiterated his opinion that appellant fully recovered from the work-related injury of December 16, 1987. He stated that appellant's diagnosed condition of degenerative arthritis of the cervical and lumbosacral spine was not related to employment factors either by direct cause, aggravation, precipitation or acceleration.

The Office found that a conflict in the medical opinion evidence between Dr. Lincow, who indicated that appellant has residuals from his work-related injury and was disabled from all employment and Drs. Aiken and Salem, who indicated that appellant no longer had residuals of his work-related injury. The Office referred appellant, together with a statement of accepted facts and the case file, to Dr. Joseph A. Jelen, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict.

In a September 11, 2001 report, Dr. Jelen provided a history of appellant's condition, the results of tests and findings on examination and opined that appellant likely had cervical and lumbosacral strains with radiculopathies since the time of injury. He stated that the medical diagnosis was connected to the work injury by direct cause and superimposed on a chronic arthritic condition. He stated that the objective findings included positive Tinel's signs in the elbow, wrist, global weakness left upper extremity, decreased circumference of the left calf and the nonindustrial or preexisting component to appellant's condition would include any psychiatric disorders or degenerative changes in the spine. He further opined that reflex sympathetic dystrophy was not an appropriate diagnosis as there was no upper or lower extremity hair loss, mottling of the skin or soft tissue or hypersensitivity. Dr. Jelen did not recommend any further diagnostic testing, but recommended a functional capacity evaluation to determine whether appellant's complaints of weakness with strength testing were documentable. Dr. Jelen further opined that because of appellant's complaints of waxing and waning pain and numbness, appellant would not be able to consistently work eight hours a day but was capable of performing sedentary work four hours a day.

Dr. Lincow continued to submit progress notes on appellant's condition.

On January 31, 2003 the Office determined that there was a conflict in the medical opinion evidence between appellant's physician, Dr. Lincow and the second opinion examinations of Dr. Aiken and Dr. Salem with regards to the cause and extent of appellant's injury-related impairment. The Office apparently scheduled an impartial medical examination

with a Dr. Jeffrey I. Greenstein; however, the scheduled examination was subsequently cancelled due to a change in the nature of the physician's practice.¹ Thereafter, the Office referred appellant, together with a statement of accepted facts and the case file, to Dr. Dara G. Jamieson, a Board-certified neurologist, to resolve the conflict in medical opinion.

In an April 6, 2003 report, Dr. Jamieson provided a history of appellant's condition, the results of tests and findings on examination and opined that appellant had sustained a mild concussion, as well as soft tissue and muscle injury, from which he should have recovered within weeks to months. Dr. Jamieson noted that radiological studies immediately after the accident did not show any spinal or brain abnormalities. Dr. Jamieson also noted that appellant's complaints increased over the years as his treating physicians proposed more unsupported diagnoses, ordered multiple unnecessary studies and tried years of unsuccessful therapy and medications. She stated that over the years, appellant developed progressive arthritic changes consistent with his age and that his doctors encouraged him to perceive himself as permanently disabled, from what should have been an injury producing transient disability. Dr. Jamieson stated that appellant's neurological examination was normal, without any evidence of neurological injury or disability. He had no evidence by history or examination of any neurological disorder, including reflex sympathetic dystrophy, cervical or lumbar radiculopathy, migraines or seizures. Dr. Jamieson opined that appellant may have "phobic ideation" unrelated to the injury. He also developed degenerative disc disease of his cervical and lumbar spine; however, his arthritic condition was not due to the work injury of December 16, 1987 but was a natural consequence of aging. Dr. Jamieson opined that no further testing or medication was required due to his work injury and that his current use of medication for pain was infrequent and not related to the work injury. She opined that appellant had completely recovered from his December 1987 injury and could work an eight-hour day without restrictions. Dr. Jamieson noted that appellant should have been sent back to work many years ago, "however, in the intervening 15 years, he has aged into an angry, elderly man, with age-related spinal arthritis and hypertension, as well as complaints of back pain, tremor, headache and irritability, all unrelated to the old injury, but likely to hamper him from being an effective worker."

On April 21, 2003 the Office referred appellant for a second opinion evaluation with a Board-certified orthopedic surgeon. In a May 21, 2003 report, Dr. Steven J. Valentino, a Board-certified orthopedic surgeon and Office referral physician, noted the history of injury and his review of the medical records and his examination findings. He noted an impression of a resolved concussion, resolved cervical and lumbar strain and cervical lumbar radiculopathy. Dr. Valentino opined that, based on his evaluation, review of the medical record and diagnostic studies, appellant had clinically recovered from his work-related injury and was capable of working an eight-hour day with no limitations. Appellant's diagnostic studies were consistent with age-related degenerative changes, which were currently not symptomatic. His objective findings were normal and subjective findings were not consistent with the objective findings. A positive Waddell's sign was remarkable for a degree of symptom embellishment that was not related to the work injury. Dr. Valentino opined that appellant no longer needed ongoing supervised medical care, as there was no evidence that the work-related condition sustained on December 16, 1987 was active or caused objective findings.

¹ The record does not contain any information regarding Dr. Greenstein's credentials.

In a June 28, 2003 report, Dr. Lincow stated that appellant had no new diagnostic studies since 1999 and reiterated that the diagnostic studies and medical reports of record from various physicians supported appellant's diagnosed conditions. Dr. Lincow noted that appellant was seen on June 25, 2003 and provided a list of appellant's current diagnoses. Dr. Lincow opined that appellant was totally disabled, his condition had deteriorated over the last decade and he still required ongoing medical treatment for pain, both nociceptive and neuropathic.

In a July 3, 2003 report, Dr. Stephen Sacks, a neurologist, reported that the electromyogram and nerve conduction study was consistent with chronic L5-S1 nerve root involvement as well as C4-5 nerve root involvement of the left lower and left upper extremities respectively. He further stated that there was a clinical picture consistent with chronic regional pain requiring continued pain management. Dr. Sacks did not address causal relationship.

Dr. Howard J. Hutt, an osteopath, provided copies of studies appellant underwent on July 3, 2003. Dr. Hutt found the computerized tomography (CT) scan of the head to be normal. However, he advised that the CT scan of the lumbosacral spine indicated an abnormal study, with a decrease in the size of the canal on a developmental basis at L2-3 and L3-4 without evidence of stenosis and a mild broad left sided L2-3 disc herniation and a mild broad L3-4 disc herniation. He further advised that the CT scan of the cervical spine was also an abnormal study with a left paracentral C5-6 disc herniation and a broad spur at C4-5 with narrowing of the neural foramina. No opinion was rendered on the causal relation of these conditions.

On March 30, 2004 the Office determined that there was a conflict in the medical opinion evidence between appellant's physician, Dr. Lincow and the second opinion examinations of Dr. Aiken, Dr. Salem and Dr. Valentino with regards to the cause and extent of appellant's injury-related impairment. The Office referred appellant, together with a statement of accepted facts, the case file and a list of questions, again to Dr. Jamieson to resolve the conflict.

In an April 19, 2004 report, Dr. Jamieson stated that after a review of recent records, an update on appellant's symptoms and her examination of appellant, her opinion had not changed as outlined in her prior report. Dr. Jamieson stated that appellant had a normal neurological examination, without any evidence of neurological injury or disability. He continued to have no evidence by history or examination of any neurological disorder, including reflex sympathetic dystrophy, cervical or lumbar radiculopathy, migraines or seizures. Appellant developed degenerative disc disease of his cervical and lumbar spine; however, his arthritic condition is not due to the blow to his head over 15 years ago, but is a natural consequence of aging. Dr. Jamieson opined that appellant did not need any further testing, therapy or medication related to his 1987 injury. Dr. Jamieson opined that appellant's current complaints are not related to his past injury and, from the standpoint of his December 1987 injury, he has completely recovered and was able to work an eight-hour day without restrictions.

By letter dated July 13, 2004, the Office advised appellant that it proposed to terminate his compensation benefits on the grounds that the weight of the medical evidence of record established that he had no remaining disability or medical conditions causally related to his December 16, 1987 employment injury.

In an August 9, 2004 letter, appellant disagreed with the proposed termination of benefits. He stated that he still had residuals from the work injury and felt that there was a certain bias due to his race. Appellant also submitted two medical reports from Dr. Lincow dated June 11 and July 30, 2004. In his reports, Dr. Lincow reiterated his previous diagnoses of appellant and his opinion that they were causally related to his December 16, 1987 injury. In his July 30, 2004 letter, Dr. Lincow stated that appellant now had post-traumatic stress syndrome with moderate to severe depression, panic attacks, phobic ideations with fatigue as well as progressive traumatic arthritis, which was accelerated by the trauma and was not age related.

By decision dated August 30, 2004, the Office terminated appellant's compensation benefits effective September 5, 2004. The Office accorded determinative weight to the opinion of Dr. Jamieson, who was selected to resolve the conflict in medical opinion.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² 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.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

ANALYSIS

The Office accepted that appellant sustained conditions of concussion, cervical and lumbar strain and cervical and lumbar radiculopathy as a result of the December 16, 1987 work incident. Therefore, it bears the burden of proof to justify the termination of compensation benefits for those conditions. The Office has no such burden of proof with respect to conditions that are not accepted, including appellant's reflex sympathetic dystrophy, post-traumatic arthritis and psychiatric conditions.⁵

With respect to the accepted conditions, the Board notes that the Office terminated appellant's compensation and medical benefits based on the opinion of Dr. Jamieson, who was accorded special weight as the impartial medical specialist. Section 8123(a) of the Federal Employees' Compensation Act, in pertinent part, provides: "If there is a disagreement between the

² *Paul L. Stewart*, 54 ECAB ____ (Docket No. 03-1107, issued September 23, 2003).

³ *Elsie L. Price*, 54 ECAB ____ (Docket No. 02-755, issued July 23, 2003).

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

⁵ *See Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004) (where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury). The Board notes that although appellant's physician has claimed that such conditions are causally related to the December 16, 1987 work injury, the Office has not ruled on this issue. Accordingly, the Board will not address whether appellant has met his burden of proof for those conditions. *See* 20 C.F.R. § 501.2(c).

physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”⁶ Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁷

The Board notes, however, that no conflict in the medical evidence existed at the time of the Office’s initial referral to Dr. Jamieson on January 31, 2003. The record reflects that a conflict in medical opinion had previously arisen between appellant’s physician, Dr. Lincow and the Office’s second opinion physicians, Dr. Aiken and Dr. Salem, with regard to the issue of whether appellant continued to have residuals of his work-related injury and, if so, the extent of his disability. Pursuant to 5 U.S.C. § 8123(a), the Office properly referred the case to Dr. Jelen for an impartial medical examination in 2001. Based on his examination of the record at that time and appellant’s examination, Dr. Jelen opined that appellant was still partially disabled in 2001 from continuing residuals from the accepted cervical and lumbosacral strains with radiculopathies superimposed on appellant’s chronic arthritic condition. When the Office referred appellant to Dr. Jamieson in 2003, there does not appear to be any additional medical evidence regarding appellant’s ability to work that contradicted Dr. Lincow’s continuing reports of total disability. The Board finds that it was improper for the Office to refer appellant to an impartial medical examiner in the absence of a new conflict in medical opinion evidence. Accordingly, the Board finds that the Office improperly gave special weight to Dr. Jamieson’s opinion in terminating appellant’s benefits.

The Board notes, however, that Dr. Jamieson’s opinion can properly be considered to be that of a second opinion physician. Dr. Jamieson was provided with appellant’s complete medical history and record including recent objective studies appellant underwent in 2003. In her report of April 19, 2004, Dr. Jamieson reported the results of appellant’s examination and opined that appellant had completely recovered from his December 1987 injury and was able to work an eight-hour day without restrictions. Dr. Jamieson found that appellant had no evidence of any neurological injury or disability and opined that his degenerative disc disease of his cervical and lumbar spine was due to the natural consequence of aging. Although Dr. Lincow continued to opine that appellant’s diagnoses were causally related to his December 16, 1987 employment injury and that he was totally disabled as a result thereof, no medical rationale was provided that explained the medical reasons for his opinion. As such, his opinion is insufficient to cause a conflict with Dr. Jamieson’s well-rationalized report of April 19, 2004. Thus, Dr. Jamieson’s second opinion evaluation constituted the weight of the medical opinion evidence, as it was based upon a proper factual and medical background and established that appellant’s continuing medical complaints were not injury related and that he had no medical residuals of his accepted condition. The report further established that appellant was able to return to full-time work without further residuals requiring medical treatment. Accordingly,

⁶ 5 U.S.C. § 8123(a).

⁷ See *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

Dr. Jamieson's second opinion evaluation constituted the weight of the medical opinion evidence.⁸

Thus, based on Dr. Jamieson's April 19, 2004 medical report, the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that appellant had no residuals of his accepted conditions which required medical treatment and that he was able to work an eight-hour day without restrictions.

CONCLUSION

The Office properly terminated appellant's entitlement to wage-loss and medical compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2004 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: October 21, 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

⁸ *Gewin C. Hawkin, supra* note 4.