

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

JOHNNIE M. WALTERS, Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
U.S. COAST GUARD, BALTIMORE, MD,
Employer**

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**Docket No. 05-1018
Issued: October 11, 2005**

Appearances:
Johnnie M. Walters, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On March 28, 2005 appellant filed a timely appeal from the January 18 and February 17, 2005 merit decisions of the Office of Workers' Compensation Programs, terminating wage loss 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 and medical benefits effective January 23, 2005, on the grounds that he has no further disability due to his accepted March 19, 2001 employment injury.

FACTUAL HISTORY

On April 9, 2001 appellant, a 47-year-old shipfitter/metal worker, filed a traumatic injury claim alleging that he pulled a muscle in his groin on March 10, 2001 while lifting heavy metal

at work. His claim was accepted for back and groin strain and he was placed on the periodic rolls.

Appellant was treated by several physicians, including Dr. Douglas Shepard, a Board-certified orthopedic surgeon, who provided a diagnosis of post-traumatic mechanical back pain and Dr. Michael M. Enoch, a treating physician, who diagnosed resolving musculoligamentous strain to the lumbar spine and left hip/groin. In a work-capacity evaluation form, Dr. Malinee Yunyongying, a treating physician,¹ checked a “yes” box, indicating that appellant suffered from a work-related medical condition and could work four hours per day with restrictions.

The Office referred appellant to Dr. Robert Allen Smith, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated August 16, 2004, he found that appellant’s examination was “essentially normal” and opined that he did not suffer from any residuals from the accepted conditions, which had fully resolved.

On October 21, 2004 the Office referred appellant, together with a statement of accepted facts and the entire case file, to Dr. Arthur Baitch, a Board-certified orthopedic surgeon, for an independent medical examination in order to resolve the conflict between his physicians and the second opinion physician and to determine whether appellant had any residual disability or medical condition causally related to his work-related injury.

In a report dated November 8, 2004, Dr. Baitch provided a history of appellant’s condition, findings on examination and the results of x-rays, electromyogram (EMG) and other diagnostic tests. Upon examination, he found no objective abnormalities or objective evidence that appellant continued to suffer residuals from the 2001 work-related injury, other than his “persistent description of problems with excessive activity.” Appellant told Dr. Baitch that, although he had been out of work for the previous two years, he had received no treatment for his condition and had not had a magnetic resonance imaging (MRI) scan, which had been recommended. Dr. Baitch found that he demonstrated no signs of discomfort during examination; his gait was normal and symmetric; he was able to stand up on his toes and back of his heels without any difficulty; range of motion of the cervical spine was full; range of motion of the thoracolumbar spine was unrestricted in all directions; straight leg raising test was negative; Patrick’s test was negative; all deep tendon reflexes were equal and active; motion of both hips was full and equal without any discomfort at extremes of motion; no diminished sensation; and ranges of motion of all joints of the upper and lower extremities were normal. After reviewing the entire medical record and examining appellant, Dr. Baitch opined that residuals from his work-related injury had resolved.

By letter dated December 17, 2004, the Office advised appellant of its proposed termination of his compensation and medical benefits on the grounds that the weight of the medical evidence, as represented by the report of the impartial medical specialist, Dr. Baitch, established that he had no residuals from his 2001 accepted injury. The Office advised him that he had 30 days to submit additional evidence or argument. Appellant did not submit any additional evidence or argument.

¹ Although Dr. Yunyongying’s letterhead reflects that he is a Board-certified family practitioner, his credentials cannot be verified.

By decision dated January 18, 2005, the Office terminated appellant's compensation and medical benefits effective January 23, 2005.

Subsequent to the Office's January 18, 2005 decision, appellant submitted a November 29, 2004 work-capacity evaluation signed by Dr. Yunyongying, which provided a diagnosis of chronic back pain and work restrictions, including no sitting, walking, standing or reaching for more than two to three hours; no reaching above the shoulder; no operating a motor vehicle for more than one half to one hour; and no pushing, pulling or lifting over five pounds. In a separate work-capacity evaluation form bearing an illegible date, she blackened a "yes" box, indicating that appellant suffered from a work-related medical problem and indicated that he could work four hours per day.

By letter dated February 8, 2005, appellant requested reconsideration of the Office's January 18, 2005 decision, alleging that his doctor's report was untimely because she had forgotten to mail it on time. Appellant stated that he was unable to work and would like to undergo an MRI scan and hernia surgery.

By decision dated February 17, 2005, the Office denied modification of its January 18, 2005 decision, finding that the weight of the medical evidence found in Dr. Baitch's report established that appellant no longer had a disability or residuals from the accepted March 19, 2001 injury.²

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office's burden of proof 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 to compensation for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁵

Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make

² The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Therefore, the Board cannot consider additional evidence submitted by appellant after the Office rendered its February 17, 2005 decision.

³ *Mohamed Yunis*, 42 ECAB 325 (1991).

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *See LaDonna M. Andrews*, 55 ECAB ____ (Docket No. 03-1573, issued January 30, 2004); *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, 41 ECAB 361 (1990).

an examination.”⁶ Where 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 a proper factual and medical background, must be given special weight.⁷

ANALYSIS

The Board finds that the Office has met its burden of proving that appellant’s accepted condition had resolved and that related residuals had ceased as of January 23, 2005.

The Office found that a conflict in medical opinion had been created between appellant’s treating physicians and the second opinion physician, Dr. Smith, regarding whether he suffered any disability or residuals related to his employment injury. The Office properly referred him to Dr. Baitch for an impartial medical evaluation.

The Board finds that Dr. Baitch’s opinion, which is based on a proper factual and medical history, is well rationalized and supports the determination that appellant’s accepted conditions of back and groin strain had ceased by January 23, 2005, the date the Office terminated his benefits. Dr. Baitch accurately summarized the relevant medical evidence, provided findings on examination and reached conclusions regarding his condition which comported with his findings. He found no objective abnormalities or objective evidence that appellant continued to suffer residuals from the 2001 work-related injury, other than his “persistent description of problems with excessive activity.” Pursuant to his examination, Dr. Baitch reported that he demonstrated no signs of discomfort during examination; his gait was normal and symmetric; he was able to stand up on his toes and back of his heels without any difficulty; range of motion of the cervical spine was full; range of motion of the thoracolumbar spine was unrestricted in all directions; straight leg raising test was negative; Patrick’s test was negative; all deep tendon reflexes were equal and active; motion of both hips was full and equal without any discomfort at extremes of motion; no diminished sensation; and ranges of motion of all joints of the upper and lower extremities were normal. After reviewing the entire medical record and examining appellant, Dr. Baitch opined that residuals from his work-related injury had resolved.

As Dr. Baitch provided a detailed and well-rationalized report based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner.⁸ The remaining evidence of record is insufficient to outweigh that special weight. Dr. Yunyongying’s work-capacity evaluation failed to address the causal relationship between appellant’s current condition and his work-related injury and, therefore, lacks probative value.⁹ Moreover, it is cumulative in nature and provides no new evidence to contradict Dr. Baitch’s report. The Board has held that an additional report from appellant’s physician that essentially repeats earlier findings and conclusions is insufficient to overcome the weight accorded to an

⁶ 5 U.S.C. § 8123(a); *see also* *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁷ *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁸ *See Roger Dingess*, *supra* note 7.

⁹ *Mary A. Ceglia*, 56 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

impartial medical specialist.¹⁰ Additionally, Dr. Yunyongying was on one side of the conflict in medical opinion that gave rise to the impartial medical examination. Therefore, her report is insufficient to overcome or to create a conflict with the well-rationalized medical opinion of Dr. Baitch.¹¹

The Board finds that the weight of the medical evidence, which is contained in the report of the impartial medical examiner, establishes that residuals from appellant's accepted condition have ceased. The Board further finds that the Office has met its burden of showing that his employment-related condition has resolved.

CONCLUSION

The Office met its burden of proof in terminating appellant's medical and wage-loss benefits effective January 23, 2005.

ORDER

IT IS HEREBY ORDERED THAT the February 17 and January 18, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 11, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *Michael Hughes*, 52 ECAB 387 (2001).

¹¹ *Roger G. Payne*, 55 ECAB ____ (Docket No. 03-1719, issued May 7, 2004).