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

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| **ROLAND J. GIGUERE, Appellant** | ) | |
| **and** | ) | **Docket No. 05-711** |
| | ) | **Issued: February 15, 2006** |
| **DEPARTMENT OF VETERANS AFFAIRS, VA MEDICAL CENTER, Bay Pines, FL, Employer** | ) | |

*Appearances:*
*Capp P. Taylor, Esq.,* for the appellant
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

### *JURISDICTION*

On February 1, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated December 13, 2004 which denied modification of the termination and finding that appellant did not establish that he had continuing injury-related residuals. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

### *ISSUES*

The issues are: (1) whether the Office properly terminated appellant's compensation benefits; and (2) whether appellant established entitlement to compensation following the termination.

### *FACTUAL HISTORY*

On July 2, 2002 appellant filed a Form CA-1 claim for traumatic injury alleging that on June 19, 2002, as he was moving a patient in a wheelchair up some stairs, he felt pain in his lumbar spine. On August 20, 2002 the Office accepted that appellant had sustained lumbar

sprain and paid compensation after continuation of pay ended. On September 9, 2002 the Office noted that appellant had returned to work for 4 hours per day on August 6, 2002 and to 6 hours per day on August 21, 2002. It recommended submission of CA-7 forms to claim further compensation. The Office later expanded the claim to accept temporary aggravation of lumbar degenerative disc disease.

On December 9, 2002 Dr. Thomas Tolli, a Board-certified orthopedic surgeon, provided a report indicating that appellant complained of back pain, thoracic pain and bilateral leg pain. Dr. Tolli indicated that appellant's complaints were 80 percent back symptoms and 20 percent leg symptoms, with nerves testing positive at L3 and L4.

In a February 3, 2003 report Dr. Tolli noted that a myelogram and computerized tomography (CT) scan studies revealed multilevel mild to moderate degenerative disc disease with right-sided facet osteophyte and advanced arthritis and sclerosis. He noted that appellant had pain at L4-5 which correlated with his arthritis, and that appellant needed limited duty. Dr. Tolli diagnosed underlying degenerative changes and lumbar muscle strain, right L4-5 facet joint arthritis, and multiple degenerative disc disease. He recommended a facet block at L4-5 on the right.

On March 7, 2003 Dr. Kazi M. Hassan, a Board-certified pain management specialist, reviewed Dr. Tolli's history and findings and opined that appellant might be a candidate for a radio frequency rhizotomy.

By letter submitted to the record on April 11, 2003, the Office authorized a second opinion examination by a Board-certified specialist to determine the degree and extent of appellant's work-related disability. The referral physician was provided a statement of accepted facts and a list of questions to be addressed. On April 22, 2003 the Office referred appellant to Dr. Vydialinga G. Raghavah, a Board-certified orthopedic surgeon, to act as a second opinion examiner.

In a report dated May 7, 2003, Dr. Raghavah reviewed the treatments appellant had undergone, the diagnosed conditions and the diagnostic studies. He opined that appellant's L2-S1 bulging lumbar discs, spondylitis and degenerative disc disease at L5-S1 with radiopathy, were not part of the allowed claim at the present time. Dr. Raghavah reported physical examination results, including measurements of tenderness, ranges of motion, straight leg raising, reflexes and weaknesses. He noted that appellant had a suggestion of sensory deficit along the L4-5 dermatome on the right, and motor weakness along the L5 nerve root on the right. Based on his clinical findings, Dr. Raghavah diagnosed a resolved lumbar strain with antecedent disc disease, multilevel from L2-S1, with evidence of L4-5 radiculopathy on the right with diabetes mellitus, peripheral neuropathy and coronary artery disease. He opined that appellant had reached maximum medical improvement, that the lumbar strain work injury of June 19, 2002 had resolved, and that the temporary aggravation of appellant's underlying osteoarthritis had also resolved approximately six weeks following the injury. Appellant's disability for work was due to the L2-S1 multilevel disc disease with radiculopathy, and the diabetes-related peripheral neuropathy in both feet. Dr. Raghavah opined that no further treatment for the lumbar strain was indicated, and that appellant could return to work as a motor vehicle operator without

restrictions. Appellant's case was expanded to include temporary aggravation of lumbar degenerative disc disease.

On August 7, 2003 the Office issued a notice of proposed termination of compensation finding that appellant had no continuing disability causally related to his June 19, 2002 employment injury. The Office noted that Dr. Raghavah provided a well-rationalized medical report that constituted the weight of the medical opinion evidence of record.

By letter dated August 22, 2003, appellant objected to the proposed termination of his compensation benefits, claiming that the radio frequency rhizotomy should be done since it helped his condition.[1]

By decision dated September 10, 2003, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence of record established that he had no further disability for work or need for medical treatment related to his accepted June 19, 2002 injury.

Appellant, through his representative, requested reconsideration and submitted additional medical evidence. A July 18, 2003 chart note from Dr. Hassan addressed occipital nerve blocks and noted that they were helping with appellant's headaches. Appellant was still waiting for authorization for radio frequency denervation to help with headaches and chronic and intractable pain. Dr. Hassan noted that they discussed appellant's coronary artery ischemic attack and appellant was directed to get clearance from his cardiologist for the radio frequency denervation.

In an October 31, 2003 report, Dr. Tolli noted that appellant complained of significant back pain and sought a definitive treatment. He noted that he gave appellant pain medication.

A December 12, 2003 report from Dr. Tolli noted that appellant was symptomatic in his back and right leg, and that he had 80 percent back symptoms and 20 percent leg symptoms, distributed to the bilateral crest. He noted that appellant's leg pain was distributed to the right anterior thigh and top of the foot, that a prior history of trauma was reported as occurring on June 19, 2002 while he was lifting a patient. Dr. Tolli reported that inspection examinations for spasm, thoracic kyphosis, scoliosis and lumbar lordosis were negative, that his neuromuscular examination was negative,[2] and that palpation revealed bilateral paralumbar tenderness. He did not comment on this finding. Dr. Tolli found that atrophy was not demonstrated, that upper motor neuron signs were nonexistent, that appellant could perform toe raises and heel walking, that sensation was normal, that range of motion of the hips was normal that the Faber test was negative, and that leg lengths were normal. Dr. Tolli provided range of motion measurements and reflexes, and he diagnosed facet joint degenerative joint disease at L4-5 on the right and degenerative disc disease.

[1] Appellant had been receiving occipital nerve blocks for headaches which were unrelated to his accepted employment injury.

[2] Including straight leg raising, the cram test and crossed straight leg raising.

In an August 4, 2004 note, Dr. Hassan stated that he reviewed the evidence and testing results, and opined that appellant sustained a "permanent aggravation to his lumbar spine." However, he noted that appellant could work eight hours per day, but not perform any heavy lifting or repetitive bending, stooping or squatting. Dr. Hassan opined that appellant would benefit from a radio frequency rhizotomy, but that he will never be able to perform his original duties as an ambulance driver.

In an August 13, 2004 note, Dr. Tolli opined that appellant was still suffering from a June 19, 2002 aggravation of a preexisting condition of the lumbar spine, but that he could work eight hours per day within restrictions. He opined that appellant would not be able to perform his date of injury job, and that he needed a treatment plan.

By decision dated December 13, 2004, the Office denied modification of the September 10, 2003 decision.

## ***LEGAL PRECEDENT ISSUE 1***

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[3] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[4] The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion[5] evidence based on a proper factual and medical background.[6]

## ***ANALYSIS ISSUE 1***

The Board finds that the Office properly terminated appellant's wage-loss compensation and medical benefits entitlement effective on September 13, 2003 on the grounds that the weight of the medical evidence established that he had no further disability or need for medical treatment causally related to the June 19, 2002 lumbar strain.

On February 3, 2003 Dr. Tolli noted that CT scan and myelogram studies that date revealed multilevel mild-to-moderate degenerative disc disease with a right-sided facet osteophyte and advanced arthritis and sclerosis. He stated that appellant's pain at L4-5 correlated with arthritis and that this finding necessitated limited duty. Dr. Tolli also diagnosed underlying degenerative changes and lumbar muscle strain, right L4-5 facet joint arthritis, and

[3] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[4] *Id.*

[5] Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant. *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[6] *Manuel Gill*, 52 ECAB 282 (2001).

multiple degenerative disc disease. He recommended an L4-5 facet block on the right. Except for the lumbar muscle strain, the remainder of the conditions found by Dr. Tolli were degenerative change-related conditions which the physician did not relate to the June 19, 2002 patient-moving incident. These conditions were not accepted by the Office as resulting from the June 19, 2002 injuries.

On March 7, 2003 Dr. Hassan opined that appellant might be a good candidate for a radio frequency rhizotomy. However, he failed to explain the relationship to and/or need for this treatment for appellant's accepted lumbar strain.

The Office properly referred appellant to Dr. Raghavah for a second opinion. On May 7, 2003 Dr. Raghavah reviewed appellant's treatments, the conditions which were diagnosed, and the diagnostic studies. He stated that appellant had bulging lumbar discs and spondylitis and degenerative joint disease with radiculopathy. However, these conditions were not part of the accepted claim. Physical examination included measurements of tenderness and range of motion, straight leg raising, reflex and weakness testing, including a sensory deficit along the L4-5 dermatome on the right and motor weakness along the L5 nerve root on the right. Dr. Raghavah determined that appellant's injury-related diagnosis was a resolved lumbar strain with disc disease at multilevels from L2-S1, with evidence of radiculopathy on the right and diabetes mellitus and peripheral neuropathy and coronary artery disease. Dr. Raghavah opined that the lumbar strain work injury of June 19, 2002 had resolved and that the temporary aggravation of his underlying osteoarthritis had also resolved within six weeks following the injury. Appellant was disabled due to his underlying multilevel disc disease with radiculopathy and diabetes-related lower extremity peripheral neuropathy in both feet. He noted that no further treatment for the lumbar strain was indicated and that appellant could return to work as a motor vehicle operator, based on his present condition.

Dr. Raghavah based his opinion on a complete and accurate objective physical examination results and an accurate factual and medical history. Therefore, the Board finds that the weight of the medical opinion evidence is represented by Dr. Raghavah. It establishes that appellant has no further disability or need for medical treatment for his lumbar strain injury or the temporary aggravation of his underlying arthritis.

## ***CONCLUSION ISSUE 1***

The Board finds that the Office properly terminated appellant's compensation benefits effective September 10, 2003 on the grounds that he had no employment-related disability on or after that date.

## ***LEGAL PRECEDENT ISSUE 2***

After termination or modification of compensation benefits, which was clearly warranted on the basis of the evidence, the burden of proof for reinstating compensation benefits shifts to appellant.[7] Neither the fact that a condition became apparent during a period of employment nor

[7] *See Manuel Gill, supra* note 6.

the belief of an employee that the condition was caused or aggravated by the employment is sufficient to establish causal relation.[8] To establish causal relationship, an employee must submit a physician's report, in which the physician reviews the factors of employment identified by the employee as causing his condition and, taking these factors into consideration as well as findings upon examination of the employee and the employee's medical history, state whether these employment factors caused or aggravated the diagnosed condition.[9]

## ***ANALYSIS ISSUE 2***

The Board finds that appellant has not met his burden of proof to establish that he has further disability or residuals due to his accepted injury.

Appellant had the burden to submit rationalized medical evidence that established ongoing disability or residuals due to the June 19, 2002 employment injuries. Appellant requested reconsideration of the termination decision and submitted a report from Dr. Hassan dated July 18, 2003. The doctor noted that appellant was seen that date complaining of headaches and claiming that the occipital nerve blocks were helping. He commented about the authorization for the radio frequency denervation, mild coronary artery disease and his cardiac status. The physician did not discuss appellant's accepted June 19, 2002 lumbar strain or residuals of that injury. Therefore, this report is of diminished probative value.

Appellant also submitted a medical report dated August 4, 2004 from Dr. Hassan and medical reports of Dr. Tolli dated October 31 to August 17, 2004. Both physicians failed to provide any objective findings relative to their examinations pertaining to the accepted conditions. Both indicated that appellant could work eight hours per day with restrictions, and that he was experiencing from an aggravation of the lumbar spine. Neither physician provided medical rationale as to why they concluded any aggravation of appellant's arthritis was related to the accepted injury or to explain how such degenerative disease was permanently aggravated by the injury.

Dr. Tolli did not address the causal relationship between appellant's current conditions of back pain, facet joint degenerative joint disease at L4-5 on the right and degenerative disc disease and the June 19, 2002 employment injuries.

The Office properly found that neither Dr. Tolli nor Dr. Hassan provided adequate rationale to support that appellant remained disabled on or after September 13, 2003 causally related to his June 19, 2002 injury. They attributed appellant's disabling conditions to degenerative disc disease and degenerative joint disease at multiple levels, resultant radiculopathy, and severe headaches. As none of these conditions has been accepted as being caused by factors of his federal employment appellant is not entitled to compensation benefits for their treatment. He has not met his burden of proof to establish entitlement to continuing compensation and benefits.

[8] *See Donald E. Ewals*, 51 ECAB 428 (2000).

[9] *See Calvin E. King*, 51 ECAB 394 (2000).

## ***CONCLUSION***

The Board finds that appellant has failed to establish that he had compensable disability on or after September 13, 2003 causally related to his June 19, 2002 accepted injury.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 13, 2004 be affirmed.

Issued: February 15, 2006

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