United States Department of Labor
Employees' Compensation Appeals Board

GARY P. CALHOUN, Appellant	)	
and	)	**Docket No. 06-29**
	)	**Issued: July 10, 2006**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Bensalem, PA, Employer	)	

Appearances:
Robert A. Davitch, Esq., for the appellant
Miriam D. Ozur, Esq., for the Director

Oral Argument May 11, 2006

DECISION AND ORDER

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

JURISDICTION

On October 3, 2005 appellant filed an appeal from the July 13, 2005 merit decision of the Office of Workers' Compensation Programs terminating his compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's wage-loss benefits for his accepted lumbar strain effective November 30, 1994, on the grounds that he had no further disability due to that condition; and (2) whether appellant had any continuing disability on or after November 30, 1994 causally related to his October 13, 1993 employment injury.

FACTUAL HISTORY

On October 18, 1993 appellant, a 35-year-old tax examiner, filed a claim for traumatic injury alleging that he injured his lower back on October 13, 1993 when a bench on which he was sitting collapsed from under him.[1] His claim was accepted for lumbar sprain, and appellant was placed on the periodic rolls.

The Office referred appellant, along with a statement of accepted facts and the entire medical record, to Dr. Stephen Horowitz, a Board-certified orthopedic surgeon, for a second opinion examination. The Office asked Dr. Horowitz to provide an opinion as to whether appellant had residuals from the October 13, 1993 work injury and, if so, whether he was disabled from work as a result of those residuals. In a report dated August 18, 1994, Dr. Horowitz opined that there were no objective findings to support ongoing residuals related to appellant's accepted lumbar strain, and that appellant had fully recovered from the injury. He stated that the subjective symptoms related to the accepted injury should have resolved within a year and that his ongoing low back symptoms were unrelated. Noting that appellant's magnetic resonance imaging (MRI) and computerized tomography (CT) scans were negative for herniated discs, Dr. Horowitz stated his belief that appellant was not suffering from clinically significant radiculopathy or a herniated disc. He also opined that appellant's knee problem was not related to the October 13, 1993 injury, but rather was caused by chondromalacia patella. Dr. Horowitz explained that chondromalacia was a degenerative condition, not secondary to a single traumatic event.

On September 27, 1994 the Office issued a notice of proposed termination of benefits on the grounds that appellant's disability had ceased. Appellant was given 30 days to provide additional evidence in support of his case.

By decision dated November 30, 1994, the Office finalized the termination of appellant's wage loss effective that date. The Office found that the weight of the medical evidence, contained in Dr. Horowitz' report, established that appellant had no continuing disability related to his accepted injury.

On April 28, 1995 appellant submitted a report from Dr. Michael C. Saltzburg, a Board-certified osteopath specializing in orthopedic surgery, who provided a diagnosis of "intractable pain [of the] lumbar spine." Dr. Saltzburg stated that a November 18, 1993 CT scan of the lumbar spine demonstrated bulging discs at L4-5 and L5-S1 levels, and that a CT scan of the sacrum demonstrated mild anterior coccygeal subluxation. He further indicated that a November 22, 1993 CT scan of the thoracic spine showed the possibility of injury to the end plate of T9. An October 10, 1994 MRI scan of the right knee was negative for internal derangement, but positive for a one centimeter Baker's cyst. His physical examination of appellant revealed marked muscle spasm along the midline of the paraspinal musculature at L1-5 levels, with marked pain on mild palpation.

[1] Appellant stated that he had "severe pain in [the] lower back and down legs."

Appellant requested an oral hearing. By decision dated November 28, 1995, the hearing representative found a conflict between the opinions of Drs. Horowitz and Saltzburg, and the case was remanded to the Office for an impartial medical examination.

On March 19, 1996 the Office referred appellant, together with the entire case record and a statement of accepted facts, to Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon, for an impartial medical examination. In an April 12, 1996 report, he provided a history of appellant's injury and treatment and indicated that he had reviewed the entire medical record. After a thorough examination, Dr. Klinghoffer opined that appellant had fully recovered from the physical effects of the October 13, 1994 work injury, and that he had no physical disability. He observed that appellant walked with a normal gait. Appellant had no muscle spasms anywhere in his back and no tenderness on palpation. He complained of pain while performing back motions in a jerky manner. Leg lengths were symmetrical. Motor and sensory functions in the lower extremities were normal. Straight leg raising of 60 degrees on either side caused a complaint of pain confined to the low back. Noting that appellant complained of daily pain in his mid to low back and a "pins and needles" sensation in the front of his right knee, Dr. Klinghoffer stated that he found nothing in his examination, x-rays or the record that might explain his continuing complaints. X-rays taken of the thoracic and lumbosacral spine were normal, except for minimal spurring on the bodies of T9 and T10. He found no other manifestations of degenerative arthritis; no sign of fracture or bone disease; and no congenital abnormalities. Dr. Klinghoffer also indicated that all of the intervertebral discs were normally maintained. In a May 14, 1996 supplemental report, he stated that the record did not lead him to believe that appellant had any knee joint pathology. Dr. Klinghoffer indicated that all of the joints in appellant's lower extremities had full, painless motion. He noted that his opinion was directed primarily at appellant's lower back condition.

By decision dated August 22, 1996, the Office affirmed the termination of benefits, finding that the weight of the medical evidence rested with Dr. Klinghoffer, whose opinion was entitled to special weight. The Office found that the evidence did not support that appellant sustained a knee injury as a result of the accepted 1993 injury.

Appellant requested an oral hearing, which was held on June 23, 1998. By decision dated November 6, 1998, the hearing representative affirmed the Office's August 22, 1996 termination of benefits. Appellant filed an appeal with the Board,[2] which was dismissed at appellant's request on January 29, 2001. Following a request for reconsideration, the Office denied modification on June 4, 2001.

On May 29, 2002 appellant again requested reconsideration and submitted a February 24, 2002 report from Dr. Maria A. Limberakis, a Board-certified osteopath specializing in family practice. She stated that, in addition to his chronic back problems, appellant had been diagnosed with reflex sympathetic dystrophy (RSD). Manifestations of the disease included mottling of the lower extremities and left forearm, as well as changes in the temperature of the feet and legs. Dr. Limberakis indicated that appellant would be required to work on a limited basis, in a nonstressful environment, where he could change positions when necessary. In a May 9, 2002

[2] Docket No. 99-929.

addendum to her February 24, 2002 report, she opined that the findings on appellant's June 14, 1999 electromyogram (EMG) were a result of and directly related to his October 13, 1993 work injury.[3]

By decision dated August 21, 2002, the Office denied modification of its prior decisions, finding that Dr. Limberakis' opinion was insufficient to outweigh the opinion of the impartial medical examiner.

Appellant filed an appeal with the Board on January 28, 2003, but requested that it be withdrawn on August 21, 2003. The Board dismissed the appeal on November 7, 2003.

On August 20, 2003 appellant again requested reconsideration. Appellant's representative indicated that he was submitting a report from Dr. Robert Knobler, a Board-certified neurologist and psychiatrist, in support of his request. By decision dated January 13, 2004, the Office denied appellant's request for reconsideration. The Office noted that Dr. Knobler's report was not contained in the record. Appellant filed an appeal with the Board.[4] On appellant's motion, on June 6, 2005 the Board dismissed the appeal and remanded the case to the Office for review of Dr. Knobler's report.

In a January 20, 2003 report, Dr. Knobler opined that appellant was permanently and totally disabled as a direct consequence of his July 10, 2002 injury, and suffered from RSD and complex regional pain syndrome. He stated that he first examined appellant on March 1, 2000 and provided a diagnosis of RSD in December 2000. Dr. Knobler indicated that a June 14, 1999 EMG suggested L4-5 and L5-S1 problems and that a June 28, 1999 MRI scan showed degenerative changes at L4-5 and L5-S1. His December 16, 2002 examination of appellant revealed decreased hair on the distal portion of his lower limbs; coolness of distal leg and foot; red discoloration with mottling; rigid nails and permanent venous markings -- a pattern consistent with RSD. Dr. Knobler further indicated that RSD pain and swelling are known to worsen with activity, dependent posture and cold, ambient temperatures. He noted that appellant's back pain was worse with sitting, but that he could not tolerate standing for prolonged periods of time because of pain in his feet. Dr. Knobler stated that there was clinical evidence of RSD, or complex regional pain syndrome, prior to appellant's July 10, 2002 injury, but that his condition significantly worsened as a direct consequence of that injury. He stated that appellant's condition was superimposed on a chronic pain state dating back to 1993.

By decision dated July 13, 2005, the Office denied modification of its prior decisions. The Office found that the record did not contain a rationalized opinion explaining a relationship between appellant's current diagnosed condition and the October 13, 1993 work injury.

[3] Appellant filed a claim for a July 10, 2002 injury to his right foot. The claim (No. 032009909) was accepted for strain and contusion of the right foot. The Office's July 13, 2005 decision in this case indicates that a formal decision terminating compensation for that injury was issued on September 23, 2003, and affirmed by an Office hearing representative on September 15, 2004.

[4] Docket No. 04-1251.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[5] The Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[6] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[7]

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part that, 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 an examination.[8] 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.[9]

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits for his accepted lumbar strain effective November 30, 1994.

The Office properly determined that a conflict existed in the medical opinion evidence as to whether appellant had any disability due to his accepted October 13, 1993 employment-related injuries. On the one hand, appellant's treating physician, Dr. Saltzburg, opined that he was disabled due to his accepted employment injury. Finding that appellant had "intractable pain of the lumbar spine," he noted marked muscle spasm along the midline musculature at L1-5 levels, and bulging discs at L4-5 and L5-S1 levels. On the other hand, the Office's second opinion physician, Dr. Horowitz, opined that appellant was not disabled. He found no objective findings to support ongoing residuals related to appellant's accepted lumbar strain, and that appellant had fully recovered from the October 13, 1993 injury. Dr. Horowitz stated that the subjective symptoms related to the accepted injury should have resolved within a year and that his ongoing low back symptoms were unrelated to the accepted injury.

In a report dated April 12, 1996, based upon a review of the medical records, statement of accepted facts and physical examination, Dr. Klinghoffer concluded that appellant had fully recovered from the physical effects of the October 13, 1993 work injury, and that he had no

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[5] *See Kathryn E. Demarsh*, 56 ECAB ___ (Docket No. 05-269, issued August 18, 2005). *See also Beverly Grimes*, 54 ECAB 543 (2003).

[6] *Id.*

[7] *James M. Frasher*, 53 ECAB 794 (2002).

[8] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

[9] *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

physical disability. He observed that appellant walked with a normal gait; had no muscle spasms anywhere in his back, and had no tenderness on palpation. Leg lengths were symmetrical. Motor and sensory functions in the lower extremities were normal. Straight leg raising of 60 degrees on either side caused a complaint of pain confined to the low back. Noting that appellant complained of daily pain in his mid to low back and a "pins and needles" sensation in the front of his right knee, Dr. Klinghoffer found nothing in his examination, x-rays or the record that might explain his continuing complaints. X-rays taken of the thoracic and lumbosacral spine were normal, except for minimal spurring on the bodies of T9 and T10. He found no other manifestations of degenerative arthritis; no sign of fracture or bone disease; and no congenital abnormalities. Dr. Klinghoffer also indicated that all of the intervertebral discs were normally maintained. In a May 14, 1996 supplemental report, Dr. Klinghoffer stated that the record did not lead him to believe that appellant had any knee joint pathology. He indicated that all of the joints in appellant's lower extremities had full, painless motion.

The Board finds that the Office properly relied on Dr. Klinghoffer's April 12, 1996 report in determining that appellant was not disabled as a result of his accepted employment injury. His opinion is sufficiently well rationalized and based upon a proper factual background. Dr. Klinghoffer not only examined appellant thoroughly, but also reviewed all medical records. He reported accurate medical and employment histories. The Office properly accorded special weight to the impartial medical specialist's findings.[10] Appellant did not submit any rationalized medical evidence to overcome the weight of Dr. Klinghoffer's opinion or to create a new conflict. As the weight of the medical evidence establishes that appellant was no longer disabled as a result of his October 13, 1993 injury, the Office properly terminated his compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant.[11] In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors.[12] The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature

[10] *Bryan O. Crane*, 56 ECAB ___ (Docket No. 05-232, issued September 2, 2005).

[11] *See Joseph A. Brown, Jr.*, 55 ECAB ___ (Docket No. 04-376, issued May 11, 2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

[12] *Juanita Pitts*, 56 ECAB ___ (Docket No. 04-1527, issued October 28, 2004).

of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[13]

ANALYSIS -- ISSUE 2

Subsequent to the termination of appellant's benefits, the Office received additional reports from Drs. Limberakis and Knobler. Neither physician provided adequate support to establish that appellant had continuing disability due to his accepted employment injuries. In his February 24, 2002 report, Dr. Limberakis stated that, in addition to his chronic back problems, appellant had been diagnosed with RSD and had symptoms which included mottling of the lower extremities and left forearm, as well as changes in the temperature of the feet and legs. He noted that appellant would be required to work on a limited basis, in a nonstressful environment, where he could change positions when necessary. This report provided no opinion as to whether appellant's RSD condition or any other current condition was causally related to the accepted 1993 employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[14] In a May 9, 2002 addendum to her February 24, 2002 report, Dr. Limberakis opined that the findings on appellant's June 14, 1999 EMG were a result of, and directly related to, his October 13, 1993 work injury. This opinion lacks probative value in that Dr. Limberakis failed to state the results of the June 14, 1999 EMG, or to explain how appellant's condition was causally related to his 1993 injury or the accepted lumbar strain.[15]

Dr. Knobler opined that appellant was permanently and totally disabled. However, he attributed appellant's disability to his July 10, 2002 injury, not to the 1993 injury. Although Dr. Knobler provided a diagnosis of RSD, he offered no explanation as to how the RSD was related to appellant's 1993 injury or his accepted lumbar strain. He stated that appellant's newly diagnosed condition was superimposed on a chronic pain state dating back to 1993. But Dr. Knobler never opined that, or explained how the condition was caused by, or resulted from, appellant's 1993 injury. Therefore, his opinion lacks probative value.

Once the Office determined that termination of benefits was warranted, the burden shifted to appellant to establish that he had an employment-related disability that continued after the termination. The Board finds that appellant has failed to establish a *prima facie* case, in that he has not shown how his diagnosed condition of RSD arose from the accepted 1993 injury. Moreover, he has not provided any rationalized medical opinion evidence establishing that his current condition is causally related to his October 13, 1993 injury. Therefore, appellant has failed to meet his burden of proof.

[13] *Bobbie F. Cowart*, 55 ECAB ___ (Docket No. 04-1416, issued September 30, 2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[14] *Ellen L. Noble,* 55 ECAB ___ (Docket No. 03-1157, issued May 7, 2004).

[15] *Franklin D. Haislah,* 52 ECAB 457 (2001); *Jimmie H. Duckett,* 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

CONCLUSION

The Board finds that the Office properly terminated compensation benefits for appellant's accepted lumbar strain effective November 30, 1994, on the grounds that he had no further disability due to that condition. The Board also finds that appellant had no continuing disability on or after November 30, 1994 causally related to his October 13, 1993 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 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