United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
and	)	**Docket No. 09-794**
	)	**Issued: December 9, 2009**
TENNESSE VALLEY AUTHORITY, CONSTRUCTION SERVICES BRANCH, CUMBERLAND STEAM PLANT, Cumberland City, TN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 27, 2009 appellant filed a timely appeal of the June 24 and November 21, 2008 merit decisions of the Office of Workers' Compensation Programs terminating his compensation benefits. 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 wage-loss and medical benefits effective January 15, 2008 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related injuries; and (2) whether he had any continuing employment-related residuals or disability after January 15, 2008.

FACTUAL HISTORY

This case has previously been before the Board. In an October 12, 2001 decision, the Board reversed the Office's October 18, 1999 and May 15 and June 27, 2000 decisions, terminating compensation benefits.[1] It found that the Office improperly based its termination decision on the medical opinion of Dr. William H. Ledbetter, a Board-certified orthopedic surgeon and Office referral physician. The Board found that the Office did not meet its burden of proof to terminate compensation.[2]

In an August 3, 2004 medical report, Dr. David S. Jones, an attending Board-certified orthopedic surgeon, found that appellant sustained lumbago. He opined that appellant continued to be disabled for work due to residuals of his accepted employment-related injuries.

On May 16, 2007 the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon, for a second opinion medical examination. In a July 18, 2007 report, Dr. Sheridan diagnosed resolved sprain of the lumbosacral joint ligament and contusion of the abdominal wall. He stated that appellant had no signs of ongoing pathology related to his accepted employment injuries. Dr. Sheridan attributed his prolonged disability to diabetes mellitus. His subjective complaints of pain were not supported by objective clinical findings.

On August 22, 2007 the Office found a conflict in medical opinion between Dr. Jones and Dr. Sheridan as to whether appellant had any continuing residuals or disability causally related to his accepted July 15, 1982 employment injuries. By letter dated August 28, 2007, it referred him, together with a statement of accepted facts and the case record, to Dr. Robert M. Dimick, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a November 2, 2007 report, Dr. Dimick reviewed the history of appellant's July 15, 1982 employment injuries, medical treatment and family and social background. He provided findings on examination of appellant. Dr. Dimick opined that appellant's July 15, 1982 employment-related abdominal contusion and lumbosacral strain had resolved. He diagnosed S1 spondylitic disc protrusion, annular tear and right foraminal protrusion based on an August 21, 2006 magnetic resonance imaging (MRI) scan of the lumbar spine. Dr. Dimick also diagnosed diabetic peripheral neuropathy, right peroneal neuropathy and tobacco abuse. Appellant had a personality disorder with moderate-to-multiple inorganic inconsistencies which suggested secondary gain and learned sick role. Dr. Dimick stated that there were no objective findings to support appellant's subjective complaints of pain and dysfunction of the lower back, pelvis and right hip and lower extremity. He had no impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A.,*Guides*) (5th ed. 2001). No further medical treatment or evaluation arising out of the accepted employment injuries was required. Dr. Dimick opined that appellant could perform his regular work duties with no

[1] Docket No. 01-87 (issued October 12, 2001).

[2] On July 23, 1982 appellant, then a 24-year-old painter, filed a traumatic injury claim alleging that on July 15, 1982 he experienced back pain and strained his left hand when he slipped while painting a stairwell. The Office accepted his claim for a contusion of the lower abdominal wall and lumbar strain.

restrictions. He noted that his psychological challenges caused him to steadfastly resist vocational rehabilitation and to believe that he was totally disabled. Dr. Dimick concluded that the diagnosed conditions were not causally related to appellant's accepted employment-related conditions.

By letter dated December 12, 2007, the Office issued a notice of proposed termination of compensation benefits based on Dr. Dimick's November 2, 2007 medical opinion. Appellant was afforded 30 days to submit additional evidence. In an undated letter received by the Office on January 7, 2008, he disagreed with the proposed action. Appellant requested additional time to see an attending physician.

By decision dated January 15, 2008, the Office terminated appellant's compensation benefits effective that date. It noted that he had been provided sufficient opportunities to submit medical evidence from an attending physician to support his continuing disability.

On February 10, 2008 appellant requested a review of the written record by an Office hearing representative regarding the January 15, 2008 decision. He submitted an October 16, 2007 report from Dr. Kevin S. McKechnie, a Board-certified internist, who stated that appellant did not have diabetic neuropathy. Appellant's right foot and lower leg paresthesias were not attributable to diabetic neuropathy. Dr. McKechnie stated that the condition was based on appellant's history and low back pain problems.

In a treatment note and report dated December 9, 2004, Dr. Jones stated that appellant's lumbago had not resolved and that he was totally disabled for work.

In a February 5, 2008 report, Dr. J. Gregory Kyser, a Board-certified psychiatrist, found no diagnosis on Axis 1 and 2. He referred to appellant's past medical history as the diagnosis on Axis 3. Dr. Kyser's Axis 4 diagnosis was moderate. Appellant had a global functioning assessment (GAF) score of 55 on Axis 5. Dr. Kyser found no evidence of active mental illness or malingering based on his examination. He concluded that appellant was not entitled to disability compensation.

By decision dated June 24, 2008, an Office hearing representative affirmed the January 15, 2008 decision. She found that the evidence submitted by appellant was insufficient to outweigh Dr. Dimick's impartial medical opinion.

In a September 1, 2008 letter, appellant requested reconsideration. In a July 16, 2008 report, Dr. McKechnie stated that appellant had Type 2 diabetes as opposed to diabetic neuropathy. He stated that appellant had right leg and foot symptoms and normal filament sensation. Appellant did not have the typical burning and stinging sensation associated with diabetic neuropathy. Dr. McKechnie opined that he suffered from chronic low back and unilateral leg pain and disc disease.

In a July 23, 2008 report, Dr. Robert H. Boyce, a Board-certified orthopedic surgeon, reviewed the history of appellant's employment-related injuries, medical treatment and family and social background. He reported normal findings on physical examination with limited range of motion of the back, positive symptoms related to the right leg and pain in the lumbosacral region radiating into the right leg. On x-ray examination of the lumbar spine, Dr. Boyce found

no sign of instability. There was only mild-to-moderate degenerative disc space narrowing at L4-5 and L5-S1. Dr. Boyce reviewed a May 13, 2002 MRI scan which demonstrated a mild left lateral spondylotic disc bulge with no appearance of spinal stenosis or herniated disc material. There was no evidence confirming radiculitis. Dr. Boyce opined that appellant had reached permanent and stationary status regarding his employment-related injuries. Surgical intervention, invasive treatment and or advance imaging studies would not benefit him. Dr. Boyce further opined that appellant was disabled for work.

By decision dated November 21, 2008, the Office denied modification of the January 15, 2008 decision. It found that the evidence submitted by appellant was insufficient to overcome Dr. Dimick's impartial medical opinion.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[3] After it has determined that an employee has disability causally related to his 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.[4] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5] 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 the claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[6]

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[7]

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. The Office properly found a conflict in medical opinion arose between Dr. Jones, an attending physician, and Dr. Sheridan, an Office referral physician, regarding whether appellant had any continuing residuals or disability causally related to his accepted July 15, 1982 employment injuries. Dr. Jones opined that appellant continued to suffer from

[3] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

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

[5] *T.P.*, 58 ECAB ___ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

[6] *E.J.*, 59 ECAB ___ (Docket No. 08-1350, issued September 8, 2008).

[7] *Gloria J. Godfrey*, 52 ECAB 486 (2001).

residuals and total disability due to the accepted employment injuries. Dr. Sheridan opined that his January 15, 1982 employment-related contusion of the lower abdominal wall and lumbar strain had resolved.

The Office referred appellant to Dr. Dimick as the impartial medical specialist who reviewed the entire record and statement of accepted facts and performed a thorough examination of appellant. In his November 2, 2007 report, Dr. Dimick opined that appellant had no residuals or disability causally related to his accepted July 15, 1982 contusion of the lower abdominal wall and lumbar strain. He further opined that appellant could perform his regular work duties with no restrictions and appellant did not require further medical treatment or evaluation arising out of the accepted employment injuries. Dr. Dimick stated that there were no objective findings to support his subjective complaints of pain and dysfunction of the lower back, pelvis and right hip and lower extremity. His examination revealed essentially normal findings. Dr. Dimick found that appellant sustained nonwork-related S1 spondylitic disc protrusion, annular tear and right foraminal protrusion of the lumbar spine, diabetic peripheral neuropathy, right peroneal neuropathy, tobacco abuse and personality disorder with moderate to multiple inorganic inconsistencies which suggested secondary gain and learned sick role. He also sustained zero percent impairment based on the A.M.A., *Guides*. Dr. Dimick stated that appellant's psychological challenges caused him to steadfastly resist vocational rehabilitation and to believe that he was totally disabled.

The Board finds that Dr. Dimick's opinion is based on a proper factual and medical background and is entitled to special weight afforded an impartial medical specialist. Based on Dr. Dimick's review of the case record, essentially normal findings on physical examination, he found that appellant's accepted employment-related contusion of the lower abdominal wall and lumbar strain had resolved and that appellant was able to return to full-duty work. Thus, the Office properly found that appellant had no residuals or disability due to the accepted employment injuries and terminated his compensation benefits effective January 15, 2008.

Appellant did not submit any rationalized medical evidence to overcome the weight of Dr. Dimick's opinion or to create a new conflict. Dr. McKechnie's October 16, 2007 report found that appellant's right foot and lower leg paresthesias was not attributable to diabetic neuropathy. Rather, the diagnosed condition was based on his history and low back pain problems. The Office did not accept appellant's claim for paresthesias of the right foot and lower leg and Dr. McKechnie's report failed to provide a rationalized opinion explaining how the diagnosed condition was causally related to appellant's accepted employment injuries.[8]

Dr. Kyser's February 5, 2008 report found no diagnosis on Axis 1 and 2. He referred to appellant's past medical history for the Axis 3 diagnosis. Appellant's Axis 4 diagnosis was moderate and his Axis 5 diagnosis was a GAF score of 55. Dr. Kyser opined that appellant was not entitled to disability compensation as he found no evidence of active mental illness or malingering. He did not provide a medical opinion addressing whether appellant had any

[8] For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

continuing residuals or disability causally related to his accepted July 15, 1982 employment injuries.

Dr. Jones's December 9, 2004 treatment note and report found that appellant's lumbago had not resolved and that he was totally disabled for work, but the accepted condition did not include lumbago. Reports that do not provide a rationalized medical opinion on the causal relationship of the condition are insufficient to create another conflict or overcome the special weight accorded that specialist's without probative value.[9]

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had any disability causally related to his accepted injury.[10] To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[11] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[12] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The 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 the claimant.[13]

ANALYSIS -- ISSUE 2

The Board finds that appellant did not establish that he had any continuing employment-related residuals or total disability after January 15, 2008. Dr. Boyce's July 23, 2008 report provided essentially normal findings on physical examination with limited range of motion of the back, positive symptoms related to the right leg and pain in the lumbosacral region radiating into the right leg. On x-ray examination of the lumbar spine, he found no sign of instability. There was only mild-to-moderate degenerative disc space narrowing at L4-5 and L5-S1. Dr. Boyce stated that a May 13, 2002 MRI scan demonstrated a mild left lateral spondylotic disc bulge with no appearance of spinal stenosis or herniated disc material. There was no evidence confirming radiculitis. Dr. Boyce opined that appellant was disabled for work. He stated that appellant had reached permanent and stationary status regarding his employment-related injuries, noting that further treatment and objective testing would not benefit him. The Office did not accept

[9] *Alice J. Tysinger*, 51 ECAB 638, 646 (2000).

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

[11] *Id.*

[12] *Elizabeth Stanislav*, 49 ECAB 540 (1998).

[13] *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

appellant's claim for degenerative disc disease or a disc bulge and Dr. Boyce's report failed to provide a rationalized opinion which establishes that the diagnosed conditions were causally related to appellant's accepted employment injuries.[14]

The Board finds that appellant did not submit the sufficient rationalized medical evidence to substantiate that the claimed continuing residuals or disability on or after January 15, 2008 were causally related to his employment-related contusion of the lower abdominal wall and lumbar strain.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss compensation and medical benefits effective January 15, 2008 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related injury. The Board further finds that appellant failed to establish that he had any continuing employment-related residuals or disability after January 15, 2008.

ORDER

IT IS HEREBY ORDERED THAT the November 21 and June 24, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 9, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[14] *See Alice J. Tysinger*, *supra* note 9.