

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

C.F., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Erlanger, KY, Employer)

**Docket No. 07-1930
Issued: December 26, 2007**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 17, 2007 appellant filed a timely appeal from November 13, 2006 and June 25, 2007 decisions of the Office of Workers' Compensation Programs terminating his wage-loss compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

FACTUAL HISTORY

On June 21, 2004 appellant, then a 61-year-old transportation passenger screener, filed a traumatic injury claim alleging that he injured his left leg and lower back while screening a housekeeping buffer on a rolling stand. He tilted the buffer back, it slipped and he held the buffer to prevent it from falling off the stand. The Office accepted appellant's claim for a

lumbosacral sprain. It placed him on the periodic compensation rolls for temporary total disability as of August 12, 2004. Appellant's application for disability retirement was effective on March 24, 2005.

In a report dated October 14, 2004, Dr. Gary L. Ray, an attending pain management and rehabilitation specialist, stated that appellant was experiencing back and left leg pain. He noted that appellant had experienced low back problems for 10 years. A magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed preexisting multilevel lumbosacral spondylosis, facet arthropathy and multilevel mild central stenosis. Dr. Ray stated that appellant's June 21, 2004 employment-related lumbosacral sprain had aggravated his preexisting back conditions. On May 9, 2005 he stated that appellant continued to have tenderness in his back. Appellant had decreased range of motion with pain on movement of the spine. Dr. Ray opined that he had permanent work restrictions, including no lifting over 50 pounds and limited bending.

In a March 30, 2005 report, Dr. Richard T. Sheridan, a Board-certified orthopedic specialist and Office referral physician, reviewed appellant's medical history and provided findings on examination. He found that appellant had no objective findings and no evidence of radiculopathy. Dr. Sheridan opined that appellant had no residuals from his June 21, 2004 work-related lumbosacral sprain and could return to his regular job without restrictions.

Due to a conflict in the medical opinion evidence between Dr. Ray and Dr. Sheridan as to whether appellant continued to have residuals of his June 21, 2004 employment-related lumbosacral sprain, the Office referred appellant, together with the case file, statement of accepted facts and a list of questions, to Dr. John W. Wolf, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination. In an August 17, 2006 report, Dr. Wolf reviewed appellant's medical history and provided findings on physical examination, as follows:

“[Appellant] stands rather than sits during the medical history taking. He leans against the examining table with his posterior thighs. [Appellant] stands constantly in a position of flexion at his hips and low back. He is unable to walk on his toes or heels on either the left or right side. When asked to take his shoes and socks off, [appellant] braces himself when he lifts his right leg because he states that he cannot trust bearing his weight on his left leg. [His] calf circumferences are unequal. Maximum calf circumference on the right is 43 [centimeters] compared to 42 [centimeters] on the left. Right and left straight leg raising cause low back pain. There is significant decreased range of motion of the lumbar spine in all planes. [Appellant] cannot assume the erect position without significant discomfort. Deep tendon reflexes are absent at the knees and ankles bilaterally. He moves with great difficulty. There is generalized tenderness to palpation over the entire lumbar spine. There is palpable lumbar muscle spasm.

“The evidence in the file has been carefully reviewed. It is difficult to conclude that [appellant's] present condition is as a result of a lumbar strain. It is more likely that the acute lumbar strain has resolved and that his current problem is the result of preexisting conditions, including lumbar spondylosis and facet joint arthropathy. [Appellant] has had intermittent lumbar symptoms for a period of 10

years at least. It is my opinion that his current symptoms are as a result of his previous spine problems and not directly the result of an acute lumbar strain.

“In his present condition, [appellant] is not able to perform the duties of his date-of-injury job ... without limitations. [Appellant] has limitation of motion of his spine, pain, weakness in his left leg, inability to ambulate for any significant length of time or distance and he is also uncomfortable sitting. These current conditions, however, are difficult to ascribe to his work-related injury. It is my professional opinion at this time that [appellant] is not capable of performing any type of physical labor since he is not able to walk or sit comfortably. Based on the findings of his MRI [scan] and the duration of his symptoms, I believe that his condition is permanent.

“The plan of treatment for [appellant] would include weight loss, exercises and medical pain management.... I believe that his condition will require continuing medical treatment, but his condition is not due solely to his work-related injury.”

On August 31, 2006 the Office provided a list of questions to Dr. Wolf and asked him to clarify his opinion regarding appellant’s accepted lumbosacral sprain and his nonwork-related back problems.

In a supplemental report dated September 13, 2006, Dr. Wolf stated:

“You were kind enough to attach the [Federal Employees’ Compensation Act] definitions of several terms. I have read all of the definitions and I think the one that applies is ‘temporary aggravation.’ The definition supplied is ‘The preexisting condition is worsened or made more severe for a time with no residual alteration of the underlying condition and without leaving any continuing impairment beyond that time.’ As you are aware, the MRI [scan] of [appellant’s] lumbar spine, [dated July 6, 2004], showed chronic changes but no acute changes. The EMG [electromyogram] performed [on November 5, 2004] indicated no evidence of radiculopathy. An examination by John Brannan, M.D., dated [August 26, 2005], contains the following sentence, ‘Based on [appellant’s] lack of structural abnormalities, I am at a loss as to why he is doing so poorly from a functional standpoint....’ [Appellant’s] accepted work-related injury was ‘lumbar strain.’ The sequel of a lumbar strain should cease within 90 days under most circumstances. In assessing [appellant], it is important to realize that he has had back pain for at least 10 years.

“It is my professional opinion that [appellant’s] current problem is not a result of a recent work-related injury. The lumbar strain that he sustained on [June 21, 2004] has resolved. I do not believe that [appellant] has any residuals from his work injury of [June 21, 2004].

“[Appellant] is currently not capable of performing his former position; however, I do not believe that this is due to work-related residuals. I believe this is due to

his underlying chronic back problem that was worsened by deconditioning and obesity.”

On September 28, 2006 the Office advised appellant of its proposed termination of his wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence established that he had no residuals from his June 21, 2004 employment-related lumbosacral sprain. There was no response from appellant.

On November 13, 2006 the Office terminated appellant’s wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence established that he had no residuals from his work-related lumbosacral sprain sustained on June 21, 2004.

On November 27, 2006 appellant requested an oral hearing before an Office hearing representative that was held on March 27, 2007.

By decision dated June 25, 2007, an Office hearing representative affirmed the November 13, 2006 termination decision.¹

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement 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 that “if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination.”⁶ Where a case is referred to an impartial medical specialist for the

¹ Subsequent to the June 25, 2007 Office decision, appellant submitted additional evidence. The Board’s jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

² *Barry Neutach*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

³ *Id.*

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

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

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

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

Appellant's claim for an injury on June 21, 2004 was accepted for a lumbosacral sprain. Due to the conflict in the medical opinion evidence between Dr. Ray and Dr. Sheridan as to whether appellant had any continuing disability or medical condition causally related to his accepted back condition, the Office referred him to Dr. Wolf for an impartial medical examination.

Dr. Wolf was provided with appellant's case file and a statement of accepted facts. He provided a complete and accurate factual and medical history. Dr. Wolf noted that appellant had experienced intermittent lumbar symptoms for at least 10 years. He indicated that a July 6, 2004 MRI scan of his lumbar spine showed chronic changes but no acute changes related to appellant's June 21, 2004 lumbosacral sprain. A November 5, 2004 EMG indicated no evidence of radiculopathy. Dr. Wolf provided findings on physical examination that included decreased range of motion in his lumbar spine and generalized tenderness to palpation and lumbar muscle spasm. He opined that appellant's work-related lumbar sprain was a temporary aggravation of his preexisting underlying back conditions and that the lumbar sprain had resolved. Dr. Wolf noted that the sequel of a lumbar strain generally resolved within 90 days. He opined that appellant had no residuals from his June 21, 2004 employment-related lumbosacral sprain. Dr. Wolf's current symptoms were the result of preexisting conditions, including lumbar spondylosis and facet joint arthropathy, worsened by deconditioning and obesity.

The Board finds that Dr. Wolf's thorough and well-rationalized report is entitled to special weight. His report establishes that appellant has no continuing disability or medical condition causally related to his employment-related lumbosacral sprain sustained on June 21, 2004. Therefore, the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits based on the medical opinion of Dr. Wolf.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective November 13, 2006.

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

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 25, 2007 and November 13, 2006 are affirmed.

Issued: December 26, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board