U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN D. ADAMS and U.S. POSTAL SERVICE,
WEST ISLIP POST OFFICE, West Islip, N.Y.

Docket No. 96-1650; Submitted on the Record;
Issued December 23, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits on the grounds that appellant no longer had any residuals of his accepted July 25, 1992 employment-related injuries.

The Board has duly reviewed the case record in this appeal and finds that the Office properly terminated appellant's compensation benefits on the grounds that appellant no longer had any residuals of his accepted July 25, 1992 employment-related injuries.

On July 27, 1992 appellant, then a letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 25, 1992, he experienced pain in his neck, back, knee and eyes after being involved in an automobile accident. Appellant stopped work on July 25, 1992 and returned to limited-duty work on January 14, 1993 for four hours per day.

The Office accepted appellant's claim for cervical sprain, lumbosacral sprain, contusion of the pelvis and contusion of the left knee.

In a notice of proposed termination of compensation dated October 28, 1993, the Office advised appellant that it proposed to terminate his compensation because the weight of the medical evidence of record established that he was fit to perform full-duty work. The Office also advised appellant to submit medical evidence supportive of his continued disability within 30 days if he disagreed with its proposed action.

By decision dated March 24, 1994, the Office terminated appellant's compensation benefits on the grounds that the medical evidence of record established that appellant no longer had any residuals of his accepted July 25, 1992 employment injuries.

On April 1, 1994 appellant, through his attorney, requested an oral hearing before an Office representative. On May 25, 1994 the Office granted appellant's April 8, 1994 request to withdraw his previous request for a hearing.

On September 16, 1994 appellant, through his attorney, requested reconsideration of the Office's March 24, 1994 decision. By decision dated December 15, 1994, the Office denied appellant's request for modification based on a merit review of the claim.

On June 6 and December 14, 1995 appellant, through his attorney, requested reconsideration of the Office's decision. By decision dated February 9, 1996, the Office denied appellant's request for modification based on a merit review of the claim.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[1]

In the present case, the Office accepted appellant's claim for cervical sprain, lumbosacral sprain, contusion of the pelvis and contusion of the left knee sustained on July 25, 1992. Dr. Martin Lehman, a Board-certified orthopedic surgeon and appellant's treating physician, opined that appellant continued to be disabled due to the July 25, 1992 employment injuries. Dr. Mortimer Housberg, a Board-certified orthopedic surgeon and second opinion physician, opined that appellant was no longer disabled and that appellant could return to his regular job duties on a full-time basis with no restrictions.

Section 8123(a) of the Federal Employees' Compensation Act provides that "[i]f there is a 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."[2] Based on a conflict in the medical opinion evidence regarding appellant's continued disability, the Office properly referred appellant along with a statement of accepted facts, a list of specific questions and medical records to Dr. Arnold Illman, a Board-certified orthopedic surgeon, for an impartial medical examination pursuant to section 8123(a) of the Act. 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.[3]

In terminating appellant's compensation benefits, the Office properly relied upon Dr. Illman's August 27, 1993 medical report. In this report, he indicated a history of the July 25, 1992 employment injuries and appellant's medical treatment. Dr. Illman further indicated a review of medical records, which included normal x-ray results, and his findings on physical examination which were also normal. He opined that appellant had subsided cervical and lumbosacral sprains and a subsided knee sprain. Dr. Illman further opined that there was causal relationship. He concluded that there was no evidence of disability and that appellant should resume his normal job. In an accompanying work restriction evaluation, Dr. Illman indicated

[1] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[2] 5 U.S.C. § 8123(a).

[3] *Nancy Lackner Elkins*, 44 ECAB 840, 847 (1993).

that appellant had no physical restrictions. Additionally, he indicated that appellant could work eight hours per day and that appellant had reached maximum medical improvement on August 26, 1993. The Board finds that Dr. Illman provided a well-rationalized opinion based on a complete medical and factual background.

In support of his claim of continued disability, appellant submitted the November 12, 1993 medical report of Dr. Steven A. Rosen, a Board-certified neurologist and appellant's treating physician, indicating that appellant was capable of returning to light duty on a full-time basis, but that he was concerned that if appellant returned to full duty without simultaneous maintenance therapy, he would reinjure and exacerbate his condition which would permanently force him out of work. Dr. Rosen failed to explain how a return to full duty without simultaneous maintenance therapy would cause appellant to reinjure and exacerbate his condition. Therefore, it is insufficient to establish continued disability.

Appellant also submitted Dr. Lehman's November 15, 1993 medical report revealing a history of the July 25, 1992 employment injuries and appellant's medical treatment. His report also revealed his findings on physical and objective examination. Dr. Lehman diagnosed a head injury with post-traumatic headaches, a history of glass about the face, acute severe sprain lumbosacral spine with radiculitis, hypalgesia and nerve root irritation of the left lower extremity, contusions of the pelvis and traumatic synovitis with injury to medial ligaments and cartilage of the left knee. He opined that appellant continued to have significant disabilities and limitations to the multiple injuries he had sustained. Dr. Lehman's report is insufficient to establish continued disability inasmuch as it failed to provide any medical rationale explaining how or why appellant continued to be disabled.

In support of his December 14, 1995 request for reconsideration, appellant submitted Dr. Rosen's June 7, 1994 medical report which provided a history of the July 25, 1992 employment injuries and appellant's medical treatment. Dr. Rosen diagnosed cervical myofascial pain, cervical disc herniation, mild cervical radiculopathy, lumbosacral myofascial pain, lumbosacral disc herniation and possible mild lumbosacral radiculopathy. He opined that appellant's current level of disability was permanent and partial, and that appellant's prognosis was fair. Dr. Rosen concluded that based on the information provided to him, appellant's current diagnoses were caused by the July 25, 1992 employment injuries. Dr. Rosen recommended the type of treatment that appellant should undergo to enable him to perform light-duty work as a mail sorter and stated that he did not expect enough improvement to allow appellant to return to his job as a letter carrier. Dr. Rosen failed to provide any medical rationale for his conclusion that appellant continued to be disabled as a result of the July 25, 1992 employment injuries.

In further support of his request for reconsideration, appellant submitted the May 5, 1995 report of Dr. Andres S. Lacerenza, a chiropractor, revealing a history of the July 25, 1992 employment injuries and appellant's medical treatment, and his findings on physical and neurological examination. Dr. Lacerenza diagnosed mild cervical radiculopathy, cervico-thoracic paraspinal myofascial pain and mild lumbar myofascial pain. He noted that no x-rays were presented for review. Dr. Lacerenza opined that if the history as related by appellant was correct, then there was a causal relationship between appellant's July 25, 1992 employment injuries and his current conditions. He concluded that although appellant was permanently

partially disabled, he could engage in gainful employment. Dr. Lacerenza further concluded that appellant would not be able to perform mail delivery either by walking/carrying or by motor car, rather appellant would be able to perform clerical work. He then noted appellant's physical restrictions. Pursuant to section 8101(2) of the Act,[4] "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."[5] If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.[6] Inasmuch as Dr. Lacerenza's report does not diagnose subluxation of the spine as demonstrated by x-ray, he does not qualify as a physician under section 8101(2).[7] Therefore, his report does not constitute competent medical evidence to support a claim for compensation.[8]

Appellant also submitted the November 16, 1995 report of Deborah K. White, a physical therapist, indicating a history of the July 25, 1992 employment injuries and her findings on physical examination. The Board finds that the report of appellant's physical therapist has no probative medical value because a physical therapist is not a physician under the Act, and therefore, is not competent to give a medical opinion.[9]

Further, appellant submitted the December 18, 1992 magnetic resonance imaging (MRI) test results which revealed that he had disc degeneration with a small protrusion at L4-5 and no discrete herniated nucleus pulposus. Additionally, appellant submitted the December 19, 1992 MRI test results revealing evidence of central disc herniation at C5-6 with evidence of cord flattening at this level, and no evidence of other discrete herniation, although bulges were identified at multiple other levels. These reports are insufficient to establish continued disability inasmuch as they failed to address whether appellant had any continuing disability causally related to the accepted July 25, 1992 employment injuries.

Dr. Illman's August 27, 1993 medical report represents the weight of the medical evidence in this case and establishes that appellant no longer had any disability causally related to the July 25, 1992 employment-related injuries. The Office therefore met its burden in terminating appellant's continuing entitlement to compensation.

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[4] 5 U.S.C. §§ 8101-8193.

[5] *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990); *see also* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.400(a).

[6] *Loras C. Dignann*, 34 ECAB 1049 (1983).

[7] *Milton E. Bentley*, 32 ECAB 1805 (1981).

[8] *Theresa K. McKenna*, 30 ECAB 702 (1979).

[9] *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983); *see also* 5 U.S.C. § 8101(2).

The February 9, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
December 23, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member