

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD D. COLEMAN and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

*Docket No. 98-254; Submitted on the Record;
Issued August 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

In the present case, the Office accepted that appellant, a postal distribution clerk, sustained temporary aggravation of lumbar sprain in the performance of his federal employment on July 1, 1990. The Office terminated appellant's compensation benefits, effective June 24, 1995, by decision dated June 21, 1995, on the grounds that the medical evidence of record did not substantiate any continuing work-related condition or residuals. On March 25, 1996 an Office hearing representative affirmed the termination of appellant's compensation benefits. The March 25, 1996 decision was reissued on October 18, 1996, due to improper mailing on March 25, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.¹

In the present case, the Office terminated appellant's compensation benefits based upon the report of an impartial medical specialist, Dr. Satish C. Bansal, a Board certified orthopedic surgeon. The Office had referred appellant to Dr. Bansal, based upon a conflict in the medical opinion evidence between Dr. Richard E. Whitehead, a Board certified orthopedic surgeon acting as an Office second opinion physician and appellant's treating physician, Dr. Gary M. Kramer, a orthopedic surgeon.

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

Appellant was first examined by Dr. Kramer on September 16, 1991, at which time Dr. Kramer reported that appellant had chronic lumbar strain which stemmed from his July 1, 1990 injury. Dr. Kramer thereafter continued to report that appellant was limited to sedentary work activities due to his back condition.

In his report dated July 22, 1993, Dr. Whitehead had concluded that he could not find any abnormality on physical examination, x-ray or computerized tomography (CT) scan which would provide any objective evidence of disability. Dr. Whitehead noted that appellant's back condition dated to a nonemployment-related injury in 1987 and that appellant's accepted work-related aggravation no longer existed.

Section 5 U.S.C. 8123(a) provides 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. As a conflict did exist in the medical opinion evidence between Drs. Whitehead and Kramer, the Office properly referred appellant to Dr. Bansal for an impartial medical evaluation.²

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.³

In his report dated May 13, 1994, Dr. Bansal carefully explained appellant's history of injury and previous medical history. Dr. Bansal noted appellant's diagnosis of chronic degenerative disc disease of the lumbar spine, which he diagnosed was based upon a February 1991 CT scan which revealed no disc herniation, but mild congenital spinal stenosis from L4-5 and L5-S1 and upon lumbar spine x-rays which showed degenerative facet disease at L4-5 and L5-S1, with narrowing of the intervertebral disc space at L5-S1. He thereafter provided a well-rationalized opinion explaining why appellant no longer had residuals of the accepted injury. Regarding the issue of whether appellant's accepted condition had ceased, Dr. Bansal explained that appellant's present condition of degenerative disc disease and facet joint arthritis had begun before his July 1990 injury. He noted that the accepted condition of musculoligamentous strain occurred from repeated lifting and bending at work, but this condition was temporary and would have ceased within three to six months of injury, especially since appellant was not employed in his previous position during that time period and was not engaging in repeated motion, bending, lifting and straightening of the lumbar spine. Finally, Dr. Bansal explained that appellant's underlying condition was progressive in nature and would have progressed to its current level, irrespective of appellant's accepted injury.

² The Office had previously determined that a conflict existed in the medical opinion evidence between Drs. Kramer and Sandow as to whether appellant had residuals of the accepted condition. The Office referred appellant to Dr. Whitehead for an impartial medical evaluation. The Office subsequently found in a hearing representative's decision dated March 31, 1994 that Dr. Sandow's report was not in conflict with that of Dr. Kramer and therefore no conflict existed in the medical evidence until receipt of Dr. Whitehead's report. The hearing representative in the March 31, 1994 decision properly remanded the case to the Office for referral to another impartial medical specialist. The Office thereafter referred appellant to Dr. Bansal.

³ *Harrison Combs, Jr.*, 45 ECAB 716 (1994).

As Dr. Bansal's report was based upon a proper factual and medical background and was well rationalized, it was entitled to special weight. The Board finds that the Office did meet its burden of proof to terminate appellant's compensation benefits effective June 24, 1995.

The decision of the Office of Workers' Compensation Programs dated October 18, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 18, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member