

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BENJAMIN D. EDWARDS and DEPARTMENT OF THE NAVY,  
NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 97-1267; Submitted on the Record;  
Issued February 3, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective July 11, 1994; and (2) whether appellant has any continuing disability causally related to his accepted employment injury.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective July 11, 1994.

In this case, appellant filed a claim on December 23, 1991 alleging that he injured his back in the performance of duty on December 12, 1991. The Office accepted appellant's claim for lumbosacral strain. Appellant used leave on two days and returned to light duty. Appellant filed a notice of recurrence of disability on March 12, 1993 alleging that he was subjected to a reduction-in-force. The Office denied appellant's claim for recurrence of disability on August 12, 1994 finding that he had not submitted sufficient medical evidence to establish that he was disabled due to his accepted employment injury. Appellant requested an oral hearing on September 14, 1994 which the Office's Branch of Hearings and Review denied as untimely on September 27, 1994. Appellant requested reconsideration on July 25, 1995 and submitted additional factual and medical evidence. By decision dated November 1, 1995, the Office modified its August 12, 1994 decision finding that appellant had established entitlement to wage-loss compensation from January 29, 1993 through July 11, 1994. Appellant requested reconsideration of this decision on October 18, 1996. By decision dated January 7, 1997, the Office denied modification of its November 1, 1995 decision.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his or her federal

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<sup>1</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>4</sup>

In this case, appellant's attending physician, Dr. Marc Zimmerman, a Board-certified orthopedic surgeon, completed reports supporting appellant's continued disability due to his accepted employment injury. The Office referred appellant for a second opinion evaluation with Dr. Noubar Didizian, a Board-certified orthopedic surgeon. In a report dated April 8, 1994, Dr. Didizian noted appellant's history of injury and medical history. He concluded that the magnetic resonance imaging (MRI) findings of herniated disc and nerve root impingement did not correlate with appellant's physical examination and that appellant was capable of returning to work with no restrictions and that he did not require further medical treatment. Dr. Zimmerman responded to this report on May 12, 1994 and stated that appellant was capable of work with restrictions, that he had excellent range of motion with pain and that he was neurovascularly intact. The Office found that there was a conflict of medical opinion evidence between Drs. Zimmerman and Didizian and referred appellant for an impartial medical examination by Dr. Martin A. Blaker, a Board-certified orthopedic surgeon.

Section 8123(a) of the Federal Employees' Compensation Act,<sup>5</sup> provides, "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."

In a report dated July 14, 1994, Dr. Blaker noted appellant's history of injury, medical history and performed a physical examination. He found no objective findings and concluded that appellant had no residual disability and that he was able to work without restrictions. Dr. Blaker also found that appellant did not require further medical treatment.

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.<sup>6</sup> As Dr. Blaker's report was based on a proper factual background and provided findings in support of his conclusion that appellant was no longer disabled, his report is entitled to the weight of the medical evidence.<sup>7</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

<sup>6</sup> *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

<sup>7</sup> Appellant, through his attorney, alleged that the Office should not have selected Dr. Blaker as the impartial

Following the Office's denial of appellant's claim for recurrence of disability, appellant requested reconsideration and submitted additional evidence. In a report dated March 27, 1995, Dr. Zimmerman noted appellant's history of injury and stated that the aggravation of December 11, 1991 was due to appellant's February 26, 1991 employment injury. He found that appellant did not have neurological deficits, but that MRI demonstrated a herniated disc. Dr. Zimmerman stated that appellant did not require further treatment but that he could not work without restrictions. Based on this report, the Office found that appellant had sustained a recurrence of disability, but that his disability ended on the date of Dr. Blaker's report.

The Board finds that Dr. Blaker's report is entitled to the weight of the medical evidence and that the Office met its burden of proof to terminate appellant's compensation benefits on the date of that report. Dr. Blaker was provided with a statement of accepted facts, he conducted a physical examination and concluded that appellant was no longer disabled and did not require further medical treatment. He based this conclusion on the lack of objective findings supporting appellant's continued condition.

As Dr. Zimmerman was on one side of the conflict that Dr. Blaker resolved, the additional report from Dr. Zimmerman is insufficient to overcome the weight accorded Dr. Blaker's report as the impartial medical specialist or to create a new conflict with it.<sup>8</sup>

The Board further finds that appellant has not met his burden of proof in establishing any continuing disability causally related to his accepted employment injury.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had disability causally related to his accepted employment injury.<sup>9</sup> To establish a causal relationship between the condition, as well as any disability claimed, and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. 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 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. The weight of medical evidence is determined by its reliability, its

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medical specialist. He submitted evidence in support of his claim. However, as this evidence did not address the Office's selection process or errors in Dr. Blaker's examination of appellant, the Board finds that it does not establish error on the part of the Office.

<sup>8</sup> *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

<sup>9</sup> *George Servetas*, 43 ECAB 424, 430 (1992).

probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>10</sup>

In support of his claim for continuing disability, appellant submitted form reports from Dr. Leonard W. Johnson, a Board-certified internist, finding that he was totally disabled and diagnosing herniated disc. Appellant also submitted an MRI report dated July 6, 1995. As these reports do not contain a history of injury or an opinion on the causal relationship between appellant's diagnosed condition and his accepted employment injury, the reports are insufficient to meet appellant's burden of proof.

The January 1, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
February 3, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>10</sup> *James Mack*, 43 ECAB 321 (1991).