

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN GRASSIA and DEPARTMENT OF DEFENSE,  
DEFENSE LOGISTICS AGENCY, Philadelphia, Pa.

*Docket No. 98-1726; Submitted on the Record;  
Issued June 7, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective March 29, 1997.

On March 8, 1988 appellant, then a 41-year-old quality assurance specialist, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured the right side of his neck and shoulder when he hit his head while stepping into a van from the side door. The Office accepted the claim myofascitis of the cervical spine/cervical sprain on April 20, 1988. Subsequently the Office accepted appellant's claim for hemicranial headache syndrome and placed appellant on the automatic rolls for temporary total disability.<sup>1</sup>

The record indicates that appellant had been referred to vocational rehabilitation based upon the opinion of appellant's physicians that he could work four hours per day.<sup>2</sup> Rehabilitation services were discontinued in June 1994 as Dr. Reznak indicated that appellant could not work more than three hours per day.

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<sup>1</sup> The Office based its acceptance of this condition upon the opinion of Dr. David Cook, a Board-certified neurologist, who was selected to resolve the conflict between Dr. Stephen Reznak, appellant's attending Board-certified neurologist, and Dr. Kathleen Maloney-Katz, a second opinion Board-certified psychiatrist and neurologist.

<sup>2</sup> Dr. Reznak noted in work restriction forms dated June 22, 1992 and July 26, 1993 that appellant could work four hours per day with restrictions. In a work restriction form dated April 5, 1994, Dr. Reznak indicated that appellant is unable to maintain a schedule at work due to his headaches. Dr. Nicholas M. Renzi indicated in a February 26, 1992 work restriction form that appellant was capable of working four hours per day effective March 1, 1992 with restrictions. In a work restriction form dated August 17, 1992, Dr. Renzi indicated that appellant could work four hours per day effective that day with restrictions. In a work restriction form dated July 16, 1993, Dr. Renzi stated appellant could work 6 to 7 hours per day with restrictions.

On October 15, 1993 the Office referred appellant to Dr. Richard Bennet, a Board-certified neurologist, for a second opinion on whether appellant remained disabled due to his accepted employment injury. In a report dated November 10, 1993, Dr. Bennet opined, based upon a review of the medical records, statement of accepted facts and physical examination, that appellant's headaches are cluster migraine headaches, which are unrelated to his accepted employment injury. Dr. Bennet noted that appellant had a normal neurological examination and that there is no evidence to support a finding that appellant has any neurological impairment causally related to his accepted employment injury.

The Office referred appellant to Dr. Paul M. Shipkin, a Board-certified neurologist, to resolve the conflict in the evidence between Dr. Reznak, appellant's treating physician, and Dr. Bennet, the Office second opinion physician on September 25, 1995.

In a report dated October 25, 1995, Dr. Shipkin opined, based upon a physical examination, review of the medical record, objective evidence and statement of accepted facts, that there was no objective evidence to support a finding of cervical strain or hemicranial headache syndrome. Dr. Shipkin indicated that there was no evidence that appellant continued to suffer from a work-related condition and that appellant was capable of performing his usual employment. Lastly, Dr. Shipkin indicated that appellant did not suffer from any residuals from his accepted employment injury.

On January 27, 1997 the Office issued a notice of proposed termination of compensation.

By letter dated February 20, 1997, appellant disagreed with the proposed notice of termination and submitted reports dated January 8 and February 6, 1997, from Dr. Reznak and October 29, 1996 from Dr. Vincent A. Renzi, a Board-certified internist. In a treatment note dated October 29, 1996, Dr. Renzi opined that appellant's recurring headaches are directly related to his February 1, 1988 employment injury, but did not provide any supporting rationale. Dr. Renzi also noted that appellant's recurring headaches were cluster in nature and centered over the left front temporal and parietal regions. In a report dated January 28, 1997, Dr. Reznak opined that appellant stated that he continued to have headaches intermittently and thus he cannot keep any schedule and is totally disabled for work. In a report dated February 6, 1997, Dr. Reznak noted that appellant had suffered from migraine headaches since the age of seven, but that the headaches he experienced since the February 11, 1988 injury were different as they interrupt his sleep and feel like someone punched him. Dr. Reznak opined that appellant's current headaches are due to his employment injury as he did not have these headaches prior to his injury of February 11, 1988.

In a decision dated March 18, 1997, the Office terminated appellant's compensation benefits effective March 29, 1997 on the grounds that the weight of the medical evidence, as represented by the impartial medical examiner, Dr. Shipkin, established that appellant's employment-related residuals had ceased.

Appellant requested an oral hearing via letter from his congressperson and a hearing was held on December 10, 1997.

At the hearing appellant was represented by counsel, allowed to testify and submit evidence. Appellant submitted an April 3, 1997 neurological report from Dr. Reznak which stated that while appellant had suffered from migraine headaches at one time, he had not suffered any headaches from 1965 until his injury on February 11, 1988. Dr. Reznak diagnosed cluster type headaches based on his symptoms. Appellant also submitted a March 25, 1997 report from Dr. Reznak who opined that appellant's "headaches appear to be a migraine-type headache and specifically a cluster variation of the headaches." Dr. Reznak stated that appellant indicated that prior to his February 11, 1988 employment injury he did not have any headaches.

In a decision dated February 23, 1998, the hearing representative affirmed the Office's decision dated March 18, 1997, terminating benefits. The hearing representative found that the weight of the medical evidence rested with Dr. Shipkin, the impartial medical specialist selected to resolve the conflict in the medical evidence, who opined that appellant had no objective findings to support a diagnosis of cervical strain or hemicranial headaches.<sup>3</sup>

It is well established that 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 or modify compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.<sup>4</sup>

Dr. Shipkin was selected as an impartial referee medical specialist to resolve the conflict in medical opinion evidence between appellant's treating physician, Dr. Reznak, and the Office second opinion referral physician, Dr. Bennet. The Board notes that section 8123(a) of the Federal Employees' Compensation Act,<sup>5</sup> provides that where there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.<sup>6</sup> In this case, the Office properly selected Dr. Shipkin to make such an impartial examination.

The Board further notes that when a case is referred to an impartial medical specialist to resolve a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>7</sup> In the present case, Dr. Shipkin's opinion was thorough, complete, was well rationalized, and was based on a current statement of accepted facts and on review of the complete case record containing all previous medical reports. Dr. Shipkin determined that appellant did not suffer from any residuals from his employment injury. He also found that appellant had no objective evidence to support continued disability due to his accepted

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<sup>3</sup> Subsequent to the hearing representative's decision, appellant submitted additional medical evidence. The Board may not consider new evidence on the first time on appeal; *see* 20 C.F.R. § 501.2(c).

<sup>4</sup> *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joe Bowers*, 44 ECAB 423 (1993).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Debra S. Judkins*, 41 ECAB 616 (1990); *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>7</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Juanita H. Christoph*, 41 ECAB 857 (1990).

employment injury. Dr. Shipkin opined that appellant's headaches were migraines and unrelated to his accepted employment injury. This report supports that appellant no longer had any injury from which a disabling condition would arise and that, therefore, any disabling physical condition appellant had had ceased. Since Dr. Shipkin's report was well rationalized and based on a complete and accurate factual and medical background, the Office properly accorded it special weight which resulted in it becoming the weight of the medical opinion evidence in establishing that appellant no longer had any physical disability causally related to his February 11, 1988 employment injury. Thus, as Dr. Shipkin's opinion represented the weight of the medical evidence at the time of the Office's March 18, 1997 decision, the Office met its burden to terminate appellant's compensation benefits effective March 28, 1997.

The Board finds that none of the additional medical evidence submitted by appellant is sufficient to overcome the weight of the medical evidence as represented by the reports of Dr. Shipkin

With his letter disagreeing with the proposed notice of termination and at the December 10, 1997 hearing, respectively, submitted reports dated January 8 and February 6, 1997, from Dr. Reznak and an October 29, 1996 report, from Dr. Renzi and reports dated March 25 and April 3, 1997, from Dr. Reznak.

The Board finds that the medical evidence submitted after Dr. Shipkin's examination is insufficient to overcome the opinion of Dr. Shipkin. The additional reports from appellant's attending physician, Dr. Reznak, whose previous reports were specifically identified as creating the conflict that was resolved by Dr. Shipkin. The content of the additional reports merely reports prior assessments and the opinion that appellant is totally disabled, and as Dr. Reznak was on one side of the conflict that Dr. Shipkin resolved, Dr. Reznak's additional reports are insufficient to overcome the special weight accorded Dr. Shipkin's opinion or to create a new conflict with it.<sup>8</sup>

Dr. Renzi's opinion does not provide supporting medical rationale regarding why appellant's cluster headaches were caused or aggravated by his accepted employment-related conditions beyond noting that his headaches were due to the March 8, 1988 employment injury. Dr. Renzi provides no supporting rationale in support of his opinion nor does he note that appellant, prior to his injury, had had a history of migraine headaches. As this opinion is not supported by medical rationale, Dr. Renzi's conclusion regarding the relationship between appellant's cluster headaches and his accepted March 8, 1988 employment injury is speculative and of diminished probative value,<sup>9</sup> and, therefore, insufficient to create a conflict with the opinion of Dr. Shipkin, or to require further development by the Office.

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<sup>8</sup> *Dorothy Sidwell*, 41 ECAB 857 (1990); *see also Helga Risor (Windell A. Risor)*, 41 ECAB 939 (1990) (additional reports from office medical adviser, who was on one side of a conflict resolved by an impartial medical specialist, could not be used as a basis for creating another conflict in medical opinion.)

<sup>9</sup> *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

Consequently, the weight of the medical evidence establishes that appellant had no disability for work causally related to his March 8, 1988 injuries effective March 29, 1997.

The decision of the Office of Workers' Compensation Programs dated February 23, 1998 is hereby affirmed.

Dated, Washington, D.C.  
June 7, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member