U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD K. DAVIS and VETERANS ADMINISTRATION, DATA PROCESSING CENTER, Austin, Tex.

Docket No. 97-655; Submitted on the Record;
Issued March 11, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, 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 medical compensation benefits on January 10, 1995.

On August 17, 1987 appellant, then a 42-year-old computer programmer/analyst filed a Form CA-2, notice of occupational disease and claim for compensation, stating that he sustained an injury to his lower back on July 7, 1987. The Office accepted appellant's claim for a lumbar strain and bulging disc, L5-S1 and paid appropriate compensation benefits. In a January 10, 1995 decision, the Office terminated appellant's compensation effective February 5, 1995 on the grounds that the weight of the medical evidence of record established that appellant did not have continuing residual disability as a result of the effects of the work injury of July 7, 1987. In a decision finalized August 11, 1995, an Office hearing representative found that the weight of the medical evidence established that appellant was no longer suffering from an employment-related medical condition or disability. She therefore affirmed the Office's January 10, 1995 decision. In a September 3, 1996 merit decision, the Office denied appellant's request for modification of its prior decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits on January 10, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] 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 disability has ceased or that it is no longer related to the employment.[2] To terminate authorization for medical treatment, the Office must establish that

[1] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[2] *Id*.

appellant no longer has residuals of an employment-related condition which require further medical treatment.[3]

Dr. Malone V. Hill, Jr., a general surgeon and appellant's attending physician, continued to find appellant totally disabled with his back condition, along with other nonrelated conditions.

The Office referred appellant to Dr. Robert Jones, a Board-certified orthopedic surgeon, for an examination and a second opinion. In a July 13, 1993 report, Dr. Jones noted that appellant had spasms and limitation of motion in the lumbar spine. He noted that appellant may have a right drop foot, but that motor and sensory testing was difficult as appellant would not cooperate. Dr. Jones noted atrophy of the right leg. The computerized tomography (CT) scan verified disc bulge and he ordered a magnetic resonance imaging (MRI) scan to further clarify the situation.

In a July 17, 1993 letter, Dr. Jones submitted the MRI scan results. He noted that the findings of the MRI scan indicated that there was no evidence for nerve root compression that would explain appellant's foot drop. Dr. Jones found the results of the MRI scan to be consistent with appellant's age. He opined that appellant has preexisting degenerative disc disease that probably was aggravated by the accident of July 7, 1987. Dr. Jones found, however, that the aggravation had ceased. He also advised that appellant should be able to return to his job as a computer programmer as demonstrated by the fact that he was able to be actively involved in public service over the years.

In a November 30, 1997 report, Dr. Hill challenged Dr. Jones' findings. Dr. Hill noted that appellant had muscle spasm; sciatica and root tension signs; atrophy of the right leg; and positive x-ray and MRI scan findings. Dr. Hill diagnosed permanent degenerated disc disease with bulge or herniation causing radiculopathy. Dr. Hill opined that appellant's condition was aggravated, precipitated, or caused by the work incident and that he could probably work if he had flexible hours and work activities.

The Office found a conflict in medical opinion between Dr. Hill and Dr. Jones as to whether appellant's accepted work-related disability had ceased. Based on the conflict in medical opinion, the Office referred appellant, along with a statement of accepted facts and the case record, to Dr. Jerjis Denno, a Board-certified orthopedic surgeon, selected as the impartial medical specialist.[4]

In a February 18, 1994 report, Dr. Denno noted the history of the injury and his subsequent medical treatment. He noted the previous examinations and MRI scan results. Dr. Denno noted the complaints of lower back pain and right hip pain with occasional pain radiating down the right leg. He advised that appellant's right foot had a tendency to turn outward. Sitting, bending and riding in a car aggravate the pain, while walking tends to give

[3] *Id.*

[4] Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician will be appointed to make an examination. 5 U.S.C. § 8123(a).

some relief. A physical examination was performed, noting generalized tenderness in the lower lumbar spine. There were decreased range of motion about knee level, but no actual spasm was found. Motor testing did not reveal any true weakness in the right lower extremity. Dr. Denno diagnosed low back pain and degenerative disc disease of the lumbar spine. He advised that bulging discs at L4-5 and L5-S1 were part of the normal aging process. Dr. Denno further advised that if appellant had a sprain in 1987, such sprain had resolved. He indicated that, while appellant may have sustained an aggravation of his degenerative process in the work incident, such aggravation had resolved. Dr. Denno found no disability connected to the work injury of July 7, 1987 that would prevent appellant from returning to his employment.

In a June 8, 1994 report, Dr. Hill advised that appellant was having an increase in his back and right leg pain. He noted his findings on examination, including atrophy of the right calf and positive straight leg raising. Dr. Hill's assessment was of degenerative disc disease, osteoarthritis of the lumbar spine and recurrent and persisting right sciatica with radiculopathy. He advised that appellant's symptoms were real and related to his previous back disorder. Dr. Hill indicated that while appellant can do public service activities, he was able to do these at his own pace. He would be unable to return to work involving prolonged sitting or where he could not change positions often. Dr. Hill opined that the degenerative disorder was due to his age, but that his work contributed with the prolonged sitting and occasional bending.

Where there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such a specialist is entitled to special weight if sufficiently well rationalized and based upon a proper factual review of the case.[5] The Board finds that Dr. Denno's February 18, 1994 report is sufficiently rationalized and responsive to the Office's inquiries to be entitled to special weight. Dr. Denno was provided with a statement of accepted facts, the entire medical record with treatment notes and diagnostic findings and performed his own examination of appellant. Based on his findings, Dr. Denno provided an opinion that appellant had no continuing disability causally related to his work injury, but that such work-related disability had ceased. His report was based on accurate facts, thorough examination and all medical records and diagnostic results available. Dr. Denno's conclusion is supported by medical rationale and is fully responsive to the inquires of the Office. The Board finds that the report of Dr. Denno is entitled to special weight and is sufficient to support termination of appellant's wage-loss benefits.

[5] *Glenn C. Chasteen*, 42 ECAB 493 (1991).

On reconsideration appellant resubmitted Dr. Denno's February 18, 1994 report, Dr. Hill's November 11, 1987 report, a December 1987 report from Dr. Sullivan,[6] a February 4, 1988 supplemental report from Dr. Sullivan, a June 8, 1994 report from Dr. Hill, a copy of the February 18, 1994 work restriction form from Dr. Denno, copies of Dr. Jones' July 13, 1993 second opinion report and the July 17, 1993 supplemental report and a copy of the June 1, 1994 memorandum to the Director. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[7]

Appellant submitted an August 7, 1995 report from Dr. VanDeWalle, a chiropractor, who evaluated appellant on August 3, 1995. He indicated that appellant continues to be disabled since the initial injury and unable to perform the duties of his original job. Dr. VanDeWalle reported that appellant presented an antalgic posture and walked with a limp. He noted that appellant wears a brace on his right foot to prevent foot drop. Dr. VanDeWalle assessed fixation at the right sacroiliac joint and 5th lumbar upon palpation. He did not indicate whether x-rays were taken.

Dr. VanDeWalle's report, however, is of insufficient probative value to create a conflict with Dr. Denno's report. Only medical evidence from a physician can be afforded probative value.[8] Pursuant to sections 8101(2) and (3) of the Act,[9] the Board has recognized chiropractors as physicians to the extent of diagnosing spinal subluxations according to the Office's definition and treating such subluxations by manual manipulation.[10] Because Dr. VanDeWalle failed to provide any indication that he interpreted an x-ray as indicating a subluxation, he does not qualify as a physician and his opinion cannot be afforded probative value. Moreover, Dr. VanDeWalle did not provide a diagnosis or render a reasoned medical opinion as to whether the current diagnosed condition is related to the identified work factors and how the present low back condition could still be related to those factors.

Appellant also submitted a January 23, 1995 report from Dr. Harold D. Lewis, a Board-certified internist. He noted appellant's history of being an applications computer analyst for many years prior to the development of a chronic low back condition. Dr. Lewis also noted that appellant has a visual impairment that forced him to bend forward in his chair to place his face very close to the computer terminal during the times that he was at work. He further noted the CAT scan results of October 15, 1987 and the opinions of the physicians who performed the

[6] In his 1987 report, Dr. Brian Sullivan, a second opinion specialist and a Board-certified orthopedist, indicated a causal relationship existed between appellant's work injury and his current condition. In its August 11, 1995 decision, the Office hearing representative found this report was of little importance to appellant's current condition and the causal relationship issue as the report was rendered in 1987 and there was more current evidence on record.

[7] *See Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

[8] *George E. Williams*, 44 ECAB 530 (1993).

[9] 5 U.S.C. §§ 8101(2) and (3).

[10] *See Williams*, *supra* note 8.

independent and impartial specialist examinations. Dr. Lewis performed a comprehensive physical examination of the lumbar spine and lower extremities. He diagnosed chronic lumbar strain with right sciatica. Dr. Lewis recommended that an electromyogram with nerve conduction velocity testing be performed as well as consultation with a chronic pain specialist. He stated that "it is my opinion, based on a review of his medical records and examination, that [appellant's] low back pain and leg pain was brought on by chronic postural overload resulting in low back syndrome and disc disease."

Dr. Lewis failed to provide any medical rationale as to how appellant's current low back condition is still related to the identified work factors. Additionally, as Dr. Lewis is an internist, his opinion does not carry equal weight in comparison to Dr. Denno's specialized opinion. Further, Dr. Lewis is a Board-certified internist, while Dr. Denno is a Board-certified orthopedic surgeon. The Board notes that the specialty of orthopedic surgery is more closely related to appellant's claimed back condition than the field of internal medicine. The Board has held that opinions of physicians who have special training and knowledge in a specialized medical field have greater probative value in determining the causal relationship of a condition germane to that field than the opinions of nonspecialists or others who have no training in the particular field.[11] Therefore, the opinion of Dr. Denno, an orthopedic surgeon, is of greater weight in establishing causal relationship in this case than the opinion of Dr. Lewis, an internist. Thus, Dr. Lewis' report is of insufficient probative value to create a conflict with Dr. Denno's report.

[11] *See Effie Davenport (James O. Davenport)*, 8 ECAB 136 (1955).

The decision of the Office of Workers' Compensation Programs dated September 3, 1996 is hereby affirmed.[12]

Dated, Washington, D.C.
March 11, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] The Board notes that the record file also contains evidence that appellant is seeking a schedule award for permanent impairment of his right leg. There is no medical evidence in file to suggest that there is any medical condition between appellant's work injury and any possible impairment appellant might have with his right leg. It is recommended that appellant claim a schedule award by filing a Form CA-7.