

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RALPH CASCETTI and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 00-1696; Submitted on the Record;
Issued April 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

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

Appellant, then a 60-year-old pipefitter, filed a notice of occupational disease on May 29, 1990 alleging that he developed degenerative disc disease due to duties of his federal employment. On May 21, 1991 the Office accepted appellant's claim for lumbosacral strain. Appellant stopped work in 1992 as the employing establishment had no light duty available and received compensation benefits.

The Office proposed to terminate appellant's compensation benefits by letter dated January 21, 1999, reissued March 5, 1999. By decision dated April 15, 1999, the Office terminated appellant's compensation benefits effective April 24, 1999. Appellant requested an oral hearing and by decision dated January 13, 2000, the hearing representative affirmed the Office's April 15, 1999 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation.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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate

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

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment,⁴ which require further medical treatment.⁵

In this case, appellant's attending physician, Dr. Kevin M. Fleming, a Board-certified family practitioner, completed reports beginning in 1990 relating appellant's disc disease to his employment.

The Office referred appellant for a second opinion evaluation with Dr. Joseph Fabiani, a Board-certified orthopedic surgeon. In a report dated July 15, 1997, Dr. Fabiani stated that appellant's lumbosacral strain had resolved and that his degenerative disc disease was not causally related to his employment duties. He stated that appellant did not require further medical treatment.

The Office requested a supplemental report from Dr. Fabiani on February 2, 1998 regarding whether appellant's employment duties had any impact on his current condition. Dr. Fabiani responded on February 10, 1998 that there was no causal relationship between appellant's current condition and his employment injury.

Due to the conflict of medical opinion evidence between appellant's attending physician, Dr. Fleming, and the Office referral physician, Dr. Fabiani, regarding the causal relationship between appellant's employment duties and his degenerative disc disease, the Office referred appellant to Dr. Frank Mattei, a Board-certified orthopedic surgeon, for an impartial medical examination.⁶

In a report dated August 7, 1998, Dr. Mattei noted appellant's history of injury and listed his findings on physical examination. He diagnosed severe degenerative arthritis of the spinal column with scoliosis. Dr. Mattei stated:

“[A]fter careful evaluation of the medical records reviewed, the history given by [appellant] and my objective orthopedic examination, it is my medical opinion that [appellant] had preexisting severe degenerative changes of the thoracal lumbosacral spine with marked deformity. However, he had no neurological involvement such as a herniated disc. Thus this condition predated his accident but may have had a temporary exacerbation of the pathology. His soft tissues injuries would have resolved with a brief period of rest, that is four to eight weeks, and he would have returned to his preinjury level of activity.”

The Board finds that the August 7, 1998 report of Dr. Mattei constitutes the weight of the medical evidence. Where there are opposing medical reports of virtually equal weight and

⁴ *Id.*

⁵ *Id.*

⁶ Section 8123(a) of the Federal Employees' Compensation Act, 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." 5 U.S.C. §§ 8101-8193, 8123(a).

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.⁷ Dr. Mattei provided a proper history of injury, reviewed the medical records and related his findings on physical examination. He concluded that appellant's degenerative condition preexisted his employment and that, at most, the employment duties resulted in a temporary aggravation of the symptoms, which should have resolved. Dr. Mattei supported his conclusion with the finding that appellant did not sustain a herniated disc as a result of his employment duties. Because Dr. Mattei provided a detailed and well-rationalized report, finding no continuing work-related condition or disability, the Office met its burden of proof to terminate appellant's compensation.

Following the Office's April 15, 1999 decision, appellant submitted an additional report dated May 25, 1999 from Dr. Fleming, who stated that appellant's back condition was without question related to his job as a pipefitter at the employing establishment. He opined: "Regardless of how old [appellant] is and regardless of what other medical conditions are currently afflicting him, the reason for his disability and retirement early was herniated disc disease in his lumbosacral spine and this was related directly to his employment."

Dr. Fleming's report is not sufficiently well rationalized to establish that appellant sustained an additional employment-related condition or disability. He did not provide a history of injury or physical findings in support of his conclusion and did not offer any medical rationale in support of his opinion that appellant's degenerative condition was caused or worsened permanently by his employment duties. Without a medical opinion explaining how and why he believes that appellant's employment duties caused or contributed to the condition of appellant's back, Dr. Fleming's report is of insufficient probative value. Also, because Dr. Fleming was on one side of the conflict that Dr. Mattei resolved, the additional report from Dr. Fleming is insufficient to overcome the weight accorded Dr. Mattei's report as the impartial medical specialist or to create a new conflict with it.⁸

⁷ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

⁸ *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

The January 13, 2000 and April 15, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.⁹

Dated, Washington, DC
April 27, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

⁹ Appellant argues that the second opinion report of Dr. Fabiani must be deleted because of improper contact with him by the employing establishment. The Office asked Dr. Fabiani on February 2, 1998 to clarify his July 15, 1997 conclusion that appellant's degenerative arthritic changes and spondylosis were unrelated to work factors. Dr. Fabiani responded on February 10, 1998 that appellant's accepted work injury could not be attributed to his 24 years of work as a pipefitter, and that employment did not aggravate, accelerate or precipitate any of his degenerative back conditions. Inasmuch as the employing establishment did not write to Dr. Fabiani until April 1998, the Board finds no improper contact and rejects appellant's argument.