U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRVING COHEN and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 00-2089; Submitted on the Record;
Issued April 27, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits on the grounds that he no longer had any residuals of his accepted May 8, 1998 employment injury.

The Board has duly reviewed the case record and finds that the Office properly terminated appellant's compensation benefits on the grounds that appellant no longer had any residuals of his employment injury.

On May 8, 1998 appellant, then a 50-year-old bulk mail clerk, filed a traumatic injury claim, No. A3-234979, alleging on that date he experienced extreme pain in his lower back and left leg after being hit by an all purpose container (APC) while placing a placard on another APC.[1]

The Office accepted appellant's claim for lumbar strain.

By letter dated September 9, 1998, the Office referred appellant along with a statement of accepted facts, a list of specific questions and medical records to Dr. Steven Valentino, an osteopath, for an examination.

Dr. Valentino submitted an October 8, 1998 report finding that appellant's lumbar strain had resolved. He also submitted an accompanying work restriction form indicating appellant's physical restrictions and opinion that appellant could work eight hours a day.

[1] Appellant filed a claim, No. A3-199807, for a knee injury he sustained on July 26, 1994. Appellant stopped work on that date. On June 24, 1996 appellant returned to work in a modified duty clerk position for six hours per day. On the date of injury in this claim1998, appellant was working in this position.

In an October 20, 1998 report, Dr. Valentino stated that appellant reached maximum medical improvement on June 24, 1998 and that his restrictions were permanent but unrelated to the May 8, 1998 employment injury. He stated that they were a result of preexisting and nonoccupational conditions.

By letter dated November 5, 1998, the Office asked Dr. Harry A. Cooper, an osteopath and appellant's treating physician, to review Dr. Valentino's report and respond to his findings. The Office also advised Dr. Cooper to complete an accompanying Form OWCP-5c.

Dr. Cooper submitted a December 8, 1998 report finding that appellant's lumbar pain continued, but his range of motion was unimpaired.

In a May 14, 1999 letter, the Office referred appellant, with a statement of accepted facts, a list of specific questions and medical records, to Dr. John T. Williams, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in the medical evidence between Drs. Valentino and Cooper.

Dr. Williams submitted a June 15, 1999 report that appellant's accepted condition resulting from his May 8, 1998 employment injury had resolved.

By decision dated June 23, 1999, the Office terminated appellant's compensation on the grounds that Dr. Williams' medical opinion established that appellant no longer had any residuals of his May 8, 1998 employment injury. In a July 19, 1999 letter, appellant, requested an oral hearing.

In a September 22, 1999 decision, the hearing representative set aside the Office's June 23, 1999 decision on the grounds that it was not preceded by a notice of proposal to terminate appellant's benefits.

In a notice of proposed termination of compensation dated October 20, 1999, the Office advised appellant that it proposed to terminate his compensation based on Dr. Williams' opinion that he no longer had any residuals of his May 8, 1998 employment injury. The Office also advised appellant to submit additional medical evidence supportive of his continued disability within 30 days.

By decision dated November 19, 1999, the Office terminated appellant's compensation based on Dr. Williams' opinion. In a November 23, 1999 letter, appellant, through his counsel, requested an oral hearing. In a February 29, 2000 letter, appellant, changed his request to a review of the written record.

In a decision dated May 30, 2000, the hearing representative affirmed the Office's November 19, 1999 decision.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability

causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[2]

Pursuant to section 8123(a) of the Federal Employees' Compensation Act,[3] the Office properly referred appellant to Dr. Williams for an impartial medical examination to resolve the conflict in the medical opinion evidence between Dr. Valentino, a physician for the Office and Dr. Cooper, appellant's treating physician, over whether appellant had any residuals of his May 8, 1998 employment injury.[4]

In his June 15, 1999 report, Dr. Williams noted appellant's complaints of low back, shoulder and right leg pain and a history of appellant's May 8, 1998 employment injury, medical treatment, family background and job description as a bulk mail technician. He opined that, based on the history and findings on physical examination, appellant, at the time of his injury, sustained an acute lumbosacral sprain/strain and an acute sprain/strain of both shoulder girdles by history that had resolved. He ruled out collagen disease, *i.e.*, rheumatoid arthritis and mechanical instability secondary to degenerative disc disease and degenerative joint changes in the lumbar spine. Dr. Williams opined:

> "By history, [appellant] incurred what is considered to be soft tissue injuries. There is no history of any fracture, dislocation or subluxation. He was struck in the back by one cart and pushed into another cart. This injury is a contusion, *i.e.*, a blunt blow. His shoulders may have been squeezed into the other cart, again that [i]s a contusion. Soft tissue injuries are self-resolving, anywhere from a few days to a couple months.
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> "Today, on physical examination, there are no positive objective findings to correlate to [appellant's] complaints. I think it is important to note that [appellant] was hospitalized in 1997 for a week because he could n[o]t move his arms and was diagnosed as having rheumatoid arthritis. [Appellant] may have some other medical problems, which may be causing or aggravating some of his underlying problems, but the injuries he sustained in his May 8, 1998 incident, he has fully recovered from those.
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> "In the absence of positive objective findings, it [i]s my medical opinion that he [i]s fully recovered from said injuries he may have sustained and is able to resume his normal preaccident activities and duties, without any restrictions."

[2] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[3] 5 U.S.C. § 8101 *et seq.*

[4] 5 U.S.C. § 8123(a) states in pertinent part "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."

After reviewing appellant's objective medical records, Dr. Williams opined:

> "I do n[o]t see anything here to alter my opinion, as previously stated in the body of my report. The basis for my opinion is, the history is the most important contributing factor toward arriving at a diagnosis; it contributes 75 percent and the physical examination 15 percent. So, on the basis of a thorough history and physical examination, one should be able to arrive at a primary and/or differential diagnosis. The remaining 10 percent, the so called diagnostic studies should be used to confirm the information gathered from the history and physical exam[ination]…."

Dr. Williams concluded that appellant had severe spinal stenosis of his cervical spine that was not work related acute lumbosacral sprain/strain by history that had resolved, degenerative joint/disc disease of the lumbar spine that was not work related, an acute sprain/strain that appellant sustained on July 26, 1994, which was superimposed upon preexisting pathology and appellant had been treated with arthroscopy, which was work related."

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.[5] In this case, the report of Dr. Williams, obtained to resolve a conflict of medical opinion, was rationalized and based on an accurate factual and medical background. His report constitutes the weight of the medical evidence and is sufficient to establish that appellant no longer has any residuals of his May 8, 1998 employment injury.

Appellant's counsel argues on appeal that Dr. Williams makes no mention of reviewing the file for appellant's prior claim. The record indicates that Dr. Williams was provided with a statement of accepted facts containing information about appellant's July 26, 1994 employment injury. Although Dr. Williams did not specifically mention appellant's prior employment injury, he had access to the statement of accepted facts and the entire case record.

Appellant's counsel further argues that the Office failed to provide Drs. Valentino and Williams with an accurate statement of accepted facts indicating the weight of the APCs that crushed appellant. Counsel contends that appellant's severe bilateral carpal tunnel syndrome and subsequent surgery, additional back conditions and hand and shoulder conditions were work related. Appellant has offered no evidence to support that these conditions constitute an employment injury. The Board, therefore, rejects appellant's argument.

Once the Office has met its burden of proof in terminating compensation, the burden shifts to appellant to establish that his disability is causally related to his employment.[6] In this case, the medical treatment notes appellant submitted regarding pain in his neck, shoulders, back, left leg and both hands failed to address whether he had a condition causally related to his

[5] *James P. Roberts*, 31 ECAB 1010 (1980).

[6] *See George Servetas*, 43 ECAB 424 (1992); *Joseph Campbell*, 34 ECAB 1389 (1983).

May 8, 1998 employment injury. Therefore, these treatment notes are insufficient to meet appellant's burden.

The September 22 and June 23, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 27, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member