

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDMUND J. ALTVATER and U.S. POSTAL SERVICE,
POST OFFICE, Old Bethpage, NY

*Docket No. 99-1662; Submitted on the Record;
Issued April 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective March 28, 1998 on the grounds that he had no disability due to his June 13, 1985 employment injury after that date.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective March 28, 1998 on the grounds that he had no disability due to his June 13, 1985 employment injury after that date.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

On June 13, 1985 appellant, then a 36-year-old janitor, sustained an employment-related acute herniated disc at L4-5 while lifting a lawnmower. Appellant returned to limited-duty work at the employing establishment in September 1985 and then stopped work in October 1985; he received compensation for periods of disability.

By decision dated March 27, 1998, the Office terminated appellant's compensation effective March 28, 1998 on the grounds that he had no disability due to his June 13, 1985

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

employment injury after that date. The Office based its termination on the opinion of Dr. Richard S. Goodman, a Board-certified orthopedic surgeon who served as an impartial medical specialist. By decision dated April 5, 1999, the Office affirmed its March 27, 1998 decision.

In this case, the Office found a conflict in the medical opinion evidence between Dr. Peter J. Lesniewski, appellant's attending Board-certified orthopedic surgeon, and Dr. Arnold M. Illman, a Board-certified orthopedic surgeon acting as an Office referral physician, regarding whether appellant continued to have residuals of his June 13, 1985 employment injury.⁵ To resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Goodman for an impartial medical examination and an opinion on the matter.⁶

In situations where there exist 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 upon a proper factual background, must be given special weight.⁷

The Board finds that the opinion of Dr. Goodman is not sufficiently well rationalized to be given special weight on the relevant issue of the present case, *i.e.*, whether appellant had disability due to his June 13, 1985 employment injury after March 28, 1998. Therefore, the Office improperly relied on Dr. Goodman's opinion and it did not meet its burden of proof to terminate appellant's compensation effective March 28, 1998.

In his July 2, 1997 report, Dr. Goodman detailed the findings of his examination, noting that appellant reported positive straight leg raising bilaterally at 30 degrees and limited his lumbar motion to 10 degrees of flexion, 5 degrees of extension, 10 degrees of rotation and 5 degrees of lateral flexion. Dr. Goodman indicated that the findings of x-ray testing obtained on June 24, 1997 were within normal limits and stated:

"Despite the patient's continuing symptoms for a period of approximately 12 years, I am unable to substantiate any evidence of organic disease. Note that bulging discs as reported are within normal limits. There is no report of the magnetic resonance imaging [scan] showing anything but a bulging disc.

"Therefore, in summary, I find that the patient has no evidence of organic disease. There is no limitation on his activities. There are no restrictions. He can work

⁵ In a report dated January 2, 1996, Dr. Lesniewski noted that appellant's continuing back problems were due to his June 13, 1985 employment injury. In contrast, Dr. Illman indicated, in a report dated July 8, 1996, that appellant's subjective complaints were not supported by findings on examination and diagnostic testing; he determined that appellant did not have continuing residuals of his June 13, 1985 employment injury.

⁶ Section 8123(a) of the Act provides 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." 5 U.S.C. § 8123(a).

⁷ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

eight hours per day. There are no restrictions in fine movements. He can do repetitive movements of the wrist and elbow. There are no limitations due to his employment injury....”

Dr. Goodman did not provide adequate medical rationale in support of his conclusion that appellant no longer had residuals of his June 13, 1985 employment injury, an acute herniated disc at L4-5.⁸ Dr. Goodman did not describe appellant’s employment injury in any detail⁹ or explain how and when it would have resolved to the extent that it no longer caused disability. He did not adequately explain why he indicated that appellant’s June 1997 x-ray findings were found to be within “normal limits” when these findings and other reports from the period showed that appellant had degenerative disc disease of the low back.¹⁰ Although he reported abnormal findings on examination, Dr. Goodman did not explain how these findings, along with the findings on diagnostic testing, comported with his opinion that appellant did not exhibit evidence of any “organic disease.” Nor did Dr. Goodman attempt to explain the cause of appellant’s reported back complaints and disability. Moreover, it is unclear whether Dr. Goodman based his opinion on a complete and accurate medical history.¹¹

⁸ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁹ Dr. Goodman simply indicated that appellant “incurred back pain” after his June 13, 1995 employment injury.

¹⁰ These reports also showed that appellant’s back complaints were progressively increasing.

¹¹ Dr. Goodman indicated that he reviewed Dr. Lesniewski’s reports through November 1989 and made reference to x-ray findings from June 1997, but he did not make note of any of the medical reports produced between these dates. Moreover, Dr. Lesniewski produced additional reports, dated in August 1998 and January 1999, in which he indicated that appellant continued to have residuals of his employment-related herniated disc.

The decision of the Office of Workers' Compensation Programs dated April 5, 1999 is reversed.

Dated, Washington, DC
April 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member