

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD G. ANDERSON and DEPARTMENT OF THE NAVY,
NAVAL STATION, Keflavik, Iceland

*Docket No. 99-1753; Submitted on the Record;
Issued January 11, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant's disability after July 8, 1982 is causally related to his employment-related low back condition.

On the prior appeal of this case,¹ the Board found that the December 21, 1993 report of Dr. Duane F. Pearson, appellant's orthopedic surgeon, was probative on the issue of "current" employment-related disability. The Board found that his opinion was well reasoned in distinguishing appellant's currently disabling condition from the normal process of aging and in associating the currently disabling condition to appellant's employment injuries and surgery. The Board found, however, that Dr. Pearson's opinion failed to address whether appellant's disability continued beyond July 8, 1982 in an unbroken manner or whether it later recurred.² The Board remanded the case for further development of the medical evidence.

On remand the Office of Workers' Compensation Programs obtained a second opinion from Dr. Robert H.L. Fielden, an orthopedic surgeon. In his November 12, 1997 report, Dr. Fielden related appellant's history and complaints and his findings on examination. He also reviewed the medical record. Dr. Fielden diagnosed chronic pain syndrome with significant exaggeration of pain response; post L5-S1 laminectomy with some L5 weakness not consistent with the level of surgery; and post compression fracture thoracic spine. He explained that radiological changes in the lumbar spine, together with perineural scarring consistent with an L5-S1 laminectomy were not new and had not changed unduly over the 30 years since the surgery and were not a cause of appellant's symptoms. "These symptoms and apparent disability have been present since 1963 and intensified after a motor vehicle accident in 19[6]5." There

¹ Docket No. 94-2560 (issued August 12, 1997).

² The weight of the medical evidence rested with the opinion of Dr. Robert L. Hausserman, a Board-certified orthopedic surgeon and referee medical specialist, who established that appellant had no employment-related disability after July 8, 1982.

was a disability due to the back injury and surgery, but that disability had stabilized within a year of the surgery. Dr. Fielden indicated that appellant was able to return to work as an automobile mechanic in 1964, based upon a one-level discectomy and its physical impairment, but would not still be able to do this work because of his age without some modification in the heavier lifting and awkward positioning.

In a December 22, 1997 supplemental report, Dr. Fielden stated as follows:

“[Appellant’s] ‘low back condition’ has neither worsened nor been affected nor can be considered a cause of total disability. His other problems, which include affective personality disorder perceived as dysthymic type of chronic depression, but also somatization, *i.e.*, turning stress into physical complaints, have been the ongoing problems since 1963. It may have fluctuated in intensity on July 7, 1992 or off and on over the years in symptoms, but has not changed in fact. From [appellant’s] injury in August 1963, there is no reason, with proper rehabilitation and ‘motivation,’ [he] could have returned [*sic*] to be an auto[mobile] mechanic with minimal restrictions from an L[5]-S1 disc herniation and should have been able to carry on that occupation over the many years should he have desired to do so. That has been primarily [appellant’s] decision and his perception that he has not been able to perform these activities and that is related to a personality disorder, not to a physical injury.”

In a decision dated February 18, 1998, the Office denied compensation benefits after July 8, 1982. The Office found that Dr. Fielden’s opinion represented the weight of the medical evidence.

In a decision dated February 23, 1999, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision.

The Board finds that this case is not in posture for determination. A conflict in medical opinion warrants referral to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a).

The Board previously found that the opinion of appellant’s physician, Dr. Pearson, was probative on the issue of “current” employment-related disability, that is, disability on or about December 21, 1993. The Board found that his opinion was well reasoned in distinguishing appellant’s currently disabling condition from the normal process of aging and in associating the currently disabling condition to appellant’s employment injuries and surgery.

Dr. Fielden, the Office’s second-opinion physician, has expressed a contrary view. In his opinion, disability due to the back injury and surgery stabilized within a year of the surgery and appellant was able to return to work as an automobile mechanic in 1964. This low back condition, he opined, neither worsened nor was affected nor could be considered a cause of total disability. Any subsequent disability was related to a personality disorder and not to a physical injury.

A conflict is thus apparent between appellant's physician and the Office referral physician on the issue of employment-related disability on or about December 21, 1993 and continuing.

Section 8123(a) of the Federal Employees' Compensation Act provides in 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."³

To resolve the conflict in opinion between Drs. Pearson and Fielden, the Office shall refer appellant, together with the medical record and a statement of accepted facts, to an appropriate impartial specialist for an opinion on whether appellant suffered any employment-related disability after July 8, 1982. After such further development of the medical evidence as may be required, the Office shall issue an appropriate final decision on appellant's entitlement to continuing compensation benefits.

The February 23, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
January 11, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

³ 5 U.S.C. § 8123(a).