

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM D. WAGONER and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, IN

*Docket No. 01-2186; Submitted on the Record;
Issued September 3, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective August 30, 1999.

On December 23, 1998 appellant, then a 44-year-old clerk, filed a notice of traumatic injury and a claim for compensation (Form CA-1), alleging that he injured his lower back as a result of lifting heavy and awkward packages on December 12, 1998. The Office accepted appellant's claim for aggravation of degenerative disc disease. Appellant was off work from December 30, 1998 to January 25, 1999, when he returned to light duty with restrictions. He lost intermittent time due to exacerbations of back pain. Appellant had a previously accepted work injury for a low back strain, which occurred on June 5, 1997 and accepted under case file number A09-0430392, which the Office subsequently combined into the master file of this case, master file number A09-0447815.

In a report dated February 19, 1999, Dr. Richard A. Hutson, a Board-certified orthopedic surgeon and Office referral physician, noted appellant's history of injury, reviewed medical reports and the statement of accepted facts. After providing the results of appellant's physical examination, Dr. Hutson advised that appellant had evidence of degenerative lumbar disc disease with some sciatic nerve irritation on the left side. He opined that appellant had a temporary aggravation of the lumbar strain but that the tissues had subsequently healed. Dr. Hutson noted that appellant's current problems were due to his ongoing degenerative lumbar disc disease. He further opined that the January 28, 1999 work restrictions provided by Dr. Denise M. Stadelmaier, an osteopath and appellant's treating physician, should be permanent. No additional physical therapy was indicated.

The Office requested Dr. Stadelmaier to render an opinion on whether appellant had any residuals due solely to the work injury of December 12, 1998 and, if so, whether the aggravation was temporary or permanent. In a February 25, 1999 report, Dr. Stadelmaier provided her findings on physical examination and provided impressions of lumbar strain, lumbar degenerative disc disease and mild central spinal stenosis. Appellant was advised by Dr. Stadelmaier that there was nothing further she could offer him. In response to the Office's

questions, Dr. Stadelmaier reported that the objective physical findings and definitive diagnosis were lumbar strain, lumbar degenerative disc disease and mild central spinal stenosis which coincided with radiographs taken on August 3, 1998 as well as the January 8, 1999 magnetic resonance imaging (MRI) scan, which revealed mild central spinal stenosis at L2-3 through L4-5 and intervertebral disc dehydration changes. Degenerative disc disease was also noted on radiographs. Dr. Stadelmaier stated that it was difficult to determine whether or not appellant's current back condition was the result of a specific injury on December 21, 1998 as he had been performing heavy lifting for several years. She opined that she did not believe that the back injury had completely resolved and that residuals appeared to be left buttock pain, pain extending down the posterior aspect of his leg, along with the numbness he experienced in the lateral aspect of his left leg. Dr. Stadelmaier stated that appellant had advised her on her initial evaluation on January 5, 1999 that he was symptom free when he returned to work full duty and did not have a problem until December 21, 1998. She opined that the residuals which appellant had with regard to his symptoms were probably permanent and that appellant appeared to have reached a plateau with regard to his improvement.

In a report dated March 25, 1999, Dr. Stadelmaier advised that she reviewed Dr. Hutson's report. She agreed with the restriction portion of Dr. Hutson's report along with the fact that no additional physical therapy was needed. She, however, failed to provide any comment on Dr. Hutson's conclusions that the physical restrictions were necessary due to an underlying condition and not the work-related aggravation. Dr. Stadelmaier reiterated that there was nothing further she could offer appellant since he has degenerative disc disease and mild spinal stenosis.

In order to resolve the conflict between the opinions of Drs. Stadelmaier and Hutson regarding the extent of the work-related aggravation, the Office referred appellant to Dr. Anthony R. Lasich, a Board-certified orthopedic surgeon, for an independent medical examination. In a medical report dated June 7, 1999, Dr. Lasich noted the history of injury, including appellant's initial back problem which arose in 1997 and physical examination findings. Review of appellant's imaging studies and x-ray evaluations revealed Scheuermann's disease in the developmental stage of a scaled system. Gross changes were noted in the upper lumbar area. The development of early degenerative changes in the lower lumbar spine involving the third, fourth and fifth elements were noted. There was also a moderate degree of spinal stenosis present in the spine. Dr. Lasich requested an electromyographic study to be done of appellant's lower extremities to determine whether he has any nerve root pressure. In a subsequent report of June 21, 1999, Dr. Lasich noted that appellant underwent an electromyogram (EMG) study on June 19, 1999, which was interpreted as a normal examination with no electrodiagnostic evidence of left lumbosacral radiculopathy, plexopathy or of an isolated tibial or peroneal mononeuropathy. Based on his previous examination and the current EMG study, Dr. Lasich opined that appellant's aggravation of his degenerative disc disease had resolved. There was no residual as far as nerve root irritation was concerned. Dr. Lasich further opined that appellant had a problem with his spine in the nature of degenerative changes with mild stenosis which was going to require permanent work restrictions which his physician had listed.

By decision dated July 19, 1999, the Office issued a proposed termination of disability and medical benefits. The Office noted that all three physicians of record were orthopedic specialists and concluded that appellant had ongoing residuals of spinal stenosis and

degenerative disc disease. The Office found that the weight of the medical evidence of file rested with Drs. Hutson and Lasich who agreed that appellant's current symptoms and the necessity for permanent restrictions were due to the noncompensable underlying condition of spinal stenosis and degenerative disc disease and not because of the resolved work injury.

In response to the notice of proposed termination, appellant submitted an April 15, 1999 statement in which he alleged that his current back condition was directly related to his previous back injury of June 5, 1997, which the Office previously accepted. In support of this contention, appellant submitted a July 28, 1999 report from Dr. D. Gene Vlahovich, an osteopath, who described the June 5, 1997 work injury and stated that, in reviewing his records and records from other physicians, he could find no mention that there was any preexisting back conditions. Dr. Vlahovich noted that appellant saw Dr. Bill Wolf, his family physician, after the work injury and that nowhere in the records he had, nor the records from Dr. Wolf, was he able to substantiate that there were any previous complaints of low back pain or back pain. He concluded, therefore, that the accident of June 5, 1997 was directly responsible for the back injury and the resultant, long-term complications of it and that Scheuermann's disease has nothing to do with the diagnosis that is currently present.

Appellant also submitted a January 5, 1999 report from Dr. Stadelmaier to further his contention that his back problems stemmed from the 1997 work injury. In her report, Dr. Stadelmaier noted that appellant's initial back symptomatology began in June 1997 while working for Naval Avionics. Appellant was lifting a 2,000-pound bag of classified mail with other workers and transferring from the back of a truck for disposal. While lifting he experienced severe back pain as well as left leg pain. Appellant underwent physical therapy for one month and had resolution of his symptomatology. He had no symptomatology until July 1998 when he had recurrence of his back and left leg pain while working at home on his car. Appellant went to physical therapy and was able to return to work light duty for one month and return to full duty. Dr. Stadelmaier noted that appellant presented for consultation of his back and left leg pain which began two weeks ago when he was lifting bulk mail. She noted that her findings on examination as well as radiographs previously taken on August 3, 1998 and provided impressions of lumbar strain and lumbar degenerative disc disease. An MRI scan was recommended to further evaluate the degenerative changes and to rule out a herniated disc.

Appellant additionally noted that Dr. Lasich remarked that his "initial problem of back morbidity arose in June 1997...."

In a decision dated August 30, 1999, the Office terminated appellant's benefits effective immediately. The Office noted that the only condition accepted with the June 5, 1997 incident was a lumbar strain and it remained appellant's burden to submit a well-rationalized medical opinion as to how the June 5, 1997 injury either directly caused the arthritic spinal changes or permanently aggravated a preexisting degenerative condition. The Office found that appellant failed to provide any new and substantial evidence to negate the Office's proposed termination of benefits since the weight of the medical evidence concludes that the symptomatology and objective findings in the present case are due to underlying degenerative disc disease and spinal stenosis and that all the residuals of both work injury of 1997 and 1998 have resolved.

By letter dated September 16, 1999, appellant requested an oral hearing. At the hearing held on February 29, 2000, he described his work history with the federal government, which included his military service, as well as the physical nature of those jobs. Appellant additionally

submitted a September 20, 1999 medical report from Dr. Stadelmaier in which she stated, based on her evaluation of appellant, that she disagreed with the fact that his symptomatology and objective findings presently were due to his underlying degenerative disc disease and spinal stenosis and that all residuals of both work injuries had resolved. Dr. Stadelmaier opined that degenerative disc disease and spinal stenosis may very well have been exacerbated by the two traumatic injuries he experienced, but were also the result of repetitive type lifting, bending and twisting activities he performed for the past two years of service for the employing establishment and the past 20 years for the federal government. She stated that appellant's permanent restrictions were not only due to the residuals from the prior traumatic injuries, but also were due to the repetitive type of activity appellant is required to do during his job. Dr. Stadelmaier opined that she did not believe the Scheuermann's disease was the cause of appellant's inability to work to full capacity.¹

In a decision dated May 15, 2000, the hearing representative found that appellant's employment-related disability had ceased as evidenced by Dr. Lasich's well-rationalized opinion, which was based on a proper factual and medical background. The Office noted that, while appellant sustained an injury on June 5, 1997, which was accepted for a low back strain, there was no medical opinion evidence in file indicating that appellant suffers from either continued disability or residuals of such accepted condition. Accordingly, the Office's prior decision was affirmed.

In a letter dated October 23, 2000, appellant, through his attorney of record, requested reconsideration. His attorney contended that the questions posed to Dr. Lasich were posed too narrowly and poorly constructed as it only inquired as to whether the disability due to the injury of December 21, 1998 had ceased, while it should have referred to appellant's entire covered employment. Appellant's attorney argued that all of appellant's current disabilities were secondary to his covered service.

In a medical report dated October 3, 2000, Dr. Don R. Jardine, a Board-certified orthopedic surgeon, stated that he reviewed appellant's record submitted to him along with the June 16, 1999 nerve conduction studies and EMG on the lower extremities. Appellant's work history along with history of work injuries were noted and the results of appellant's examination were set forth. Dr. Jardine noted difficulties in the methodology of using the MRI and stated that although there was no evidence of herniated disc compressing nerve roots on the study, clinically, it was clear that there was significant nerve root compression and nerve root irritation in the low back area to account for appellant's signs and symptoms with positive straight leg raising. He also assumed that the accepted condition of aggravation of degenerative disc disease was selected by a claims adjuster who had no documented training or background in medicine to presume such a diagnosis. Dr. Jardine opined that the major diagnosis clinically should have been a herniated nucleus pulposus with left sciatica. He further opined that lumbar strain would be another appropriate clinical diagnosis. Dr. Jardine stated that the diagnosis of degenerative lumbar disc disease or degenerative disc disease of the spine did not represent a clinical diagnosis and was only a reading from a spinal x-ray. He opined that there was evidence of old Scheuermann's disease which had never been symptomatic in appellant and by account by

¹ Although Dr. Jardine advised in a letter dated February 21, 2000 that his report was forthcoming, it was not of record at the time of the hearing representative's decision.

several examining/treating physicians did not account for appellant's current disabling pain and complaint. Dr. Jardine concluded:

"It is clear that [appellant's] spine has undergone accelerated degenerative changes due to his work assignments over the past 20 years working as a government employee both with Naval Avionics and for the [employing establishment]. It is further my opinion although the sciatic pain has generally decreased his discogenic pain from the injury culminating December 21, 1998 has not resolved. The pain affects his activities of daily living and affects his unrestricted work activities with the postal service. I am in concurrence with the orthopaedic surgeon[,] Dr. Stadelmaier's opinions[,] and feel that [appellant] should be on lifetime restriction with the postal service and that the disabling problems continues secondary to the injury of December 21, 1998."

Copies of pages from *The Adult Spine, Principles and Practice* were provided along with Dr. Jardine's resume.

By decision dated February 2, 2001, the Office performed a merit review and denied modification of its prior decision.

The Board finds that the Office met its burden of proof when it terminated appellant's benefits on August 30, 1999.

It is well established that once the Office has accepted 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. Thus, the burden of proof is on the Office rather than the employee with respect to the period subsequent to the date when compensation is terminated or modified.²

In this case, the Office, in its decision of August 30, 1999, accepted that appellant had sustained a lumbar strain from a June 5, 1997 incident and had aggravated his preexisting degenerative disc disease in the December 23, 1998 incident. As there existed a conflict between appellant's treating physician, Dr. Stadelmaier, who found appellant's aggravation permanent and the physician giving the second opinion for the Office, Dr. Hutson, who opined that the aggravation of appellant's underlying condition was temporary and the necessity for permanent restrictions were due to appellant's preexisting, nonwork-related underlying condition of spinal stenosis and degenerative disc disease, the Office referred appellant to Dr. Lasich for the purpose of resolving the conflict. When a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.³

² *Eddie Franklin*, 51 ECAB ____ (Docket No. 98-1240, issued December 14, 1999); *Craig M. Crenshaw, Jr.*, 40 ECAB 910, 922 (1989); *Edwin L. Lester*, 34 ECAB 1807 (1983).

³ *Charles E. Burke*, 47 ECAB 185, 191 (1995).

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Lasich. After reviewing appellant's complaints, reviewing his medical history including the 1997 work-related injury and medical testing, and conducting a physical examination, Dr. Lasich opined that appellant was in the developmental stage of Scheuermann's disease as well as early degenerative changes and spinal stenosis. More importantly, in a supplemental report of June 21, 1999, Dr. Lasich provided the results of a current EMG study and, in conjunction with his examination findings, opined that appellant's aggravation of his degenerative disc disease had resolved and that there was no residual as far as nerve root irritation was concerned. Permanent work restrictions were recommended on the basis of appellant's degenerative changes with mild stenosis. The Office correctly found that the weight of the medical evidence rested with the independent medical opinion of Dr. Lasich as it was sufficiently probative, rationalized and based upon a proper factual background. Therefore, the Office acted correctly in according the opinion of Dr. Lasich the special weight of an impartial medical examiner.⁴

Additionally, the Office properly found that appellant had not met his burden of proof in showing that the June 5, 1997 injury either directly caused the arthritic spinal changes or permanently aggravated his preexisting degenerative condition. Appellant alleged that his back problem arose from the initial work injury of June 5, 1997; however, the mere fact that a condition was asymptomatic before an injury and symptomatic after it, is not sufficient, absent supporting rationale, to establish a causal relationship between the two.⁵ In support of his allegation that his current back condition is due directly to the June 5, 1997 injury, appellant submitted a July 28, 1999 report from Dr. Vlahovich which disputed any preexisting condition and opined that the accident of June 5, 1997 was directly responsible for the back injury and any resultant, long-term complications. However, review of the medical evidence contemporaneous to the June 5, 1997 injury reveals that appellant's treating physician, Dr. William V. Wolf, a general practitioner, diagnosed a low back sprain and indicated that there were no permanent effects and that the condition should normalize. Dr. Wolf additionally noted that appellant had a preexisting condition of arthritis of the lumbar spine and a June 30, 1997 x-ray of the lumbar spine confirmed that appellant had mild degenerative disc disease at L1-2 and L2-3 with bilateral facet arthritis at L5-S1. This contradicts Dr. Vlahovich's claim that appellant did not have any preexisting conditions pertaining to his back. Moreover, Dr. Stadelmaier's January 5, 1999 report specifically noted that, although appellant's initial back symptomatology began in June 1997, he had noted resolution of his symptomatology after undergoing physical therapy for a period of one month. She reported that appellant reexperienced back symptomatology in July 1998 while working at home on his car. This was prior to the work-related incident of December 21, 1998. This is consistent with Dr. Lasich's report which notes that appellant's "initial problem of back morbidity arose in June 1997 ... he was treated at that time for an acute injury and apparently underwent physical therapy. He was off work for a period of time and he gradually resolved his problem." Dr. Lasich further notes that, although appellant still had some mild to moderate occurrences of low back discomfort while working for the employing

⁴ Gary R. Seiber, 46 ECAB 215 (1994).

⁵ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (finding that the fact that appellant was asymptomatic before an injury but symptomatic afterward is insufficient to establish, absent supporting rationale, a causal relationship); see also *Kimper Lee*, 45 ECAB 565, 574 (1994) (finding that a physician's rationale that appellant's condition was related to a previous lifting injury because appellant reported no similar problem prior to that accepted injury was insufficient to establish a causal relationship).

establishment, no medical attention was required until the incident of December 21, 1998. Inasmuch as Drs. Wolf, Stadelmaier and Lasich medical reports specifically state that appellant had resolution of his initial back symptomatology of 1997 and provide objective findings of preexisting underlying back conditions, Dr. Vlahovich's July 28, 1999 report has little probative value in establishing that the June 5, 1997 work incident is responsible for appellant's resultant, long-term complications and underlying, preexisting back conditions.

The weight of the medical evidence concludes that the symptomatology and objective findings in the present case are due to appellant's underlying degenerative disc disease and spinal stenosis and that all residuals from both work injuries had resolved. As Dr. Lasich's opinion is based upon an accurate factual background and his opinion that appellant had recovered from the work-related injuries is supported by substantial evidence, it is entitled to special weight. The Office met its burden in terminating compensation benefits on August 30, 1999.

Subsequent to the Office's August 30, 1999 termination decision, the burden of proof in this case shifted to appellant, who thereafter submitted both nonmedical and medical evidence before the Office hearing representative and in his October 23, 2000 reconsideration request. The Board notes that the issue is whether appellant has any ongoing residuals of either his back strain from 1997 or the December 21, 1998 incident, which the Office accepted as a temporary aggravation. Accordingly, appellant's arguments are of no probative value as it fails to offer any new medical evidence or opinion on how appellant's current conditions are causally related to either of his accepted work injuries.

Of the medical evidence submitted, the Board finds that it is not sufficient to outweigh or create a new conflict with Dr. Lasich, the impartial medical specialist in this case. Although the September 20, 1999 report from Dr. Stadelmaier stated that appellant's permanent restrictions were due to both the residuals of the prior traumatic injuries and the repetitive activity of appellant's job, she failed to provide any medical rationale for this opinion. Moreover, the Board notes that, as Dr. Stadelmaier is appellant's attending physician and was on one side of the medical conflict which was resolved by Dr. Lasich, this report may not be used to overcome the probative value of the referee physician's opinion.⁶

In his October 3, 2000 medical report, Dr. Jardine advised that the accepted condition should have been the clinical diagnoses of a lumbar strain or herniated nucleus pulposus with left sciatica rather than aggravation of disc disease as the diagnosis of degenerative lumbar disc disease or degenerative disc disease did not represent a clinical diagnosis. The Board notes, however, that Dr. Hutson, the physician for the Office, diagnosed a temporary aggravation of the lumbar strain which had subsequently healed. He additionally diagnosed degenerative lumbar disc disease with some sciatic nerve irritation on the left side. As Dr. Lasich had an accurate statement of accepted facts and access to appellant's entire medical file, Dr. Jardine's opinion regarding the diagnoses of what the accepted condition should have been is of diminished probative value and is insufficient to outweigh or create a new conflict with Dr. Lasich, who opined that appellant's aggravation of his degenerative disc disease had resolved and there was no residual as far as nerve root irritation was concerned. Dr. Jardine further noted that appellant's entire work history was not taken into consideration. The Board notes, however, that

⁶ *Virginia Davis-Banks*, 44 ECAB 389, 392 (1993).

appellant's claim was based on two traumatic injuries rather than an occupational disease. The Board further notes that the medical opinion evidence on file fails to indicate that appellant suffers from either continued disability or residuals from either of the accepted conditions. Accordingly, Dr. Jardine's report fails to provide any substantial new evidence to establish that Dr. Lasich's report was based on erroneous information and is insufficient to create a new conflict with or to outweigh Dr. Lasich's well-rationalized opinion that appellant's work-related aggravation had ceased and that the permanent restrictions are due to preexisting underlying conditions.

The decision of the Office of Workers' Compensation Programs dated February 2, 2001 is hereby affirmed.

Dated, Washington, DC
September 3, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member