

**United States Department of Labor
Employees' Compensation Appeals Board**

GEORGE A. HILL, Appellant

and

**DEPARTMENT OF THE NAVY, Vallejo, CA,
Employer**

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**Docket No. 03-2243
Issued: February 10, 2004**

Appearances:
Hank Royal, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On September 16, 2003 appellant, through his representative, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated September 19, 2002. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation and authorization for medical benefits effective January 23, 2002 on the grounds that he had no further disability or condition causally related to his August 9, 1988 employment injury.

FACTUAL HISTORY

On August 9, 1988 appellant, then a 51-year-old equipment cleaner, filed a claim for an injury occurring on that date in the performance of duty. The Office accepted appellant's claim for low back strain, a contusion and sprain of the left wrist and

aggravation of degenerative disc disease. Appellant stopped work on August 12, 1988 and returned to work in a limited-duty position on March 20, 1990. On September 28, 1990 the employing establishment terminated appellant due to a reduction-in-force. The Office placed appellant on the periodic rolls effective September 29, 1990.

On June 10, 1998 the Office initiated vocational rehabilitation services for appellant. On July 7, 1998 the Office referred appellant to Dr. John Sazy, an orthopedic surgeon, for a second opinion evaluation. In a report dated July 29, 1998, Dr. Sazy opined that appellant had degenerative disc disease and should remain off work pending a magnetic resonance imaging (MRI) study. In a work capacity evaluation dated October 10, 1998, Dr. Sazy found that appellant could begin working four hours per day, increasing to eight hours per day with restrictions.¹

In a report dated March 19, 1999, Dr. Deepak Chavada, an orthopedic surgeon and appellant's attending physician, found that he could work as a cashier. In a report dated January 4, 2000, Dr. Susan K. Linder, a Board-certified physiatrist to whom Dr. Chavada had referred appellant, diagnosed chronic low back pain syndrome and found that he should remain off work. She recommended a psychological evaluation. In an office visit note dated January 10, 2000, Dr. Chavada found that appellant should remain off work pending further evaluation.

On May 2, 2000 the Office referred appellant to Dr. Roger S. Blair, a Board-certified neurologist, for an impartial medical examination after finding a conflict in opinion between Drs. Chavada and Sazy regarding the nature and extent of appellant's disability. In a report dated May 15, 2000, Dr. Blair diagnosed low back pain, lumbar dysfunction and depression "probably partly work related." Dr. Blair found no evidence of any further wrist strain or contusion and opined that appellant had "no objective evidence of any of the accepted conditions that are currently active...." He concluded that appellant could return to the job that he was in at the time the employing establishment terminated his employment initially for four hours per day and then possibly increasing from six to eight hours per day.²

On September 6, 2000 the Office notified appellant that it proposed to terminate his compensation benefits on the grounds that he had no further employment-related disability.³ The Office finalized its termination of appellant's benefits in a decision dated October 10, 2000. Appellant requested a hearing on November 6, 2000. In a decision dated July 30, 2001, the hearing representative set aside the Office's October 10, 2000 decision. The hearing representative noted that appellant's physicians, Drs. Chavada and

¹ An MRI scan dated August 7, 1998 showed mild facet degenerative changes at L4-5 and L5-S1.

² Dr. Blair found that appellant remained disabled, in part, from residuals of his employment injury.

³ The Office further developed the issue of whether appellant sustained a psychiatric impairment due to his employment injury. In a report dated July 18, 2000, Dr. Cherye Callegan, a Board-certified psychiatrist, found that appellant had no psychiatric diagnosis and no work restrictions from a psychological standpoint. She further opined, in an addendum dated August 10, 2000, that appellant could work as a cashier.

Linder, and Dr. Sazy, the Office referral physician, found that appellant remained partially disabled due to his employment injury. He found that Dr. Blair opined that appellant had no further employment-related disability and therefore the record contained an unresolved conflict in medical opinion between Dr. Chavada and Dr. Blair. The hearing representative remanded the case for resolution of the conflict in opinion.

On November 16, 2001 the Office referred appellant to Dr. Richard S. Levy, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated November 30, 2001, Dr. Levy discussed appellant's medical history, reviewed the medical evidence of record and listed findings on physical examination. Regarding appellant's left wrist strain, contusion and lower back strain, Dr. Levy opined:

“There is no medical evidence that any of these conditions are currently active, through his lower back strain and the aggravation of [h]is lumbar dis[c] disease still cause[] partial impairment. This condition alone does not prevent him from returning to his date-of-injury job or other type of employment. He has multiple other medical problems that contribute to his overall disability. I believe that his lumbar strain injury is a relatively mild injury and is not the most important factor that has prevented him from returning to gainful employment.”

Dr. Levy further found that the employment-related aggravation of appellant's degenerative disc disease had ceased and his current disability was not due to residuals of his employment injury. He stated:

“It is my impression that his nonwork cardiac problems, the natural progression of his degenerative disc disease, his deconditioning, depression, and psychological problems all mainly contribute to his inability to return to his date-of-injury employment. I believe that he has only mild residuals due to his lumbar spine injury. The injury alone clearly does not prevent him from returning to his date-of-injury job. It is my opinion that he is unable to return to his date-of-injury job, mainly because of his other health-related conditions and only minimally because of residuals from his lumbar strain.”

Dr. Levy further found that appellant could perform work 20 to 25 hours per week as a cashier or, considering only his back condition, 40 hours a week at a more strenuous job. In an accompanying work restriction evaluation, Dr. Levy found that appellant was restricted from full-time employment due to his “general medical health.” He opined that appellant could work four to six hours per day with restrictions.

On December 20, 2001 the Office notified appellant that it proposed to terminate his compensation on the grounds that he had no further disability due to his accepted employment injury. By letter dated January 22, 2002, appellant contested the termination of his benefits and submitted additional medical evidence. In a decision dated

January 23, 2002, the Office terminated appellant's compensation and authorization for medical benefits effective that date.

Appellant requested a hearing before an Office hearing representative in a letter dated January 28, 2002. Following a hearing, held on June 26, 2002, the hearing representative issued a September 19, 2002 decision affirming the Office's January 23, 2002 decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

ANALYSIS

Where there exists a conflict in medical opinion 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, is entitled to special weight.⁸ The Board finds, however, that Dr. Levy's report is insufficient to show that appellant had no further employment-related condition or disability effective January 23, 2002. In his November 30, 2001 report, Dr. Levy opined that there was no evidence that the accepted conditions of left wrist strain, contusion and lower back strain were "currently active." He also found, however, that appellant's lower back strain and aggravation of degenerative disc disease "still causes partial impairment." Dr. Levy opined that appellant's disability from employment was primarily due to medical problems unrelated to his employment injury and that his current disability was not due to residuals of his employment injury. He concluded that appellant was unable to resume his usual employment "mainly because of his other health-related conditions and only minimally because of residuals from his lumbar strain." Dr. Levy's report is internally inconsistent as he appears to find that appellant has no active residuals of his accepted employment injury but also finds that he has a continued impairment due to his

⁴ *David W. Green*, 43 ECAB 883 (1992).

⁵ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *Id.*

⁸ *Leanne E. Maynard*, 43 ECAB 482 (1992).

lower back strain and aggravation of his degenerative disc disease. Dr. Levy provided no explanation for the apparent discrepancy or rationale in support of his conclusions. As Dr. Levy's opinion is equivocal in nature and unsupported by medical rationale, it is of diminished probative value.⁹ Additionally, Dr. Levy's finding that residuals of appellant's lumbar strain caused minimal disability from employment is insufficient to negate causal relationship. Where the medical evidence reveals that factors of employment contributed in any way to the disabling condition, such condition is considered employment related for the purposes of compensation under the Federal Employees' Compensation Act.¹⁰ Thus, Dr. Levy's opinion is insufficient to meet the Office's burden of proof to establish that appellant had no employment-related condition or disability after January 23, 2003.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation and authorization for medical benefits effective January 23, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 19, 2002 is reversed.

Issued: February 10, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ *Betty M. Regan*, 49 ECAB 496 (1998).

¹⁰ *Jack L. St. Charles*, 42 ECAB 809 (1991).