

¹ Docket No. 99-206 (issued October 24, 2000). On March 30, 1989 appellant, then a 42-year-old support service specialist, sustained an aggravation of degenerative arthritis of the left hip in the performance of duty when he jumped from the back of a truck.

medical benefits effective December 8, 1996.² The Board found that the opinion of the impartial medical specialist was not entitled to special weight and, therefore, the Office did not meet its burden of proof in terminating appellant's benefits. The Board's October 24, 2000 decision is incorporated herein by reference.

On May 7, 2002 the Office referred appellant, together with a statement of accepted facts, a list of questions and the case record, to Dr. Peter D. Wirtz, a Board-certified orthopedic surgeon, for an examination and evaluation in order to resolve the conflict in the medical opinion evidence between Dr. Martin S. Rosenfeld, appellant's physician, and Dr. John H. Kelley, an Office referral physician,³ as to whether appellant had any remaining disability or medical condition causally related to his 1989 employment injury.⁴

In a report dated June 19, 2002, Dr. Wirtz provided a history of appellant's condition and physical findings on examination and diagnosed bilateral degenerative joint disease of the hips. He stated that appellant walked with a crutch. Dr. Wirtz provided range of motion measurements of the hips which indicated restricted range of motion. He stated:

"The objective findings on this examination include the restricted range of motion of both hips and the [April 6, 1989] x-ray confirming the condition of degenerative arthritis of the hips.

"The subjective complaints relate to stiffness of the hips, limits in weight lifting, pain posteriorly right and left hips....

"Current diagnostic evidence relates to a natural progressive condition of the hip joint degenerative arthritis.... This condition is a developmental condition from hereditary causes and any one single incident of trauma is not the cause of the condition. The injury that occurred in 1989 did not materially aggravate, nor did it accelerate this degenerative condition. [Appellant's] present condition would be present without the injury that was so described as jumping off [a] truck in 1989.... The x-ray obtained [on April 6, 1989] does not reveal a condition as an alteration of this condition based on the trauma from jumping.

"Present examination and diagnostics do not reveal an objective orthopedic condition that is a residual of the [1989] injury. The present objective findings of restricted range of motion, continued degeneration in the hip joint is consistent with the natural progressive condition of this hip disease which is unrelated to any

² Upon return of the case record, the Office paid appellant retroactive compensation for the period December 8, 1996 to February 23, 2002 and he was then placed on the periodic compensation rolls.

³ Dr. Rosenfeld opined that appellant had continuing problems with his degenerative arthritis of the left hip. Dr. Kelley found that appellant's temporary aggravation of his degenerative arthritis of the left hip had resolved and his continuing problems were due to the natural progression of his arthritis.

⁴ The Office had referred appellant to Dr. Mark Palit for an independent medical examination; however, the Office found that his report was not thorough and well rationalized or based on an accurate factual background and, therefore, his report could not be used to resolve the conflict in the medical evidence.

one single incident of trauma that did not materially aggravate, accelerate, nor show evidence of objective changes on original x-ray.

“The injury that occurred [in 1989,] would have been a temporary aggravation of a preexisting degenerative hip condition. The specific date of the aggravation improving is unknown, but likely was within 6 [to] 12 weeks of the original injury.

“Any future surgical intervention to the hip conditions of degenerative arthritis is a result of the natural progression of the degenerative joint disease.”

By letter dated March 12, 2004, the Office advised appellant that it proposed to terminate his compensation and medical benefits on the grounds that the weight of the medical evidence as represented by the opinion of Dr. Wirtz, established that he had no residual disability or medical condition causally related to his 1989 employment injury.

In letters dated March 30 and April 1, 2004, appellant stated his objections to the proposed termination of benefits. He argued that the medical evidence of record from several physicians established a continuing aggravation of his degenerative left hip arthritis.

By decision dated April 26, 2004, the Office terminated appellant’s compensation and medical benefits effective May 15, 2005, on the grounds that the weight of the medical evidence as represented by the opinion of Dr. Wirtz, established that he had no remaining disability or medical condition causally related to his 1989 employment-related aggravation of degenerative arthritis of the left hip. The Office also denied appellant’s request for authorization for surgery.⁵

In an August 4, 2004 letter, appellant’s attorney argued that the medical evidence established that he had continuing work-related disability. He submitted additional medical evidence.

In a report dated August 4, 2004, Dr. Robert C. Jones, a Board-certified neurosurgeon, provided a history of appellant’s condition and physical findings on examination. He diagnosed severe bilateral hip disease and stated his opinion that appellant had a permanent aggravation of degenerative changes in both hips causally related to the 1989 employment injury. Dr. Jones stated:

“Some of the orthopedic surgeons who saw [appellant] felt that he had a permanent aggravation and others thought he had a temporary aggravation; however, 15 years after the episode he still was having progressively worsening pain, which did not come about until the [1989] episode and has continued ever since, is *prima facie* evidence of permanent aggravation.”

On August 12, 2004 appellant requested an oral hearing that was held on December 9, 2004. He testified that he had experienced hip pain since the 1989 employment injury. Appellant testified that Dr. Wirtz did not physically examine him and merely talked to

⁵ Appellant had requested authorization for a total hip replacement.

him and asked why he had not yet undergone hip replacement surgery. He testified that Dr. Wirtz spent approximately 10 minutes talking with him and then stated, “Well, there [is] your file over there. I [have] to go through that.”

By decision dated March 4, 2005, the Office hearing representative affirmed the April 26, 2004 decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁶ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.⁷ The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁹

Section 8123(a) of the Federal Employees’ Compensation Act provides that 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.¹⁰ Where 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.¹¹

ANALYSIS

The Office accepted that appellant sustained an aggravation of degenerative arthritis of the left hip on March 30, 1989 in the performance of duty. Effective May 15, 2004 the Office terminated his compensation and medical benefits on the grounds that the accepted condition had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.¹²

⁶ *Barry Neutuch*, 54 ECAB ____ (Docket No. 01-1532, issued January 6, 2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

⁷ *Id.*

⁸ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁹ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

¹⁰ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

¹¹ *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

¹² *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹³

Medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of little probative value.¹⁴ The opinion of Dr. Wirtz, that appellant had no continuing disability or medical condition causally related to his accepted aggravation of degenerative arthritis of the left hip was not based on a complete and accurate factual and medical background. He stated that appellant was discharged from the employing establishment in March 1989 and did not work again until May 2000. However, the statement of accepted facts in this case indicates that he did not retire until December 9, 1996, when he was granted disability retirement.

The Board further finds that the opinion of Dr. Wirtz, that appellant sustained only a temporary aggravation of his degenerative arthritis, is not well rationalized. He opined that appellant's 1989 injury did not materially aggravate or accelerate his degenerative condition and that his continuing problems would have been present without the 1989 injury. However, Dr. Wirtz did not provide sufficient medical rationale to explain why appellant's continuing left hip problems were due only to the preexisting degenerative arthritis rather than to the 1989 employment injury. He did not sufficiently explain why the 1989 employment injury, when appellant jumped from a truck and injured his left hip, could not have affected the progression of his preexisting degenerative arthritis.

Due to these deficiencies, the impartial medical examination and evaluation by Dr. Wirtz did not resolve the conflict in the medical opinion in this case and, therefore, the Office did not meet its burden of proof to terminate appellant's compensation and medical benefits.

CONCLUSION

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation and medical benefits effective May 15, 2004.

¹³ *Anna M. Delaney*, 53 ECAB 384 (2002).

¹⁴ *Douglas M. McQuaid*, 52 ECAB 382 (2001); *Patricia M. Mitchell*, 48 ECAB 371 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation dated March 4, 2005 and April 26, 2004 are reversed.

Issued: July 26, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board