U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE D. PRYOR and DEPARTMENT OF THE NAVY, MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

Docket No. 96-462; Submitted on the Record;
Issued April 13, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective August 19, 1995, on the grounds that he had no condition or disability due to his October 16, 1992 injury after this date.

On October 16, 1992 appellant, then a 43-year-old welder, alleged injury to his right wrist, elbow and knee when he fell off a walkway. Appellant stopped work October 16 and returned to work October 19, 1992. Appellant stopped work again on November 16, 1992. On January 19, 1993, the Office accepted appellant's claim for low back strain and right ankle strain. By letter dated April 13, 1995, the Office notified appellant that it proposed termination of his compensation benefits on the grounds that the medical evidence disclosed no residuals of his accepted employment injury. Appellant objected to the proposed termination and submitted medical evidence in support of his position. The Office declared a conflict in the medical evidence and referred appellant for an impartial medical examination. By decision dated August 10, 1995, the Office terminated appellant's compensation effective August 19, 1995 on the grounds that there was no continuing disability or condition causally related to appellant's October 16, 1992 employment injury.

The Board has carefully reviewed the entire case record in the present appeal and finds that the Office properly terminated appellant's compensation effective August 19, 1995.

Under the Federal Employees' Compensation Act,[1] once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.[2] After the Office determines than an employee has a disability causally related to his employment, the Office may not terminate compensation without establishing that its original

[1] 5 U.S.C. § 8101 *et seq.* (1974).

[2] *William Kandel*, 43 ECAB 1011 (1992).

determination was erroneous or that the disability has ceased or is no longer related to the employment injury.[3]

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.[4] Therefore, the Office must establish that appellant no longer had residuals of his employment-related condition after August 19, 1995, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

In the present case, the Office properly determined that there was a conflict in the medical opinion evidence between Dr. David Wren, an orthopedist and appellant's treating physician, and Dr. Howard Sturtz, a Board-certified orthopedic surgeon and an Office second opinion physician. Dr. Wren indicated that appellant remained totally disabled by residuals of his employment injury as demonstrated by a February 1995 magnetic resonance imaging (MRI) scan which revealed some small disc herniation and an annular fissure tear at L5. On the other hand, Dr. Sturtz found that appellant had no positive objective findings and concluded that appellant could return to work without limitations. In order to resolve the conflict, the Office referred appellant to Dr. John W. Batcheller, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on the matter.[6]

In situations where there exists 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 has carefully reviewed the opinion of Dr. Batcheller and finds that it has sufficient probative value, regarding the relevant issue in the present case, to be accorded such special weight.

In a report dated June 12, 1995, Dr. Batcheller diagnosed resolved right ankle, wrist and elbow sprains, lumbar strain and cervical pain of unclear etiology. He found that appellant's low back strain was work related but functionally should have resolved after four to six weeks. Dr. Batcheller found that this strain symptomatically should have resolved in four to six months. He believed that appellant's complaints were exaggerated since the history of appellant returning

[3] *Carl D. Johnson,* 46 ECAB 804 (1995).

[4] *Dawn Sweazey*, 44 ECAB 824 (1993).

[5] *Mary Lou Barragy,* 46 ECAB 781 (1995).

[6] Section 8123(a) of the Act provides: "An employee shall submit to examination by a medical officer of the Unites States, or by physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonable required…. 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 (1990); *James P. Roberts,* 31 ECAB 1010 (1980).

to work after three days and working a month before leaving work again indicated that he sustained a relatively minor strain. Dr. Batcheller reported that the diagnosed conditions were essentially resolved as there were no objective findings to substantiate appellant's complaints. He felt appellant's low back pain and the degenerative disc disease revealed by the MRI scan predated appellant's employment injury and was not precipitated, aggravated or accelerated by that injury. Dr. Batcheller added that appellant's degenerative disc disease occurred naturally as part of the aging process. He concluded that from a physical standpoint appellant was capable of returning to his usual and customary employment as a welder.[8] As Dr. Batcheller's report is rationalized and based upon a proper factual background, his report represents the weight of the medical evidence and establishes that appellant had no continuing disability causally related to his October 16, 1992 employment injury. The Office has met its burden of proof in terminating appellant's compensation effective August 19, 1995.

The decision of the Office of Workers' Compensation Programs dated August 16, 1995 is hereby affirmed.

Dated, Washington, D.C.
April 13, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] Dr. Batcheller recommended that appellant be examined by a psychiatrist in light of his psychological problems. The Office referred appellant to Dr. Herbert Perliss, a psychiatrist. He confirmed that appellant had recurrent depressive syndrome that was unrelated to his employment injury.