

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANTHONY L. SUMMERS and U.S. POSTAL SERVICE,  
POST OFFICE, Orlando, Fla.

*Docket No. 95-2107; Submitted on the Record;  
Issued February 24, 1998*

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DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant's employment-related disability causally related to a January 1, 1987 and/or July 3, 1991 work injury ceased by February 26, 1992; and (2) whether the Office properly determined that appellant has no residuals from his accepted injury and thus is not entitled to medical benefits.

This is the second appeal in this case.<sup>1</sup> In its decision dated September 7, 1993, the Board found that there existed an unresolved conflict in the medical evidence between appellant's physician, Dr. Edward Farrar, a Board-certified orthopedic surgeon and Dr. John F. Schaeffer, a Board-certified orthopedic surgeon and Office second opinion physician, regarding whether appellant has any residuals on and after February 26, 1992 causally related to his January 1, 1987 and/or July 3, 1991 work injuries and the case was remanded for further development. The facts of this case are more fully set forth in the prior decision of the Board and are incorporated herein by reference.

After return of the case record, appellant was referred, along with a statement of accepted facts and copies of medical evidence, to Dr. James F. Richards, a Board-certified orthopedic surgeon, for an impartial medical examination. The examination and medical evaluation were actually performed, however, by Dr. Matthew D. Imfeld, a Board-certified physiatrist and

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<sup>1</sup> See Docket No. 92-2154 (issued September 7, 1993). Briefly, in this case the Office accepted appellant's claims for back strain on January 1, 1987 and July 3, 1991. Appellant received compensation and medical benefits for both injuries. After his July 3, 1991 work injury, appellant returned to limited-duty work on July 29, 1991 and subsequently missed intermittent periods of work. In a March 17, 1992 decision, the Office found that appellant's January 1, 1987 and/or July 3, 1991 work injuries had resolved without residuals no later than February 26, 1992 and terminated appellant's compensation benefits. The Office based its decision on the February 26, 1992 report of Dr. John F. Schaeffer, a Board-certified orthopedic surgeon and Office second opinion physician. Dr. Schaeffer stated that he saw no evidence of any impairment or disability related to appellant's January 1, 1987 or July 3, 1991 work injuries and that appellant did not have any significant problem with his back.

associate of Dr. Richards. In his report dated November 1, 1993, Dr. Imfeld opined that appellant had reached maximum medical improvement, that he did not see any reason to restrict appellant from job activities and that continued medical treatment was unwarranted.

In a decision dated November 12, 1993, the Office denied appellant's claim for continuing compensation and medical benefits on the grounds that the weight of the medical evidence, represented by the opinion of Dr. Imfeld, the impartial medical specialist, established that appellant's employment-related injuries had resolved without residuals no later than November 1, 1993, the date of Dr. Imfeld's report.

On December 1, 1993 appellant, through counsel, requested an oral hearing before an Office representative. Appellant appeared at the hearing, held on August 24, 1994 and testified on his own behalf. In addition, appellant's counsel specifically noted that although appellant's independent medical examination had been scheduled with Dr. James Richards, appellant had actually been evaluated by Dr. Imfeld, who is not an orthopedist but is a Board-certified physiatrist.

In a decision dated November 28, 1994, the Office hearing representative found that the Office did not meet its burden of proof to terminate benefits, as it did not follow its established procedure to resolve the conflict in medical opinion. The hearing representative explained that the Office's procedures provide that a rotation system be followed in selecting qualified Board-certified specialists in the appropriate geographical area and that in this case, while it did not appear that the Office had improperly selected Dr. Richards to examine appellant, it was clear from the record that Dr. Imfeld, not Dr. Richards, had actually performed the examination and prepared the report. The hearing representative remanded the case to the Office for selection of an impartial medical specialist, in accordance with its procedures, for any further development the case might require and for the issuance of a *de novo* decision.

On January 12, 1995 the Office referred appellant to Dr. Stephen R. Goll, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the conflict in medical opinion. In his report dated February 3, 1995, Dr. Goll stated that he had examined appellant and taken his history and had reviewed the statement of accepted facts and medical evidence provided by the Office, including prior x-rays and computerized tomography scans. In the portion of his report reserved for his impressions, Dr. Goll listed them as lumbar strain, chronic and degenerative disc disease, lumbosacral spine. Regarding whether appellant had any residuals on or after February 26, 1992, causally related to appellant's 1987 or 1991 work injuries, the physician stated:

“(1) ... the answer to this is that the patient continued to have subjective pain but no objective findings consistent with a radiculopathy or any pathology that requires surgical intervention.”

The physician further stated:

(2) I believe that this patient would benefit from active physical therapy, including strengthening, stretching and range of motion of his back. Due to the chronic nature of the injury I do not feel that his treatments in traction provide any significant benefit. In fact, extended bed rest is contraindicated in situations such as this.

(3) *I believe this patient had reached [maximum medical improvement] as of [February 3, 1995] with 3.5 percent [permanent partial impairment] according to the Minnesota impairment guidelines.*

(4) He will require periodic evaluation, perhaps two times a year for renewal of his medications, which may include Darvocet and occasional muscle relaxants.

(5) Regarding his work status, *I believe this patient may return to his current employment with light-duty restrictions of no lifting greater than [five] pounds, no repetitive bending.*” (Emphasis in the original.)

In a decision dated February 23, 1995, the Office denied appellant’s claim for continuing compensation and medical benefits on or after February 4, 1995 on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Goll, the impartial medical specialist, established that appellant’s employment-related injuries had resolved without residuals on or after February 4, 1995, the day following Dr. Goll’s report. The Office specifically found that although “Dr. Goll referred to “current employment with some restriction,” Dr. Goll found no objective findings to support the need for restrictions due to a permanent partial impairment. Any restrictions listed in the report as, “Impression,” are based on subjective complaints and not objective findings.”

The Board finds that the Office met its burden of proof in establishing that appellant’s disability causally related to his January 1, 1987 or July 3, 1991 employment injury ceased by February 4, 1995.

It is well established that once the Office accepts 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 or her employment, the Office may not terminate compensation without first establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> In this case, the Office accepted appellant’s claim for back strain and paid appropriate compensation. The Office, therefore, has the burden to establish that appellant was not disabled after February 4, 1995 due to the accepted employment injury or due to any factors of employment. The Office has met that burden here.

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<sup>2</sup> *Edwin L. Lester, 34 ECAB 1807 (1983).*

As used in the Federal Employees' Compensation Act,<sup>3</sup> the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>4</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>5</sup> An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.<sup>6</sup> When, on the other hand, the medical evidence establishes that the residuals of an employment injury are such that from a medical standpoint they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>7</sup>

When there are opposing medical reports of virtually equal weight, the case must be referred to an impartial medical specialist to resolve the conflict in the medical opinion.<sup>8</sup> The opinion of the impartial medical specialist, if based on a proper factual background and sufficiently well rationalized, must be given special weight.<sup>9</sup>

In this case, there existed a conflict in medical opinion between Dr. Farrar, appellant's attending physician, who opined that appellant is unable to work due to residuals causally related to his accepted employment injuries and Dr. Schaeffer, the Office referral physician who found no evidence of any impairment or disability. In order to resolve this conflict, the Office referred appellant, a statement of accepted facts, medical records and a list of specific questions to Dr. Goll, a Board-certified orthopedic surgeon, for an impartial medical evaluation pursuant to section 8123(a) of the Act. In a report dated February 3, 1995, Dr. Goll stated that appellant could return to his current employment with light-duty restrictions of lifting no more than five pounds and no repetitive bending. The Board finds that Dr. Goll's opinion is based on a complete and accurate factual background and is sufficiently well rationalized to be accorded

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

<sup>5</sup> See *Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages and not upon physical impairment, as such).

<sup>6</sup> See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or causes any incapacity to earn the wages he was receiving at the time of injury).

<sup>7</sup> *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

<sup>8</sup> Section 8123(a) of the Federal Employees' Compensation Act provides that "[i]f 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." See 5 U.S.C. § 8123(a); *Melvinia Jackson*, 38 ECAB 443 (1987).

<sup>9</sup> *Jane B. Roonhaus*, 42 ECAB 288 (1990).

special weight. Dr. Goll's opinion thus constitutes the weight of the medical evidence and establishes that appellant is no longer disabled due to his accepted employment injuries.

The right to medical benefits for an accepted condition, however, is not limited to the period of entitlement to compensation for wage loss.<sup>10</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>11</sup>

The Office found that the weight of the medical evidence rests with Dr. Goll, as the impartial medical specialist. Based on Dr. Goll's February 3, 1995 report, the Office found that appellant's accepted condition had resolved as of that date and that appellant required no further medical treatment. Consequently, the Office denied appellant continuing medical benefits. The Board finds, however, that Dr. Goll did not state that appellant's condition had completely resolved, but rather recommended that the patient receive active physical therapy and bi-annual medical evaluations for renewal of his medications. The Board will therefore affirm the Office's November 4, 1994 decision on the issue of compensation for wage loss, but set aside on the issue of continuing medical benefits.

The February 23, 1995 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part and the November 28, 1994 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
February 24, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>10</sup> *Marlene G. Owens*, 39 ECAB 1320 (1988).

<sup>11</sup> *Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).