U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of MICHAEL M. HARRIS and DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Albuquerque, N.M.

*Docket No. 95-2807; Submitted on the Record;*
*Issued February 3, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective August 20, 1995 on the grounds that he had no disability due to his March 9, 1989 employment injury after that date.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly terminated appellant's compensation effective August 20, 1995 on the grounds that he had no disability due to his March 9, 1989 employment injury after that date.

Under the Federal Employees' Compensation Act,[1] once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[3] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

In the present case, the Office accepted that appellant sustained an employment-related L3 radiculopathy and herniated nucleus pulposus at L2-3 on March 9, 1989. Appellant stopped work on March 9, 1989, returned to work in a light-duty position until stopping work on January 9, 1994 and received compensation for periods of partial and total disability. The Office determined that there was a conflict in the medical evidence between Dr. Lloyd C. Jones, appellant's attending Board-certified internist and the government physician, Dr. Hyman P.

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[3] *Id.*

[4] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

Roosth, a Board-certified orthopedic surgeon acting as an Office referral physician, regarding whether appellant continued to have disability due to his March 9, 1989 employment injury.[5] The Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. David F. Dean, a Board-certified neurosurgeon, for an impartial medical examination and an opinion on the matter.[6] By decision dated July 27, 1995, the Office terminated appellant's compensation effective August 20, 1995 on the grounds that the weight of the medical evidence rested with the opinion of Dr. Dean.

In situations where there exist 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. Dean and notes that it is sufficiently well rationalized to constitute the weight of the medical evidence with respect to whether appellant continued to have employment-related disability after August 20, 1995. In reports dated September 27, 1994 and June 12, 1995, Dr. Dean determined that appellant no longer had residuals of his March 9, 1989 employment injury.

The Board notes that the opinion of Dr. Dean has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Dean's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Dean provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.[8] Dr. Dean provided medical rationale for his opinion by explaining that appellant did not exhibit any objective findings, upon examination and diagnostic testing, to show that he had residuals of his March 9, 1989 employment injury.[9] He explained the cause of appellant's continuing condition by indicating that it was due to the effects of aging and inactivity.[10]

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[5] In various reports, including reports dated June 1 and August 3, 1994, Dr. Jones determined that appellant continued to be totally disabled due to his March 9, 1989 employment injury. In a report dated July 18, 1994, Dr. Roosth determined that appellant's condition was not due to any anomaly at L2-3, but rather opined that he was partially disabled due to nonwork conditions including iatrogenic spine disease, gluteal strain and sacroiliac bursitis.

[6] Section 8123(a) of the Act provides in pertinent part: "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, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

[8] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

[9] He noted that appellant exhibited functional behavior and inconsistent results upon some testing during his physical examination and indicated that the results of diagnostic testing obtained in November 1993 showed no significant changes at L2-3 since 1989.

[10] Appellant submitted additional medical evidence, including June 4 and 10, 1995 reports of Dr. Jones, after the

The decision of the Office of Workers' Compensation Programs dated July 27, 1995 is affirmed.

Dated, Washington, D.C.
February 3, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Office proposed termination of his compensation. However, this evidence did not contain a clear opinion that appellant continued to have residuals of his March 9, 1989 employment injury; *see Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).