

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HAROLD SPEAKMAN and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 95-1908; Submitted on the Record;  
Issued January 8, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established that his medical condition on and after May 29, 1993 was causally related to the accepted January 23, 1992 cervical and lumbar sprains, pulpitis of tooth number 13, or other factors of his federal employment.

In this case, the Office of Workers' Compensation Programs accepted that on January 27, 1992 appellant, then a 54-year-old security police officer, sustained lumbosacral and cervical sprains and pulpitis of tooth 13 when his patrol vehicle ran over a defective steam cover plate, falling into a four-foot deep hole. Appellant returned to work on February 24, 1992 and sustained accepted recurrences of disability from March 3 to June 7, August 28 to September 15 and November 4 to 16, 1992. Appellant returned to light-duty work from November 17, 1992 to May 29, 1993 as a security clerk, a sedentary position involving clerical work, then stopped work and did not return.

On May 4, 1993 appellant claimed a recurrence of disability on or after May 29, 1993. He stated that he was unable to perform his light-duty position due to back pain radiating into the lower extremities, bilateral hand numbness, muscle spasms in his neck, headaches, shoulder pain and right knee pain.<sup>1</sup>

In an April 13, 1993 report, Dr. Carl Mogil, an attending Board-certified orthopedic surgeon, opined that appellant was incapacitated by "spinal and lower extremity problems" and could not "perform any gainful employment." Dr. Mogil opined that the January 23, 1992 incident aggravated appellant's quiescent right knee arthritis, caused a herniated lumbar disc and aggravated preexisting cervical arthritis and "caused a bulging disc."<sup>2</sup>

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<sup>1</sup> In a May 13, 1993 letter, the employing establishment controverted appellant's claim, noting that appellant had been performing light-duty work as a security clerk since November 23, 1992.

<sup>2</sup> The record indicates that Dr. Mogil performed a medical meniscectomy of the right knee on appellant in 1977.

In an October 11, 1993 report, Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon and second opinion physician, found a full range of cervical motion without spasm or tenderness, no lumbosacral spasm, a leg length discrepancy unrelated to the January 23, 1992 accident, and x-ray findings of spurring with narrowing at L5, T11, T12 and L1. Dr. Klinghoffer diagnosed lumbar degenerative disc disease causing “intermittent low back symptoms,” but could not find a physiologic basis for appellant’s pain “complaints involving all portions of both lower extremities ... [or] his head, neck and upper extremity symptoms,” noting that appellant had no right knee findings related to the January 23, 1992 incident. Dr. Klinghoffer concluded that appellant was partially disabled due to “factors that existed before” the January 23, 1992 incident.”

The Office found that there was a conflict of medical opinion between Dr. Mogil, for appellant and Dr. Klinghoffer, for the government. The Office then referred appellant, the medical record and a statement of accepted facts to Dr. Samuel F. Broudo, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve this conflict.<sup>3</sup>

In a March 2, 1994 report, Dr. Broudo provided a history of injury and treatment, reviewed the medical record and related appellant’s subjective complaints. On examination Dr. Broudo found a lumbar scoliosis causing a half-inch leg length discrepancy, full range of motion of the low back, neck and shoulders, negative straight raising tests bilaterally and status post 1977 right knee surgery. Dr. Broudo diagnosed “early degenerative spondylosis cervical spine at C5-6,” degenerative lumbar disc disease with spondylosis at L4-S1, and a “probable central disc herniation at L4-5 and L5-S1 by September 8, 1992 MRI (magnetic resonance imaging) scan,” bilateral L5 radiculopathy and possible carpal tunnel syndrome although Tinel’s signs were negative. Dr. Broudo opined that appellant’s “cervical strain secondary to the incident of January 23, 1992 is now over two years post injury and presently resolved.” Dr. Broudo noted that appellant’s degenerative lumbar spondylosis and lumbar disc disease “antedat[ed] the events of January 23, 1992” and were the “contributing factors” in appellant’s low back pain. Dr. Broudo concluded that appellant had “returned to his preinjury level.” In an attached work restriction evaluation, Dr. Broudo proscribed bending, squatting, climbing, kneeling and twisting, limited standing to 2 hours and sitting, walking and lifting to 3 hours per day, with a maximum lift of 10 pounds. He indicated that appellant had reached maximum medical improvement and could work six hours per day.

By notice dated March 31, 1994, the Office advised appellant that it proposed to terminate his continuing medical benefits on the grounds that any medical conditions related to the January 23, 1992 injury had resolved. The Office noted that the weight of the medical evidence rested with Dr. Broudo’s March 2, 1994 report explaining that any effects of the January 23, 1992 accident had resolved.

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In an October 12, 1993 report, Dr. Mogil reiterated that appellant’s right knee, cervical and lumbar spine problems were related to the January 23, 1992 motor vehicle accident and recommended further diagnostic testing. He submitted periodic form reports recommending right knee and lumbar surgery.

<sup>3</sup> In a letter received January 10, 1994 appellant’s attorney representative asserted that Dr. Mogil’s reports should represent the weight of the medical evidence, as he felt Dr. Klinghoffer’s opinion was poorly rationalized.

In response to the March 31, 1994 notice, appellant submitted a March 31, 1994 report from Dr. Mogil, stating that the January 23, 1992 accident aggravated appellant's right knee problem and might require corrective knee surgery and lumbar discectomy.<sup>4</sup>

By decision dated May 13, 1994, the Office denied appellant's claim for recurrence of disability on and after May 29, 1993 and terminated his entitlement to medical benefits. The Office found that the weight of the medical evidence, as represented by Dr. Broudo, established that his medical conditions resulting from the January 23, 1992 injury had resolved and that appellant had returned to his "preinjury level." The Office noted that in response to the Office's proposed termination of medical benefits dated March 31, 1994, appellant submitted Dr. Mogil's March 31, 1994 report, which did not address causal relationship and was therefore of "diminished probative value." The Office noted that Dr. Mogil's reports were insufficiently rationalized and "included diagnoses of conditions never accepted as ... resulting from [appellant's] January 23, 1992 injury."

Appellant disagreed with this decision, requested reconsideration and submitted additional medical evidence.

In an August 6, 1993 report, Dr. Frederic C. Steig, an attending Board-certified psychiatrist and family practitioner, provided a history of injury and treatment, noted that October 13, 1992 (EMG) electrodiagnostic studies showed "bilateral carpal tunnel syndrome and L5 radiculopathy bilaterally," diagnosed "chronic benign pain syndrome," and recommended further evaluation and treatment.

In a September 7, 1994 report, Dr. Mogil stated that appellant's "chronic neck and back pain is related to injuries that he sustained in a work incident of January 23, 1992. [Appellant's] chronic and unremitting pain problems are permanent and are associated with progressive deterioration in all physical, vocational and psychological functioning."

In an October 10, 1994 report, Dr. Mogil opined that appellant sustained a herniated L4-5 disc causing "persistent low back pain with sciatica, "aggravation of preexisting low back arthritis," "intractable neck pain ... due to an aggravation of preexisting degenerative disc disease at C5-6 and cervical spondyloarthritis," aggravation of preexisting osteoarthritis of the right knee with ... pain, swelling and inability to walk on his right lower extremity."<sup>5</sup>

By decision dated March 13, 1995, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification of the May 13, 1994 decision. The Office found that Dr. Mogil's September 7 and October 10, 1994 reports and Dr. Steig's August 6, 1993 report, did not contain medical rationale explaining how and why the January 23, 1992 accident would cause an L4-5 herniated disc, "intractable neck pain," aggravation of C5-6

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<sup>4</sup> In a May 11, 1994 note, Dr. Mogil stated that appellant was "able to return to work on May 16, 1994 ... to light duty *only*." (Emphasis in the original.)

<sup>5</sup> In a December 6, 1994 letter, the Office's Branch of Hearings and Review noted that appellant's request for an oral hearing had been withdrawn and the case record was being returned to the district office.

degenerative disc disease and spondyloarthrosis and aggravation of preexisting arthritis of the right knee.

The Board finds that appellant has not established that his medical condition on and after May 29, 1993 was causally related to the accepted January 23, 1992 cervical and lumbar sprains, pulpitis of tooth number 13, or other factors of his federal employment.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>6</sup> In this case, appellant has not submitted sufficient evidence indicating that the accepted conditions of cervical and lumbar strains or pulpitis of tooth 13 had changed or worsened such that he could no longer perform the sedentary position of security clerk.

Dr. Steig, an attending Board-certified physiatrist, in an August 6, 1993 report, provided a history of injury and treatment and diagnosed “chronic benign pain syndrome, but did not explain how and why such syndrome was related to the accepted injuries or would totally disable appellant for light-duty work. Without medical rationale explaining the pathophysiologic link between the diagnosed pain syndrome and the accepted injuries, Dr. Steig’s opinion is of little probative value in establishing causal relationship.”<sup>7</sup>

Dr. Mogil, an attending Board-certified orthopedic surgeon, opined in reports from April 12, 1993 to October 10, 1994 that appellant was totally disabled for work due to herniated lumbar and cervical discs, chronic, permanent neck and back pain, aggravation of preexisting lumbar, cervical and right knee arthritis and “progressive deterioration in all physical, vocational and psychological functioning.” The Office has not accepted these conditions as causally related to the January 23, 1992 incident. Thus, Dr. Mogil attributed appellant’s condition during the claimed period of recurrence of disability to causes unrelated to factors of his federal employment.

The Board finds that the weight of the medical evidence rests with Dr. Broudo, a Board-certified orthopedic surgeon and impartial medical examiner, appointed by the Office to resolve a conflict of medical opinion between Dr. Mogil, for appellant and Dr. Klinghoffer, a Board-certified orthopedic surgeon and second opinion physician, for the government. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion on such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>8</sup> In this case,

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<sup>6</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 864 (1989); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>7</sup> *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

<sup>8</sup> *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

Dr. Broudo's opinion is sufficiently rationalized and based on a complete and accurate medical and factual history and is therefore entitled to represent the weight of the medical evidence in this case.

In a March 2, 1994 report, Dr. Broudo explained how and why the accepted conditions had ceased and that appellant's subjective symptoms were attributable to medical conditions predating the January 23, 1992 incident. Dr. Broudo opined that appellant's "cervical strain secondary to the incident of January 23, 1992 is now over two years post injury and presently resolved." Dr. Broudo stated that appellant's low back pain was caused by degenerative lumbar spondylosis and lumbar disc disease antedating the January 23, 1992 incident. He noted that appellant's right knee complaints were unrelated to the January 23, 1992 incident. Dr. Broudo thus concluded that, in relation to the accepted injuries, appellant had "returned to his preinjury level" of functioning.

The decisions of the Office of Workers' Compensation Programs dated March 13, 1995 and May 13, 1994 are hereby affirmed.

Dated, Washington, D.C.  
January 8, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member