

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HORACE C. COONE and DEPARTMENT OF THE NAVY,
MINE DEFENSE LABORATORY, Pan A.M.A., City, Fla.

*Docket No. 95-2177; Submitted on the Record;
Issued January 22, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits on the grounds that he had no continuing disability caused by the accepted lumbosacral strain.

On October 3, 1967 appellant, then a 35-year-old electroplating worker, filed a notice of traumatic injury, claiming that he hurt his back while lifting heavy batteries on September 25 and 26, 1967. The Office accepted a chronic lumbosacral strain and paid compensation from October 17, 1967 onward.¹

On March 23, 1993 Dr. Douglas Smith, a Board-certified orthopedic surgeon, examined appellant at the request of the Office to determine the connection between the 1967 work-related injury and his symptomatic complaints along with possible physical disability. Noting appellant's multiple evaluations and hospitalizations as well as his extensive medical history, Dr. Smith stated that x-rays of the lumbosacral spine were normal with no significant degenerative changes in the discs.

The physician indicated that appellant was treated conservatively after he strained his back and any more significant, work-related injury, such as a herniated disc, would have manifested itself before now. Dr. Smith opined that appellant's present complaints of pain, his psychiatric problems and his neurological peripheral neuritis had "nothing to do with" the 1967 incident. Dr. Smith concluded that "absolutely" no orthopedic treatment was necessary, but that appellant was totally disabled because of his obesity, poor physical condition, diabetic neuropathy and mental condition.

¹ Subsequently, the Office accepted post-traumatic stress disorder and major depression with conversion features. Appellant's emotional condition is not an issue before the Board.

Based on Dr. Smith's report, the Office issued a notice of proposed termination of medical benefits for the accepted lumbosacral strain on May 12, 1993. Appellant responded to the notice on June 8, 1993 and submitted the medical reports of Dr. David S. Gettinger, Board-certified in internal medicine and Dr. Alexander H.S. Weaver, a Board-certified orthopedic surgeon, who had seen appellant about every two years since 1981.

Dr. Gettinger stated in a report dated May 25, 1993 that appellant had "persistently complained" about his back pain since August 1992 when Dr. Gettinger began treatment. A magnetic resonance imaging (MRI) scan revealed disc bulging at L5-S1 with more severe bulging at L4-5 and some stenosis. Dr. Gettinger added that it was "impossible" for him to determine whether the 1967 incident could account for appellant's current back condition and that he could not "reasonably comment" on any causal relationship.

Dr. Weaver diagnosed chronic low back strain, disabling and permanent and stated that appellant had first injured his back in 1967 and had been in constant and continuous pain since then. While appellant's x-rays showed degenerative changes which could be due to aging, appellant "has been counted as disabled for 25 years now" and trying to find him not disabled at this point was inconsistent with his history and physical examination.

On April 22, 1994 the Office terminated appellant's medical benefits for the accepted 1967 injury on the grounds that the weight of the medical evidence, represented by Dr. Smith's report, established that appellant's back condition caused by the work incident had resolved. The Office noted that Dr. Weaver provided inadequate medical rationale for his conclusion that appellant's current back condition was causally related to the 1967 incident.

Appellant requested reconsideration on the basis that Dr. Weaver's June 21, 1994 report diagnosed chronic lumbar strain or herniated disc and conflicted with that of Dr. Smith. Dr. Weaver commented that Dr. Smith had found appellant not to be disabled and that his compensation had been removed, but he "felt very strongly all along" that appellant did have a chronic low back strain. Dr. Weaver stated that appellant's physical findings were consistent with a chronic lumbar strain or herniated disc, neither of which could be seen on a plain x-ray. He added: "I think changing a diagnosis on a man after approximately 27 years with the same diagnosis and with his present findings is incorrect."

On May 5, 1995 the Office denied appellant's request on the grounds that the medical evidence was insufficient to warrant modification of its prior decision.

The Board finds that the Office properly terminated appellant's medical benefits for the accepted lumbosacral strain sustained in 1967.

Under the Federal Employees' Compensation Act,² the Office has the burden of justifying modification or termination of compensation once a claim is accepted and compensation paid.³ Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁴

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 or she 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.⁵ The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

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.⁷

Dr. Smith, a Board-certified specialist, determined in his March 23, 1993 report that appellant's disability due to the accepted lumbosacral strain had ceased based on the lack of objective findings to support any continuing disability. Dr. Smith reviewed the history of the 1967 incident and subsequent treatment. He noted the normal spinal x-rays and lack of diagnostic tests showing any abnormalities beyond mild degenerative disc disease. He reported extensive findings on his physical examination of appellant. Dr. Smith found appellant to be incapable of gainful employment, but his conclusion that appellant's disability is unrelated to the accepted lumbosacral strain is solidly supported by his examination and findings.⁸

² 5 U.S.C. §§ 8101-8193.

³ *William Kandel*, 43 ECAB 1011, 1020 (1992).

⁴ *Carl D. Johnson*, 46 ECAB ____ (Docket No. 94-404, issued May 31, 1995).

⁵ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

⁶ *Mary Lou Barragy*, 46 ECAB ____ (Docket No. 93-2326, issued May 25, 1995).

⁷ *Connie Johns*, 44 ECAB 560, 570 (1993).

⁸ See *Delphine L. Scott*, 41 ECAB 799, 802 (1990) (finding that the second opinion physician's conclusion regarding the improbability of appellant's lumbosacral sprain persisting for so long was sufficient to establish that appellant had recovered from the accepted injury).

While Dr. Smith indicated that appellant had continued to work until October 16, 1967 after he strained his back and appellant stated that he had not returned to work, this discrepancy does not diminish the probative value of Dr. Smith's conclusion that appellant's lumbosacral strain was not causing any current disability.⁹ Dr. Smith stated that the conservative treatment appellant received in 1967 was "more than adequate" for the injury described. He did not dispute appellant's current complaints of pain in his low back and lower extremities but found them related, not to the 1967 incident, but to appellant's obesity, diabetic neuropathy and psychiatric condition.

By contrast, Dr. Gettinger admitted that he could not offer an opinion on any causal relationship between the 1967 incident and appellant's current orthopedic condition. Dr. Weaver, while disagreeing with Dr. Smith's assessment, offered no medical rationale explaining how a strained back in 1967 would not have resolved nearly 30 years later. Rather, Dr. Weaver merely indicated strongly that he felt the diagnosis should not be changed. However, the length of time the Office paid for treatment of appellant's back strain is irrelevant to medical evidence provided by the referral specialist, Dr. Smith, showing that the accepted injury had long since resolved. Therefore, the Board finds that Dr. Smith's conclusion represents the weight of the medical opinion evidence and is sufficient to carry the Office's burden of proof.¹⁰

⁹ See *Donald Johnson*, 44 ECAB 540, 551 (1993) (noting that every injury does not necessarily cause disability for employment); see also *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990) (finding that whether a particular injury causes disability for employment is a medical issue which must be resolved by competent medical evidence).

¹⁰ See *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that physician's opinion was thorough, well rationalized and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved); *Larry Warner*, 43 ECAB 1027, 1032 (1992) (finding that the weight of the medical evidence rests with the second opinion physician whose well-rationalized conclusion that appellant had no residuals of the accepted injury was sufficient to carry the Office's burden of proof).

The May 5, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.

January 22, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member