U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM AVILA and U.S. POSTAL SERVICE,
POST OFFICE, Miami, Fla.

Docket No. 96-644; Submitted on the Record;
Issued June 8, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective August 20, 1995; and (2) whether appellant had any disability after August 20, 1995 causally related to his employment injury.

The Board has duly reviewed the case on appeal and finds that the Office met its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.[1]

In this case, the Office accepted that appellant sustained an employment-related thoracic strain and subluxations at C1, T4, T6 and T7. He was treated by Dr. J.A. Munoz, a neurologist, and on May 18, 1994 the Office referred appellant to Dr. Peter J. Millheiser, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding his neck and back condition, and to Dr. Neil H. Edison, a Board-certified psychiatrist, for a psychiatric evaluation. Appellant submitted a September 8, 1994 report from Dr. Munoz and, in response, the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Dr. Harlan S. Chiron, a Board-certified orthopedic surgeon, for an impartial medical evaluation regarding appellant's orthopedic condition. Based on Dr. Chiron's reports, by letter dated June 27, 1995, the Office proposed to terminate appellant's compensation benefits, and by decision dated August 1, 1995 the Office terminated his compensation benefits, effective August 20, 1995. Medical benefits for treatment of cervical sprain syndrome and aggravation of cervical spondylosis were not terminated. In a letter decision dated August 3, 1995, the Office noted that appellant had submitted evidence in response to the June 27, 1995 notice that had

[1] *See Patricia A. Keller*, 45 ECAB 278 (1993).

been misplaced by the Office. The Office reviewed the medical evidence submitted and found it irrelevant or repetitious and of insufficient probative value to outweigh the opinion of Dr. Chiron. On October 2, 1995 appellant requested reconsideration, and submitted additional medical evidence. In a merit decision dated December 8, 1995, the Office denied modification of the prior decision. The instant appeal follows.

The relevant medical evidence includes a June 6, 1994 report in which Dr. Millheiser advised that appellant had "bizarre sensory findings" and no objective orthopedic findings with no spinal or neck disorder or impairment. He diagnosed cervical and thoracic strain with marked symptom magnification and opined that there was no reason why appellant could not return to normal work eight hours per day, five days per week. In an accompanying work capacity evaluation, he advised that appellant "can do full activities ... full time." By report dated July 8, 1994, Dr. Edison found no evidence of a psychiatric condition but that appellant exhibited personality trait disorders. He advised that appellant was able to return to work without psychiatric restriction. In a September 8, 1994 report, Dr. Munoz noted findings of spasms of the cervical and lumbar spine. He noted lifting restrictions of 10 to 15 pounds.

Finding a conflict between the opinions of Drs. Munoz and Millheiser, the Office then referred appellant to Dr. Chiron for a referee examination. By report dated December 20, 1994, Dr. Chiron diagnosed degenerative arthritis of the cervical and dorsal spine and noted loss of motion of the neck. He advised that appellant was not permanently or partially disabled and that he could be employed in a sedentary position that did not require lifting "beyond his own pain tolerance" with no other restrictions. In a report dated February 23, 1995, Dr. Chiron diagnosed residual cervical sprain syndrome with superimposed cervical spondylosis. He advised that there were no objective findings to limit appellant's work tolerance with only a slight decrease in neck range of motion. He reiterated that appellant was not totally disabled and could be employed. In a work capacity evaluation dated March 7, 1995, Dr. Chiron advised that appellant should not lift "beyond pain tolerance." By letter dated May 5, 1995, the Office provided Dr. Chiron with the physical restrictions of appellant's regular duties as a part-time flexible letter carrier which would require driving 4 hours per day, lifting up to 20 pounds one-half hour per day, lifting up to 50 pounds one-half hour per day, sitting for 2 hours per day, standing/walking for 4 hours per day, stooping, twisting, bending and reaching above the shoulder for 3 hours per day. By report dated May 15, 1995, Dr. Chiron advised that appellant's cervical sprain syndrome and spondylosis were employment related, that the thoracic strain had resolved, and stated that, while appellant could lift up to 20 pounds one-half hour per day, he should not lift 50 pounds. He could sit for two hours per day, stand or walk for four hours per day, reach above his shoulders for three hours per day, but should not stoop, bend or twist. Dr. Chiron stated that there were no objective findings to limit appellant's work tolerance but that it was his "feeling" that if appellant were forced to lift weight beyond his pain tolerance, back pain in the lumbosacral spine would recur.

In a July 10, 1995 report, Dr. Munoz noted findings on examination and reiterated lifting restrictions of 10 to 15 pounds.

In situations where there are 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 on a proper factual background, must be given special weight.[2] Here the Office determined that a conflict of medical opinion existed between appellant's physician, Dr. Munoz, and that of Dr. Millheiser, who examined appellant for the Office. The Office then referred appellant, along with the medical record, a statement of accepted facts and a list of questions, to Dr. Chiron, a Board-certified orthopedic surgeon, to resolve the conflict who, in a May 5, 1995 report, advised that appellant could perform the duties of a flexible part-time letter carrier. While he provided restrictions to appellant's physical activity, he indicated that this was done merely to prevent recurrence of appellant's low back symptoms. The Board has held that fear of future injury is not compensable.[3] As Dr. Chiron's reports were based on a complete and accurate history and, in well-reasoned and thorough reports, he clearly explained why he believed that appellant's employment-related disability had ceased, the Board finds appellant had no employment-related disability on or after August 20, 1995, and the Office met its burden of proof to terminate appellant's compensation benefits on that date.

The Board further finds that appellant failed to establish that he had any continuing disability causally related to his accepted injury after August 20, 1995.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had disability causally related to his accepted injury.[4] To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[5]

On October 2, 1995 appellant requested reconsideration and submitted additional medical evidence. In an August 10, 1995 report, Dr. Barry N. Burak, a chiropractor, noted findings on examination and diagnosed cephalgia, cervicobrachial radiculitis and lumbosacral sprain/strain. He opined that appellant was totally disabled. In an August 24, 1995 report, Dr. Dennis B. Zaslow, an orthopedic osteopathic physician, noted findings on examination and diagnosed chronic neck and back pain syndrome, nerve root irritation in the neck and back with radiculopathy in the arms and legs, somatic dysfunction of the spine and injury to the myoligamentous spinal supporting structures. Dr. Zaslow concluded, "[i]t appears from his history and by way of a thorough physical examination today that his problems are ongoing and that he cannot do any physical work."

[2] *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

[3] *See William A. Kandel*, 43 ECAB 1011 (1992).

[4] *See George Servetas*, 43 ECAB 424 (1992).

[5] *See* 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, *supra* note 2.

As neither physician discussed the cause of appellant's current condition, the Board finds that these reports are not sufficient to meet appellant's burden of proof.[6] Appellant thus failed to present sufficient rationalized medical evidence to establish that his current condition or disability is causally related to his employment injury and therefore failed to meet his burden of proof.

The decisions of the Office of Workers' Compensation Programs dated December 8 and August 1, 1995 are hereby affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[6] The Board notes that appellant also submitted a November 16, 1991 medical report that is irrelevant to his condition on August 20, 1995, the date the Office terminated his compensation benefits.