

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT W. PLYMPTON and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, Fla.

*Docket No. 96-1055; Submitted on the Record;
Issued March 17, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant had disability after March 21, 1994 due to his employment injury.

The Board has duly reviewed the case record, in the present appeal and finds that appellant had no disability after May 11, 1994 due to his employment injury.

Under the Federal Employees' Compensation Act,¹ once the Office of Workers' Compensation Programs 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 determined that there was a conflict in the medical opinion between Dr. Harry F. Jones, appellant's attending Board-certified orthopedic surgeon and the government physician, Dr. Trave L. Brown, a Board-certified orthopedic surgeon, acting as an Office referral physician,⁵ regarding whether appellant continued to have residuals of his employment injury.⁶ In form reports dated in November and December 1993, Dr. Jones

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).

⁵ The Office suggested that Dr. Brown served as an impartial medical examiner, but he actually served as a second opinion physician for the Office.

⁶ The Office had accepted that appellant sustained temporary aggravation of his left patella chondromalacia and

determined that appellant continued to have disability due to his employment injury, including the employment-related aggravation of his left knee chondromalacia. In contrast Dr. Brown determined in a March 21, 1994 report, that appellant did not have continuing residuals of his employment injury; he noted that the type of tissue trauma sustained by appellant due to his employment injury would have resolved and indicated that appellant's continuing knee condition was due to the nonwork-related recurrent subluxation of his patella.

In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Peter A. Indelicato, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.⁷ By decision dated October 26, 1994, the Office terminated appellant's compensation effective March 21, 1994 on the grounds that he had no disability due to his employment injury after that date and, by decision dated November 27, 1995, the Office denied modification of its October 26, 1994 decision.

In situations where there exists 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.⁸ The Board notes that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Indelicato, the impartial medical specialist selected to resolve the conflict in the medical opinion. The May 11 and September 15, 1994 reports of Dr. Indelicato establish that appellant had no disability due to his employment injury after May 11, 1994, the date that Dr. Indelicato examined appellant. As noted above, the Office terminated appellant's compensation effective March 21, 1994; appellant would be entitled to compensation for the period March 21 to May 11, 1994 because the Office did show that his employment-related disability had ceased prior to May 11, 1994.

The Board has carefully reviewed the opinion of Dr. Indelicato and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Indelicato'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. Indelicato 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.⁹

temporary aggravation of chronic ligamentous instability of his left ankle. Appellant underwent ligamentous reconstruction surgery on his left ankle on May 14, 1992 and arthroscopic surgery on his left knee on October 9, 1992.

⁷ 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).

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁹ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

Dr. Indelicato provided medical rationale for his opinion, by explaining that the type of employment injury sustained by appellant was such that it would have resolved itself. He explained appellant's continuing symptoms by indicating that they were due to the natural progression of his underlying condition. Dr. Indelicato indicated that appellant had a similar degenerative condition in both knees, even though only his left knee had sustained an employment injury. For these reasons, the medical evidence shows that appellant is not entitled to compensation after May 11, 1994 for the effects of his employment injury.

The decision of the Office of Workers' Compensation Programs dated November 27, 1995 is affirmed as modified to reflect that appellant is entitled to compensation for the period March 21 to May 11, 1994.

Dated, Washington, D.C.
March 17, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member