

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM J. HANRAHAN and U.S. POSTAL SERVICE,
POST OFFICE, Topeka, Kans.

*Docket No. 97-292; Oral Argument Held February 3, 1990;
Issued May 13, 1998*

Appearances: *Beth Regier Foerster, Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has any continuing disability on or after September 19, 1990 causally related to his accepted employment injury.

The Board has duly reviewed the case on appeal and finds that appellant had no continuing disability on or after September 19, 1990 causally related to his accepted employment injuries.

This case has previously been on appeal before the Board. In its January 30, 1995 decision,¹ the Board found that the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective April 2, 1990 and further found that there was an existing conflict of medical opinion evidence regarding whether appellant had any continuing disability on or after April 2, 1990. The Board remanded the case for referral to an impartial medical examiner to resolve the conflict of medical opinion evidence between appellant's attending physician, Dr. David Barry, a Board-certified family practitioner and the District medical director. The facts and circumstances of the case as noted by the prior decision are adopted herein by reference.

Following the Board's January 30, 1995 decision, the Office prepared an amended statement of accepted facts, a list of specific questions and referred appellant along with the medical reports of record, to Dr. Satish Bansal, a Board-certified orthopedic surgeon, for an impartial examination. By decision dated April 27, 1995, the Office found that based on Dr. Bansal's report appellant had no continuing disability causally related to his accepted employment injuries on or after September 19, 1990. Appellant, through his attorney, requested

¹ Docket No. 93-1015.

reconsideration on April 25, 1996. By decision dated July 17, 1996, the Office found that the evidence submitted was not sufficient to warrant modification of its April 27, 1995 decision.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation, without establishing that the disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁵

In his report dated April 10, 1995, Dr. Bansal noted appellant's history of injury and findings on physical examination. He reviewed appellant's x-rays and magnetic resonance imaging. Dr. Bansal concluded that appellant had subjective symptoms in his lumbar spine with no objective findings. He diagnosed lumbar strain and radicular pain in the left lower extremity and stated that appellant recovered from the accepted back strain by the middle of 1990. Dr. Bansal stated that appellant's symptoms might worsen upon return to work and provided work restrictions.

The Office requested a supplemental report, from Dr. Bansal on April 14, 1995, addressing whether appellant had recovered from the residuals of his employment injury. In a report dated April 20, 1995, Dr. Bansal stated that appellant had recovered completely from the effects of the employment injury. He based this finding on the lack of objective abnormalities.

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.⁶ The Board finds that Dr. Bansal's reports are based on a proper factual background and contain the necessary medical rationale to support his conclusion that, appellant is no longer disabled due to his accepted employment injuries. Therefore, the Office properly accorded this report special weight in determining that appellant was not entitled to further medical or compensation benefits.

Appellant, through his attorney, requested reconsideration on April 25, 1996 and submitted additional evidence. Appellant submitted physical therapy notes in support of appellant's claim for continuing disability. As a physical therapist is not a physician, for the purposes of the Federal Employees' Compensation Act, these notes do not constitute probative

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

medical evidence and are not sufficient to establish continuing disability causally related to appellant's employment injuries.⁷

In a report dated April 23, 1996, Dr. Edward J. Prostic, a Board-certified orthopedic surgeon, reviewed the medical records and concluded that a traumatic injury sufficient to cause a foot drop and a positive electromyogram (EMG) for L5 nerve root impingement would not heal without residual disability. He further stated that any injury sufficient to leave work restrictions requires a rating for permanent impairment. Dr. Prostic stated that an EMG confirming an L5 radiculopathy was sufficient evidence to warrant a return to "light-duty work with no heavy lifting." This report is not sufficient to overcome the weight of the impartial specialist report or to create a conflict with it as Dr. Prostic did not offer sufficient medical rationale, explaining what led him to believe that appellant's condition would result in permanent impairment as well as work restrictions.

Appellant's attorney also submitted legal argument in support of her request for reconsideration. The Board finds that Dr. Bansal's report is sufficiently well rationalized and constitutes the weight of the medical evidence.⁸

The Board finds that appellant had no continuing disability on or after September 19, 1990 causally related to his accepted employment injuries.

The decision of the Office of Workers' Compensation Programs dated July 17, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 13, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁷ *Jane A. White*, 34 ECAB 515 (1983).

⁸ Appellant through his attorney submitted a deposition from Dr. Bansal and argued that the deposition established that Dr. Bansal was biased against claimants with only subjective complaints of pain in a claim for permanent injury. The Board finds that the evidence submitted is not sufficient to establish bias on the part of Dr. Bansal.