

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM C. BURCHFIELD and DEPARTMENT OF THE AIR FORCE,  
ALASKAN AIR COMMAND, ELMENDORF AIR FORCE BASE, Alas.

*Docket No. 97-2542; Submitted on the Record;  
Issued May 21, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant had any disability after May 1, 1997, the date the Office of Workers' Compensation Programs terminated his compensation benefits, causally related to his January 7, 1976 thoracic strain injury and temporary aggravation of degenerative disc disease of the lumbar spine.

The Board finds that the Office did not meet its burden of proof to terminate compensation due to an unresolved conflict in medical opinion.

The Office accepted that appellant sustained thoracic strain and temporary aggravation of degenerative disc disease on January 7, 1976 while in the performance of duty.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> 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.<sup>2</sup> The Office has not met its burden to terminate compensation in this case, due to a conflict in medical opinion evidence.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "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." Such a disagreement is present in this case.

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

On January 4, 1996 the Office requested that Dr. Haq Babur, appellant's treating Board-certified neurosurgeon, provide an updated report and answer a number of specific questions addressing whether appellant continued to be disabled due to his accepted employment-related conditions or their residuals, and whether appellant's preexisting degenerative disc disease had returned to its baseline pathology. The Office also provided a paragraph of accepted facts which Dr. Babur was to consider in formulating his answers, and a description of appellant's prior job duties.

By report dated February 8, 1996, Dr. Babur responded to the Office's letter, reiterated the accepted facts as given in the Office's request, reported appellant's present symptomatology and the results of objective testing and noted that appellant's thoracic strain was still active. Dr. Babur noted that objectively appellant manifested paradorsal muscle spasm and mid-dorsal spine tenderness to percussion. He noted that appellant still had intercostal neuralgic pain on the left side, with coughing and straining, and opined that the objective findings supported that the thoracic strain was still active. He further responded that appellant's degenerative disc disease with S1 nerve root irritation and radiculopathy remained active and he opined that it had not returned to the baseline pathology. Dr. Babur further stated that he did not expect the condition to return to its baseline pathology as appellant had permanent partial impairment as a result of his injuries. He opined that appellant's disability at that time was the result of all seven conditions the Office mentioned in its questions, including those accepted by the Office as being related to the work incident and those not accepted by the Office as having been employment related.

The Office subsequently referred appellant to Dr. Stephen Ringel, a Board-certified orthopedic surgeon, for a second opinion with the same notation of accepted facts and the same questions it had posed to Dr. Babur.

By report dated February 18, 1997, Dr. Ringel reviewed appellant's history and present symptoms, reported the results on physical examination and diagnosed cervical spondylosis, lumbosacral spondylosis, possible facet arthritis, and possible mild spinal stenosis syndrome. To the question of whether appellant had any evidence of thoracic strain Dr. Ringel answered "no." To the question of whether appellant had currently active aggravation of degenerative disc disease he answered "no." To the question of whether the degenerative disc disease had returned to the baseline pathology Dr. Ringel answered "yes." To the question of whether appellant was restricted from performing his former duties Dr. Ringel answered "yes." Next to the list of appellant's seven diagnosed conditions, in response to the question, of which ones caused appellant's disability, Dr. Ringel noted "no" for thoracic strain, aggravation of degenerative disc disease, preexisting degenerative disc disease and cervical degenerative disc disease and answered "yes" to arthritis, cervical radiculopathy and cervical and lumbar spondylosis. Dr. Ringel opined that appellant's "symptomatology can be referred to chronic low back pain, which developed as a result of his acute injury in 1976." Dr. Ringel further stated that appellant's lower back had decompensated since that time and he opined that appellant would be unable to resume his former position. He completed a work restriction noting that appellant was restricted from performing his former duties and he indicated that appellant's restrictions due to his employment injury included limitations on prolonged standing, sitting, walking, lifting,

pushing and pulling, and would be permanent. He indicated that appellant had no limitations due to preexisting or nonwork-related conditions.

In response to the Office's request for clarification of his prior report Dr. Ringel advised that appellant's current back pain was due to lumbosacral spondylosis and facet arthrosis, and he stated that the effects of the 1976 injury had ceased.

On March 31, 1997 the Office issued appellant a notice of proposed termination of compensation benefits, which it finalized on May 1, 1997, indicating that the weight of the medical evidence indicated that the effects of appellant's accepted conditions had ceased.

The Board, however, finds that there exists a conflict in medical opinion evidence between Dr. Babur, who reported the presence of appellant's objective symptomatology, opined that appellant's condition had not returned to baseline pathology and opined that appellant remained permanently partially impaired as a result of his accepted employment injuries and Dr. Ringel, who opined that appellant had no evidence of thoracic strain, and no active aggravation of degenerative disc disease or cervical degenerative disc disease, who indicated that appellant's degenerative disc disease had returned to the baseline pathology and that his current condition was due to nonaccepted conditions of arthritis, and cervical and lumbar spondylosis, and who stated that the effects of appellant's 1976 injury had ceased.

As the opinions of Drs. Babur and Dr. Ringel are in direct conflict on the issue of whether or not appellant had disabling injury residuals at the times of their examinations, neither opinion constitutes the weight of the medical evidence, and the Office improperly terminated appellant's compensation benefits.

Consequently, the decision of the Office of Workers' Compensation Programs dated May 1, 1997 is hereby reversed.

Dated, Washington, D.C.  
May 21, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member