

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT PALADINO and U.S. POSTAL SERVICE,
POST OFFICE, Newark, N.J.

*Docket No. 97-1185; Submitted on the Record;
Issued November 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

The Board has duly reviewed the case record and finds that the Office has met its burden of proof in this case.

Once the Office accepts a claim it has the burden to justify modification or termination of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.¹ As the Office terminated appellant's continuing disability and medical benefits, the Office bears the burden of proof in this case.²

In the present case, the Office has accepted that appellant sustained aggravation of a left congenital hip dislocation on or about August 3, 1995 as a result of his employment as a mail carrier. On July 31, 1996 the Office referred appellant to Dr. Richard D. Jacobs, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the extent of appellant's continuing disability and the need for a total hip replacement. In reports dated August 28 and September 16, 1996, Dr. Jacobs opined that appellant's work activities, including prolonged standing and walking, aggravated his preexisting congenital dislocation of the left hip and arthritis. Dr. Jacobs explained that, while appellant remained disabled from his regular work, his disability was not work related as his work-related aggravation had ceased but that his degenerative disease had continued along its natural progression. Appellant's treating physician, Dr. Joseph P. Pizzurro, a Board-certified orthopedic surgeon, reported on October 30, 1996 that appellant's employment as a postal carrier had aggravated an old congenital hip dislocation with

¹ Gary R. Sieber, 46 ECAB 215 (1994).

² See Gus N. Rodes, 46 ECAB 518 (1995).

resultant advanced degenerative arthritis of the hip. Dr. Pizzurro stated that this aggravation was not temporary and did leave permanent residuals. He concluded that appellant was disabled and was unable to continue his employment due to the continued progressive deterioration of his hip, as well as his knee joint.

The Office thereafter properly determined that a conflict existed in the medical opinion evidence between Dr. Jacobs and Dr. Pizzurro as to whether appellant's continuing disability was causally related to the accepted condition, and referred appellant to Dr. Michael L. Gross, a Board-certified orthopedic surgeon, for an impartial medical evaluation. The Federal Employees' Compensation Act³ provides that 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.

The Office terminated appellant's compensation benefits by decision dated January 14, 1997 on the grounds that the weight of the medical evidence rested with Dr. Gross and established that the temporary aggravation of appellant's preexisting condition had ceased and appellant had no continuing disability as a result of the August 3, 1995 injury.

In situations where a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual medical background, must be given special weight.⁴ In his report dated December 20, 1996, Dr. Gross reviewed appellant's medical history, x-ray and physical examination findings. Dr. Gross noted that appellant's current condition was not much different from his initial presentation to Dr. Pizzurro in 1992. Dr. Gross thereafter concluded that appellant did have a permanent deficit with regard to his left hip and leg and was completely disabled at this time, pending a total hip replacement. Dr. Gross explained, however, that the accepted temporary aggravation of appellant's left hip condition had not altered the course of the progression of the preexisting condition, and the total hip replacement would have been required due to the preexisting condition. Dr. Gross therefore concluded that appellant's accepted temporary aggravation of his congenital left hip condition had ceased, such that appellant's condition and continuing disability were now due to his preexisting condition. As Dr. Gross' opinion regarding appellant's accepted condition and continuing disability was based upon a proper factual background and was sufficiently well rationalized, it constituted the weight of the medical opinion evidence.

³ 5 U.S.C. § 8123(a).

⁴ *Thomas Bauer*, 46 ECAB 257 (1994).

The decision of the Office of Workers' Compensation Programs dated January 14, 1997 is hereby affirmed.

Dated, Washington, D.C.
November 23, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member