

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCIEN L. MATARRAZO and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 97-62; Submitted on the Record;
Issued February 12, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective November 11, 1995 on the grounds that he no longer had any disability causally related to his October 30, 1990 employment injury.

On October 30, 1990 appellant, then a 42-year-old materials expediter, sustained myofascitis of the lumbar spine when he slipped on water and fell. He stopped work on October 30, 1990 and did not return to work.

In a disability certificate dated November 2, 1990, Dr. Nicholas M. Renzi, an osteopath, diagnosed myofascitis of the lumbar spine.

In a report dated January 11, 1991, Dr. Stephen E. Reznak, a Board-certified neurologist, provided a history of appellant's condition and findings on examination, which were essentially normal, and diagnosed post-traumatic lumbosacral radiculopathy on the right side, a postconcussion syndrome and post-traumatic cephalgia.

An electroencephalogram (EEG) report dated January 24, 1991 indicated a normal EEG.

By letter dated March 20, 1991, the Office advised appellant that he had been placed on the periodic compensation rolls to receive compensation benefits for temporary total disability effective January 5, 1991.

A magnetic resonance imaging (MRI) scan report dated June 7, 1991 indicated no change from an April 23, 1990 scan.

In a report dated June 24, 1991, Dr. Reznak related that appellant was complaining of headaches and dizziness but noted that the neurologic examination was normal.

In a report dated July 6, 1991, Dr. Henry S. Wieder, Jr., a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's condition, a review of the medical record, and findings on examination and diagnosed chronic radiculopathy at the lumbosacral level based primarily on subjective findings. Dr. Wieder stated his opinion that appellant could return to work on at least a part-time basis (four hours per day) in a sedentary capacity with certain restrictions.

In a work restriction evaluation form dated July 9, 1991, Dr. Ronald B. Greene, a Board-certified orthopedic surgeon, indicated that appellant could work for four hours a day with certain restrictions.

A July 26, 1991 MRI report indicated a normal study.

In a work restriction evaluation form dated March 12, 1992, Dr. Renzi opined that appellant was totally disabled yet he provided a list of work restrictions.

In notes dated February 23, 1993, Dr. Renzi indicated that appellant was still disabled.

In notes dated March 16 through June 16, 1994, Dr. Renzi related appellant's complaints of headaches, dizziness, lightheadedness, neckaches and backaches. He stated that there was spasticity and rigidity of the cervical and lumbar paravertebral musculature and opined that appellant was disabled from his regular job.

In a report dated December 7, 1994, Dr. Richard H. Bennett, a Board-certified neurologist, who had received copies of the medical evidence and statement of accepted facts from the Office, provided a history of appellant's condition and findings on examination and noted that tests including a lumbar spine x-ray report, an EEG and an MRI scan were all normal. Dr. Bennett stated that there was no evidence of any persistent orthopedic or neurological impairment related to the October 30, 1990 employment injury. He stated his opinion that appellant could return to his regular work without restrictions and required no further treatment or diagnostic studies.

In a report dated December 7, 1994, Dr. Gladys S. Fenichel, a Board-certified psychiatrist and neurologist and an Office referral physician, who had received copies of the medical evidence and statement of accepted facts from the Office, provided a history of appellant's condition and the results of a mental status examination and determined that appellant had no psychiatric problems and no psychiatric contraindications to his returning to his regular job.

In notes dated March 7, 1995, Dr. Renzi related that appellant was complaining of backaches, dizziness, lightheadedness and neckaches and could not perform his regular work.

By letter dated March 7, 1995, the Office advised appellant that, due to a conflict of medical opinion, he would be referred to Dr. Paul M. Shipkin, a Board-certified neurologist, for an examination and evaluation to determine whether he had any residual disability causally related to his employment injury. The Office provided Dr. Shipkin with the entire case record and a statement of accepted facts.

In a report dated April 13, 1995, Dr. Shipkin provided a history of appellant's condition and findings on examination. He diagnosed a traumatic low back injury, slowly improving with time, associated with a right lumbosacral radicular syndrome superimposed on an old low back trauma sustained during 1974. Dr. Shipkin also diagnosed post-traumatic nervous instability (postconcussive syndrome) with an element of cervical strain/sprain accounting for his chronic intermittent headaches. He stated:

“[Appellant’s] neurologic examination, however, is basically unremarkable except for old ophthalmologic findings and prominent nonphysiologic sensory findings raising the strong probability that psychogenic elaboration is present. Therefore, the above-noted diagnostic considerations (traumatic low back injury, post-traumatic nervous instability and cervical strain/sprain syndrome) are all highly suspect.

“With reasonable medical certainty, I seriously doubt [appellant] is incapacitated in any meaningful way. I believe he is fully capable of returning to gainful employment in his former occupation or similar position. I can find no hard evidence that effects of his alleged injury in 1990 are present at this time.”

By letter dated August 7, 1995, the Office advised appellant that it proposed to terminate his compensation benefits on the grounds that the weight of the medical evidence established that his work-related disability has ceased.

By letter dated September 1, 1995, appellant, through his attorney, stated that he disagreed with the proposed termination of benefits and submitted additional evidence.

In a report dated August 22, 1995, Dr. Renzi related that appellant had been under his care since October 31, 1990 for his employment injury and that he currently complained of headaches, light-headedness, dizziness, neckaches, backaches and numbness in both arms. He stated that there was spasticity and rigidity noted throughout the cervical and lumbar spine and there was restriction of motion on flexion, extension and side bending. Dr. Renzi stated this opinion that appellant was completely disabled.

In a report dated August 22, 1995, Dr. Reznak related that appellant was in worse condition with more pain in his back radiating to his legs. He stated that on neurologic examination cranial nerves were intact, muscular power was equal bilaterally, deep tendon reflexes were equal bilaterally and there were no pathologic reflexes noted. Dr. Reznak noted that straight leg raising was positive with a complaint of pain in his back. He stated that findings were significant and appellant was disabled for any type of work at the present time.

By decision dated December 17, 1995, the Office terminated appellant's compensation benefits effective November 11, 1995 on the grounds that weight of the evidence of record failed to establish causal relationship between his October 30, 1990 employment injury and any continuing condition or disability.

By letter dated November 13, 1995, appellant requested an oral hearing before an Office hearing representative.

On April 29, 1996 a hearing was held before an Office hearing representative at which time appellant testified.

Subsequently, additional evidence was submitted. In notes dated February 5, 1996, Dr. Renzi related appellant's complaints of headaches, lightheadedness, dizziness and backaches and noted that appellant had difficulty getting on and off the examination table and had spasticity and rigidity of the lumbar spine.

In a report dated May 6, 1996, Dr. Reznak related appellant's complaints of pain in his back and provided findings on examination which were normal except for complaints of pain on straight-leg raising and "pathologic reflexes."

By decision dated July 15, 1996, an Office hearing representative affirmed the Office's October 17, 1995 decision.

The Board finds that the Office has met its burden of proof in terminating appellant's compensation benefits effective November 11, 1995.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

In this case, appellant sustained myofascitis of the lumbar spine on October 30, 1990 when he slipped and fell at work.

In reports and notes dated March 12, 1992 through June 16, 1994, Dr. Renzi, opined in that appellant was disabled due to his employment injury. However in a December 7, 1994 report, Dr. Bennett examined appellant and opined that appellant was able to return to his regular work.

Section 8123(a) of the Federal Employees' Compensation 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."⁴

In this case, the Office referred appellant to Dr. Shipkin, along with the entire case record and a statement of accepted facts, for an examination and evaluation in order to resolve the

¹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

² *Id.*

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ 5 U.S.C. § 8123(a); *see James P. Roberts*, 31 ECAB 1010 (1980).

conflict in medical opinion evidence as to whether appellant had any remaining disability or medical condition causally related to his October 30, 1990 employment injury.

In a report dated April 13, 1995, Dr. Shipkin provided a history of appellant's condition and findings on examination. He diagnosed a traumatic low back injury, slowly improving with time, and post-traumatic nervous instability (postconcussive syndrome) with an element of cervical strain/sprain accounting for his chronic intermittent headaches. Dr. Shipkin stated that appellant's neurologic examination was basically unremarkable except for prominent nonphysiologic sensory findings which raised a strong probability that psychogenic elaboration was present and made the diagnoses of post-traumatic instability and cervical sprain/strain highly suspect. He stated his opinion that appellant had no residual disability or medical condition causally related to his 1990 employment injury and that he was fully capable of returning to his regular work.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁵ In this case, the April 13, 1995 report of the impartial medical specialist, Dr. Shipkin was based upon review of the entire case record and examination of appellant and contained a well-rationalized opinion that appellant was no longer disabled due to his October 30, 1990 employment injury. It is therefore entitled to special weight and the Office met its burden of proof in terminating appellant's compensation benefits based upon the weight of the medical evidence as represented by Dr. Shipkin's report.

The 1996 reports of Drs. Renzi and Reznak which were submitted subsequent to the Office's December 17, 1995 termination decision are not sufficient to overcome the thorough and well-rationalized report of Dr. Shipkin.

In notes dated February 5, 1996, Dr. Renzi related appellant's complaints of headaches, lightheadedness, dizziness, and backaches and noted that appellant had difficulty getting on and off the examination table and had spasticity and rigidity of the lumbar spine. However, he did not provide a well-rationalized medical opinion as to why appellant was unable to return to work and therefore his report is not sufficient to overcome the report of Dr. Shipkin.

In a report dated May 6, 1996, Dr. Reznak related appellant's complaints of pain in his back and provided findings on examination which were normal except for complaints of pain on straight leg raising and "pathologic reflexes." He did not provide a well-rationalized medical opinion explaining why appellant was not able to work and therefore his report is not sufficient to overcome the report of the impartial medical specialist, Dr. Shipkin.

⁵ *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

The July 15, 1996 and December 17, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
February 12, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member