U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLIE J. PATTERSON and TENNESSEE VALLEY AUTHORITY, DIVISION OF CHEMICAL OPERATIONS, Chattanooga, Tenn.

Docket No. 97-2163; Submitted on the Record;
Issued July 7, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate benefits effective May 3, 1992.

The Office accepted appellant's claim for contusion to the left hip, chronic low back strain and chronic lumbar back syndrome. Appellant sustained his original injury at work on March 16, 1982 and sustained recurrences of disability on February 28, 1983 and January 19, 1984. Appellant worked intermittently at the employing establishment until May 1985 when he was terminated because there was no longer light work for him. The Office paid appellant compensation for the time periods he could not work and placed him on the automatic rolls in December 1985.

By decision dated May 15, 1992, the Office terminated appellant's benefits stating that the weight of the medical evidence established that appellant's disability resulting from the March 16, 1982 employment injury had ceased by May 3, 1992. In terminating benefits, the Office relied on the medical report of Dr. Perry L. Savage, a Board-certified orthopedic surgeon and a second opinion physician, dated July 24, 1991. In his report, Dr. Savage considered appellant's history of injury, performed a physical examination and reviewed lumbosacral and sacroiliac x-rays and the results of a myelogram and computerized axial tomography (CAT) scan which were all normal. He also stated the neurological examination of the upper extremities was normal. Dr. Savage stated:

> "In general, I cannot explain this man's complaints of pain. I cannot relate it to his lumbosacral strain in 1982. He does not seem to have signs or symptoms of a herniated disc, nor does he have signs or symptoms that are typical of mechanical back pain."

He stated that he would not restrict appellant and he could not explain appellant's disability.

By letter dated June 2, 1992, appellant requested a written review of the record by an Office hearing representative. Appellant submitted medical evidence to support his claim consisting of a letter from Dr. Robert Q. Craddock, a Board-certified neurological surgeon, dated April 10, 1990 and medical reports from Dr. James M. Sornsin, an orthopedic surgeon, dated May 28, 1992 and from Dr. John Kendall Black, a Board-certified orthopedic surgeon and a second opinion physician, dated July 9, 1990.

In a report dated July 9, 1990, Dr. Black stated that appellant's lumbar back syndrome still existed and that the condition restricted his activities. He stated that the condition had been accepted as causally related to the March 16, 1982 employment injury by the Office's previous determinations. Dr. Black stated that the objective findings were described in the paragraph on physical examination particularly with regard to the limitations of motion. Attached to Dr. Black's report is a work restriction evaluation dated July 9, 1990 describing appellant's restrictions.

By letter dated April 10, 1990, Dr. Craddock stated that he would agree with Dr. Black's evaluation in his January 17, 1990 report. In his January 17, 1990 report, Dr. Black considered appellant's history of injury, performed a physical examination and reviewed lumbar spine x-rays which were normal. On physical examination, he found appellant walked with a normal gait, stood with a level pelvis and had no spasm at rest. Dr. Black found no evidence of muscle wasting. He noted that appellant flexed 40 degrees, had lateral bend less than 10 degrees on the right and left and essentially had no rotation of the lumbar spine on the right or left. Dr. Black also found that appellant's motor function over the lower extremities was normal and the straight leg raising test was negative.

Based on the examination, he stated that "it would seem" that appellant had a lumbosacral strain which developed into a chronic low back syndrome. Dr. Black stated that the myelogram and the CAT scan did not show any herniated nucleus pulposus. He further stated he found no physical findings that were related to the March 16, 1982 employment injury. Dr. Black stated that appellant would require vocational rehabilitation to return him to gainful employment and that would "ultimately require a sedentary job."

In his May 28, 1992 report, Dr. Sornsin considered appellant's history of injury, performed a physical examination and reviewed x-rays which were normal. He diagnosed back strain with chronic low back pain syndrome. Dr. Sornsin stated:

> "[Appellant] has been treated for back strain with back pain symptoms since 1982 and apparently has not worked since 1985. As he has not worked and has not been involved in any other activities it would be assumed that the symptoms he is experiencing today are associated with the original back problems. It should be noted however, at the present time there are no hard signs of herniated nucleus pulposus or sciatic nerve irritation. In view of this, I feel that a lot of these symptoms are perpetuated by the level of inactivity initially caused by the back symptoms and now caused by the chronic back pain syndrome."

Dr. Sornsin recommended that a magnetic resonance imaging (MRI) scan be performed to rule out herniated nucleus pulposus. He stated that appellant could work with restrictions of

no lifting over 15 to 20 pounds, no bending, stooping or climbing. Dr. Sornsin stated that even with these restrictions, he doubted that appellant would tolerate the workplace for any length of time without significant back symptoms. He stated that the prognosis was "not good" unless appellant became highly motivated and markedly increased his activity level.

By decision dated September 18, 1992, the Office hearing representative affirmed the Office's May 15, 1992 decision.

Appellant twice requested reconsideration of the decision and submitted additional medical evidence. By decisions dated February 10 and July 18, 1994, the Office found that the evidence was insufficient to warrant modification of the Office's decision. The evidence appellant submitted consisted of a report and progress notes from Dr. Craddock dated April 29, 1993, October 27 and May 25, 1992 and February 1, 1993, respectively, a bone scan dated July 26, 1991 showing a focal rib lesion "most probably related to trauma," a work restriction evaluation dated February 1, 1993 from Dr. Savage, a report dated August 30, 1993 from Dr. Don R. Hirsbrunner, a Board-certified orthopedic surgeon, and a report dated April 29, 1994 from Dr. Richard Rex Harris, a Board-certified orthopedic surgeon. Of this evidence, only the July 26, 1991 bone scan, Dr. Craddock's April 29, 1993 report, Dr. Hirsbrunner's August 30, 1993 report and Dr. Harris' April 29, 1994 report address causation. In his April 29, 1993 report, Dr. Savage considered appellant's history of injury and noted that a lumbar discogram dated April 2, 1993 which he performed revealed that appellant had some degeneration in the lower two discs but they were normal and did not reproduce any unusual pain. He opined that it was difficult "to say for sure" whether appellant's chronic low back pain was related to his March 16, 1982 employment injury but noted that appellant stated that all his problems began when he injured his back at work. Dr. Savage stated that Dr. Craddock and other physicians who treated appellant prior to his seeing appellant might be able to aid in relating appellant's condition to the March 16, 1982 employment injury.

In his August 30, 1993 report, Dr. Hirsbrunner stated that appellant had severely restricted back motion secondary to his subjective complaints which could neither be proved nor disproved. He stated that appellant had extreme signs of deconditioning secondary to inactivity. Dr. Hirsbrunner stated that he failed to see how anyone with appellant's "self-image and perception of his difficulties can possibly maintain any kind of ongoing employment." He recommended treatment by a pain clinic or psychiatrist and stated that the prognosis for appellant's improvement was "very poor."

In his April 29, 1994 report, Dr. Harris considered appellant's history of injury, reviewed the x-rays showing degenerative changes at L5-S1 and diagnosed chronic lumbar strain causally related to the March 16, 1982 employment injury.

On October 24, 1995 appellant subsequently appealed to the Board. By order dated July 1, 1996, Docket No. 96-250, the Board dismissed the appeal, finding that a final decision had not been issued within a year of appellant's October 24, 1995 filing and therefore the Board lacked jurisdiction to hear the appeal.

By letter dated July 15, 1996, appellant requested reconsideration of the Office's decision and submitted additional medical evidence consisting of lumbar CAT scans dated March 2,

1983, April 4, 1984, January 3, 1986 and October 12, 1988, a lumbar MRI scan dated May 22, 1986 and a report from Dr. John R. Brouillette, an internist, dated April 17, 1995. The March 2, 1983 and April 4, 1984 CAT scans showed bulging discs at L4-5 or L5-S1 levels or both, the January 3, 1986 CAT scan showed a probable herniated disc central and slightly to the right at L5-S1, the May 22, 1986 MRI scan showed slight posterior disc bulging at L4-5 and the October 12, 1988 CAT scan showed no herniated disc at the L5-S1 level.

In his report dated April 17, 1995, Dr. Brouillette considered appellant's history of injury, performed a physical examination and reviewed x-ray results showing severe inflammatory disease of the sacroiliac joints. He diagnosed severe sacroiliitis which limits appellant's ability to walk, lift or sit for extended periods of time. Dr. Brouillette stated that "the underlying etiology of this is most likely rheumatologic in origin."

By decision dated December 3, 1996, the Office found that the evidence appellant submitted was insufficient to warrant modification of the decision.

By letter dated February 10, 1997, appellant requested reconsideration of the decision and submitted a medical report from Dr. Keehn W. Berry, a Board-certified internist, dated February 3, 1997. In his report, Dr. Berry diagnosed two problems, a herniated L4-5 disc of 1982 which was previously related to appellant's disability by the Office but was no longer disabling him and rheumatoid spondylitis diagnosed in the St. Vincent's Hospital in 1994. He stated that it was "impossible" to state whether appellant had ankylosing spondylitis at the time of his fall in 1982 as the condition "has a very insidious onset and … there may be no objective evidence of the disease radiologically or serologically at the time of onset, even though the individual suffering from the disease may be a great deal of discomfort." Dr. Berry stated that persons with ankylosing or rheumatoid spondylitis are of increased susceptibility to fractures and to the effects of even minor trauma and therefore there was "a possibility" that appellant's ankylosing or rheumatoid spondylitis was precipitated or aggravated by the 1982 fall. He stated that appellant was disabled due to the rheumatoid or ankylosing spondylitis, that his disease had progressed to involve all of his spine symptomatically and his physical activity was markedly limited.

By decision dated April 23, 1997, the Office found that the evidence of record was insufficient to warrant modification of the decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective May 3, 1992.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.[1] The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.[2]

In the present case, the July 24, 1991 report of Dr. Savage, a second opinion physician, constitutes the weight of the evidence. In his report, Dr. Savage found that the neurological examination and the results of lumbosacral and sacroiliac x-rays, a myelogram, CAT scan were normal. He stated that could not explain appellant's complaints of pain and that appellant did not have signs or symptoms of a herniated disc or of typical mechanical back pain. Dr. Savage stated that appellant did not require restrictions.

None of the medical evidence appellant submitted addressing causation is sufficiently rationalized to counter Dr. Savage's opinion. In his July 1990 report, Dr. Black, also a second opinion physician, stated that appellant's lumbar back syndrome still existed and restricted his activities and stated that the objective findings were described in the paragraph on physical examination particularly with regard to the limitations of motion but it is not clear what he is referring to. In his April 10, 1990 letter, Dr. Craddock stated that he agreed with Dr. Black's January 17, 1990 report. In that report, Dr. Black found that the diagnostic tests were normal but based on some restriction of motion on the physical examination, appellant had a lumbosacral strain which developed into a chronic low back syndrome and that with vocational rehabilitation, appellant could perform a sedentary job. Dr. Craddock's letter merely stating his agreement with Dr. Black does not constitute a rationalized medical opinion to support that appellant's current disability is work related. The Board has held that a medical reports not containing rationale on causal relationship are entitled to little probative value.[3]

In his May 28, 1992 report, Dr. Sornsin noted that there were no hard signs of herniated nucleus pulposus or sciatic nerve irritation and opined that appellant's symptoms were perpetuated by the level of inactivity initially caused by the back symptoms and now caused by the chronic back pain syndrome. Dr. Sornsin has addressed why appellant's back strain with pain symptoms have continued in that the inactivity from the March 16, 1992 employment injury perpetuated them. However, his opinion is not sufficiently rationalized to establish the requisite causal connection as he did not explain in any detail how appellant's inactivity prevented the back strain from healing.[4]

Dr. Savage's April 29, 1993 opinion that it was "difficult to say for sure" whether appellant's chronic low back pain was work related is equivocal and speculative and therefore is insufficient to establish the requisite causal connection. The Board has held that medical opinions which are speculative, vague or equivocal are not probative in establishing a causal

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[1] *Patricia M. Mitchell*, 48 ECAB ___ (Docket No. 95-384, issued February 27, 1987); *Patricia A. Keller*, 45 ECAB 278 (1993).

[2] *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[3] *See John Watkins*, 47 ECAB 597, 602 (1996); *William C. Thomas*, 45 ECAB 591, 594 (1994).

[4] *See Larry Warner*, 43 ECAB at 1033.

relationship between appellant's disability and his federal employment.[5] In his August 30, 1993 report, Dr. Hirsbrunner opined that appellant had severely restricted back motion secondary to his subjective complaints and showed extreme signs of deconditioning secondary to inactivity. He, however, did not specifically relate appellant's condition to his March 16, 1992 employment injury. Therefore, his opinion is not probative. Dr. Harris' April 29, 1994 report in which he diagnosed chronic lumbar strain causally related to the March 16, 1982 employment injury is conclusory as he provided no medical rationale as to how appellant's lumbar strain is causally related to the March 16, 1982 employment injury. Further, degenerative changes were not an accepted condition. His opinion is also not probative.[6]

Dr. Brouillette's April 17, 1995 opinion that the underlying etiology of appellant's sacroiliitis is rheumatologic in origin is not probative because Dr. Brouillette did not relate appellant's sacroiliitis to factors of his federal employment. Further, sacroiliitis was also not an accepted condition. Therefore, Dr. Brouillette's opinion is not probative. Moreover, Dr. Berry's February 3, 1997 opinion that there was "a possibility" that appellant's ankylosing or rheumatoid spondylitis were precipitated or aggravated by the 1982 fall is speculative. Further, ankylosing or rheumatoid spondylitis was not an accepted condition. The July 26, 1991 bone scan appellant submitted showing a focal rib lesion probably related to trauma does not establish any causal connection between appellant's March 16, 1982 employment injury and the accepted conditions of chronic low back strain and chronic lumbar back syndrome. The other diagnostic tests appellant submitted including the CAT scans and MRI also do not demonstrate any causal connection between appellant's current disability and his March 16, 1982 employment injury.

As appellant has not submitted sufficient evidence to counter Dr. Savage's July 24, 1991 report that appellant is no longer disabled due to the March 16, 1991 employment injury based on the lack of objective evidence, Dr. Savage's opinion which is well rationalized constitutes the weight of the evidence and justifies the Office's termination of appellant's compensation benefits.

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[5] *Alberta S. Williamson*, 47 ECAB 569, 574 (1996); *William S. Wright*, 45 ECAB 498, 504 (1994).

[6] *John Watkins*, *supra* note 2 at 602.

The decisions of the Office of Workers' Compensation Programs dated April 23, 1997 and December 3, 1996 are hereby affirmed.

Dated, Washington, D.C.
July 7, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member