

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PANTELIS (PETER) GEORGANTZIS and DEPARTMENT OF THE ARMY,
PICATINNY ARSENAL, Dover, N.J.

*Docket No. 97-885; Submitted on the Record;
Issued June 11, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation, effective November 9, 1996, on the grounds that he had no continuing disability from the accepted work injury.

The Board has carefully reviewed the case record and finds that the medical evidence is sufficient to meet the Office's burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ The Office burden

¹ 5 U.S.C § 8101 *et seq.* (1974).

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁶

In this case, appellant's notice of traumatic injury filed on March 9, 1995 was accepted by the Office after he slipped on icy stairs and fell at work, hurting his right elbow and straining his lower back. Appellant stopped work and underwent extensive physical therapy and facet joint injections as well as two rhizotomies.⁷

Subsequently, the Office referred appellant for a second opinion to Dr. Scott Naftulin, an osteopathic practitioner, who stated in a March 27, 1996 report that appellant could currently work in a sedentary position for eight hours daily as tolerated allowing him to stand or walk as needed. Because this report conflicted with the conclusions of Dr. Carlos H. Zambrano, a neurologist, and Dr. James B. Kim, also an osteopathic practitioner, appellant's treating physicians who found appellant unable to work, the Office sent appellant for an impartial medical examination to Dr. Joseph R. Sgarlat, a Board-certified orthopedic surgeon.

Based on Dr. Sgarlat's August 7, 1996 report, the Office issued a notice of proposed termination on September 11, 1996 and allowed appellant 30 days to submit evidence of his continuing claim for disability.

In response, appellant submitted the August 29, 1996 report of Dr. Horia H. Schwartz, Board-certified in physical medicine and rehabilitation, who found that appellant had a permanent two-thirds residual disability, with "a great deal of supratentorial overlay," and the combination rendered appellant unable to return to work.⁸ Appellant also submitted a September 19, 1996 report from Dr. Zambrano, and a September 20, 1996 report from Dr. Kim, in which he reviewed the reports of Drs. Naftulin and Sgarlat.

⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁶ *Connie Johns*, 44 ECAB 560, 570 (1993).

⁷ Rhizotomy involves an operation to cut the anterior or motor nerve roots or the posterior or sensory nerve roots within the spinal canal in an effort to relieve essential hypertension or intractable pain. *DORLAND'S ILLUSTRATED Medical Dictionary* (27th ed. 1988).

⁸ Psychogenic overlay is defined as the emotionally determined increment to an existing symptom or disability of an organic or traumatic origin. The tentorium covers the brain's cerebellum. *DORLAND'S ILLUSTRATED Medical Dictionary* (27th ed. 1988).

On October 22, 1996 the Office terminated appellant's compensation on the grounds that the medical evidence failed to support any current residuals of the March 9, 1995 work injury. The Office accorded the weight of the medical opinion evidence to the report of Dr. Sgarlat.

The Board finds that the medical evidence is sufficient to establish that appellant has no continuing disability resulting from the accepted work injury.

Dr. Sgarlat initially found that appellant could return to sedentary work in March 1996,⁹ but because appellant's treating physicians disagreed, the Office properly referred appellant to an impartial medical examiner.¹⁰ He was provided with the Office's entire medical record of appellant's treatment, a statement of accepted facts and a list of pertinent questions.

Reviewing the objective testing -- including x-rays, a bone scan, magnetic resonance imaging (MRI) scans, computerized tomographic (CT) scans and myelograms, Dr. Sgarlat concluded that all results were within normal limits with only minor, age-related changes in appellant's back. The many physical examinations since appellant's injury showed "rather extensive subjective complaints," but "remarkably normal" clinical findings.

Dr. Sgarlat found similar normal objective findings upon his own examination and noted that appellant "voluntarily" limited the range of motion in his back and complained that even that movement was painful. However, no findings or results of his multiple special studies supported any limited range of motion.

Based on this information, Dr. Sgarlat concluded that appellant's back injury would have normally healed within a few weeks, and no objective findings demonstrated a current lumbar strain. Nor was there any evidence of any current work-related condition -- appellant stated that the elbow injury no longer troubled him. Dr. Sgarlat found no residual effects of the original back injury and opined that appellant's prolonged recovery was based primarily on his continuing subjective complaints.

Supportive of Dr. Sgarlat's conclusion is the second opinion specialist's report. Dr. Naftulin also noted the normal results of objective tests, including a June 15, 1995 electromyogram showing no evidence of neuropathy, radiculopathy or myopathy, and found no objective neurologic deficit upon examination.

By contrast, the monthly reports of Dr. Zambrano, who continued to find appellant incapable of any work, contain no objective findings to support appellant's continued complaints

⁹ The employing establishment noted that appellant's work covered a broad spectrum of engineering activities, none of which required any lifting or physical exertion. The employing establishment offered a light-duty assignment and waiver of any necessary travel until appellant felt able to do that. Dr. Sgarlat reported that appellant told him that his position as a mechanical engineer was a desk job and required no physical labor.

¹⁰ See *Shirley L. Steib*, 46 ECAB 309, 316 (1994) (noting that 5 U.S.C. § 8123 of the Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination).

of pain and disability. His latest report does not even address the issue of whether appellant is capable of working. Therefore, Dr. Zambrano's opinion is of diminished probative value.¹¹

Dr. Schwartz, who also reviewed the medical evidence, stated that appellant has had persistent symptomatology "which, according to him, prevents" him from returning to work. He related that appellant had.

"An extremely stiff antalgic posture maintaining essentially an immobilized trunk and pelvis moving extremely slowly, very deliberately, very cautiously, essentially as little as possible to just go from here to there and will not walk for more than 10 or 15 feet or so. Standing in an erect posture, he constantly grabs his sides and pelvis for propping support, constantly groans and moans."

Dr. Schwartz diagnosed permanent residuals of traumatic injuries to the lumbosacral spine with radiculopathy at several levels, persistent excessive myofascitis, facet arthropathy, and degenerative disc disease and attributed appellant's inability to work to his permanent residual back condition and his overlay of subjective complaints. However, he provided no medical rationale for her conclusion, which is therefore insufficient to detract from the well-rationalized opinion of Dr. Sgarlat.¹²

Finally, while Dr. Kim criticized Dr. Sgarlat's conclusion that appellant had no limitations resulting from his work injury, Dr. Kim stated that appellant may be able to do some sedentary work, but that his medication made him sleepy and therefore unable to drive. He, who diagnosed chronic low back pain, also failed to provide any objective medical evidence of appellant's continuing disability for work.

Inasmuch as Dr. Sgarlat reviewed the case record in detail and a statement of accepted facts, examined appellant thoroughly, found no objective evidence to support appellant's complaints of pain, and provided a detailed and well-rationalized medical explanation of why the accepted back and elbow conditions had resolved, the Board finds that his conclusions represent the weight of the medical evidence¹³ and are sufficient to carry the Office's burden of proof.¹⁴ Therefore, the Board finds that the Office properly terminated appellant's compensation.¹⁵

¹¹ See *Anna Chrun*, 33 ECAB 829, 835 (1982) (finding that the absence of objective evidence of disability is more compatible with the absence of disability than with its presence).

¹² See *Kathryn Haggerty*, 45 ECAB 383, 389 (1994) (finding that neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship).

¹³ See *Cleopatra McDougal-Saddler*, 47 ECAB 480, 488 (1996) (finding that the Office referral physician provided convincing rationale, bolstered by the opinion of another Board-certified specialist, that appellant's continuing disability was not work related).

¹⁴ See *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that physician's opinion was thorough, well rationalized, and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

¹⁵ See *Thomas Bauer*, 46 ECAB 257, 265 (1994) (finding that the additional report from appellant's physician

The October 22, 1996 decision of the Office of Workers' Compensation is affirmed.

Dated, Washington, D.C.

June 11, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

concerning his emotional condition was insufficient to overcome the special weight accorded to the impartial medical examiner's opinion).