

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY R. HYATT and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Nashville, Tenn.

*Docket No. 97-1061; Submitted on the Record;  
Issued March 9, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issues are: (1) the Office of Workers' Compensation Programs properly rescinded acceptance of its claim for the cataract in appellant's right eye; and (2) whether appellant has met his burden of proof in establishing that the cataracts in his left and right eyes were causally related to the August 19, 1970 employment injury.

The Office accepted appellant's claim for trauma-induced unilateral cataract of the right eye. Appellant was struck on the top of his head in a work-related car accident on August 19, 1970. In February 1989 appellant began to have problems with the vision in his right eye, was diagnosed as having trauma-induced cataract, and due to his worsening vision, he underwent surgery consisting of extracapsular cataract extraction and implantation of a posterior chamber intraocular lens. In a report dated March 13, 1990, Dr. Denis M. O'Day, a Board-certified ophthalmologist and appellant's treating physician, opined that appellant's cataract in the right eye was probably caused by the August 1970 car accident because the problem involved only appellant's right eye. Dr. O'Day stated that usually a unilateral cataract is caused by some type of trauma and ocular disease would affect both eyes to some extent. Subsequent to that report, appellant developed a cataract in his left eye for which he underwent the same kind of surgery as he had on his right eye on February 27, 1992. Appellant sought to expand his claim to include the cataract in his left eye.

By decision dated November 18, 1991, the Office denied appellant's claim for a schedule award, stating that the evidence of record failed to establish that appellant had a permanent partial impairment to the right eye resulting from the August 19, 1970 employment injury. Appellant requested an oral hearing before an Office hearing representative but, by decision dated May 15, 1992, the Office hearing representative remanded the case for further development and for an evaluation of appellant's right eye condition by a second opinion physician. The Office hearing representative noted that Dr. O'Day stated that appellant's right eye condition was work related because appellant did not develop a problem in the left eye. Because, however, appellant subsequently developed a problem in his left eye, the Office

hearing representative remanded the case to determine whether the right eye problem was in fact work related.

By letter dated May 21, 1993, Dr. O'Day referenced his March 13, 1990 letter, and stated that he did not believe it was possible for him to draw any conclusions about the etiology of the cataract in appellant's left eye but he could not exclude trauma as a contributing factor.

By decision dated June 7, 1993, the Office hearing representative remanded the case for further development of the evidence as appellant submitted additional evidence which the Office had requested but had not considered and appellant additionally requested compensation for his left eye condition.

In a report dated July 7, 1993, the Office medical adviser considered appellant's history of injury and stated that it would be helpful to obtain old records of appellant's eye examination. He concluded that there was no causal relation between the car accident and appellant's cataract 18 years later. The Office medical adviser stated that the second cataract strengthened that opinion. He stated that "we all get cataracts if we live long enough."

In a report dated August 2, 1993, Dr. O'Day stated that he disagreed with the medical adviser, stating that posterior cataracts appellant suffered could arise from a multiplicity of causes including normal aging changes, corticosteroid administration and concussive trauma. He stated that the etiology of cataract is conjectural because doctors do not understand the fundamental mechanisms of cataract formation. Dr. O'Day stated that any injury in which the head is traumatized may cause indirect damage to the eyeball even if it is only a quite trivial bump on the head. He stated that individuals may develop eye disease many years later. Further, Dr. O'Day stated that, while his supposition that appellant's right eye cataract was trauma induced was strengthened by the unilaterality of presentation, bilaterality did not weaken that argument since bilateral ocular injury is possible from a head injury. He stated:

"There is absolutely no way to prove a cause or relationship. The argument is based on known mechanisms and probabilities. Thus, the development of the first cataract provided some support, especially as it was unilateral, for the possibility that there may have been a precipitating cause. Development of the second cataract lessened that possibility but did not contradict or exclude it."

By decision dated August 6, 1993, the Office rescinded its acceptance of appellant's right eye condition stating that the evidence of record failed to establish that the claimed condition or disability is causally related to the August 19, 1970 employment injury. By decision dated February 23, 1994, the Office hearing representative found there was a conflict in the evidence between Dr. O'Day's opinion that he could not rule out that appellant's cataracts in his eyes were work related and the Office medical adviser's opinion that appellant's cataracts were not work related. He therefore remanded the case for an impartial medical specialist to resolve the conflict in the medical opinions.

In a report dated October 7, 1994, the impartial medical specialist, Dr. John B. Bond, a Board-certified ophthalmologist, performed a physical examination and an eye test and stated that he found no evidence of any visual impairment "whatsoever." Dr. Bond stated that

appellant had a mild astigmatic error for the right and was slightly myopic in the left eye. He stated that it was difficult for him to provide an opinion concerning the relationship of appellant's cataracts with the August 19, 1970 employment injury since the cataracts were removed. Dr. Bond stated that it was his understanding that appellant had posterior subcapsular cataracts which, while not common, were known to occur in people in their 30's and 40's who have not had any ocular trauma. He opined that there was no relationship between appellant's car accident and the cataracts which developed 18 to 19 years later. Dr. Bond stated the fact that appellant developed cataracts bilaterally, and that at the time the first eye was operated upon, the lens was clear in the left eye, mitigated against the possibility that the cataracts were the result of trauma.

By decision dated October 24, 1994, the Office denied the claim, stating that the evidence of record failed to demonstrate a causal relationship between the claimed medical condition or disability. By letter dated November 19, 1994, appellant requested an oral hearing before an Office hearing representative which was held on July 12, 1995. At the hearing, appellant stated that he had not received any payments for his right eye. Appellant described the August 19, 1970 car accident, the medical treatment he had received from Dr. O'Day, and the history of the Office's decisions. He stated that he continued to have problems with his eyes as in having burning spells when he was driving and he was unable to completely open his right eye. Further, he stated that according to Dr. O'Day, it was unknown how effective his surgery would be in terms of how long the lens and stitching would last.

Appellant submitted additional evidence to support his claim including progress notes dated November 16, 1989 from Dr. Karla J. Johns, a Board-certified ophthalmologist, in which she performed a physical examination and noted that appellant had advanced cataract and vision reduced to hand motion. Dr. Johns also noted that appellant was injured on duty in a motor vehicle accident in 1969 and had progressive vision loss over the years due to cataract formation. The Office referred appellant to Dr. Warren R. Berrie, a Board-certified ophthalmologist, who, in a report dated August 25, 1995, stated that he had not examined appellant and therefore could not render an independent opinion and, further, he could not render an opinion about the etiology of cataracts when the cataracts were gone. By decision dated September 21, 1995, the Office hearing representative affirmed the Office's October 24, 1994 decision.

By letter dated September 19, 1996, appellant requested reconsideration of the Office's decision and resubmitted Dr. Johns' November 16, 1989 progress notes.

By decision dated October 3, 1996, the Office denied appellant's reconsideration request.

The Board finds that Office properly rescinded acceptance of appellant's claim for a cataract in his right eye and that appellant failed to establish that the cataracts in his left and right eyes were causally related to the August 19, 1970 employment injury.

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128(a) of the Federal Employees' Compensation Act<sup>1</sup> and, where

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<sup>1</sup> 5 U.S.C. § 8128(a).

supported by the evidence, set aside or modify a prior decision and issue a new decision.<sup>2</sup> The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.<sup>3</sup> It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.<sup>4</sup> To justify rescission of acceptance, the Office must establish that its prior acceptance was erroneous based on new or different evidence or through new legal argument and/or rationale.<sup>5</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup> Medical reports which are speculative or ambiguous are not probative in establishing an employee's claim.<sup>7</sup>

In the present case, the Office accepted appellant's claim for a cataract in the right eye based on Dr. O'Day's opinion that the cataract was caused by the August 1970 car accident because the cataract was unilateral, that is, it involved only the right eye. He stated that ocular disease would have affected both eyes. New evidence subsequently became available in that appellant developed a cataract in his left eye. In his reports dated May 21 and August 2, 1993, Dr. O'Day opined that the development of the left eye cataract may have lessened the possibility that the right eye cataract was work related but did not contradict or exclude it because bilateral ocular injury is possible from a head injury. He stated, however, that there was absolutely no way to prove a causal relationship. In his July 7, 1993 report, the Office medical adviser opined that appellant's right eye cataract was not work related because appellant developed a cataract in his left eye and attributed appellant's cataracts to age. In his August 6, 1993 decision, the Office rescinded its acceptance of appellant's right eye cataract, stating that the evidence established that it was not related to the August 19, 1970 employment injury. In its February 23, 1994 decision, the Office hearing representative referred the claim to an impartial medical specialist to resolve the conflict between Dr. O'Day's and the Office medical adviser's opinions as to the etiology of appellant's cataracts. In his October 7, 1994 opinion, the impartial medical specialist, Dr. Bond, stated that the right eye cataract was not work related because of the development of the cataract in the left eye. Additionally, he stated the fact that the lens in the

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<sup>2</sup> *Ezel Wills*, 49 ECAB \_\_\_\_\_ (Docket No. 96-549, issued March 4, 1998); *Eli Jacobs*, 32 ECAB 1147 (1981).

<sup>3</sup> *Ezel Wills*, *supra* note 2; *Shelby J. Rycroft*, 44 ECAB 795, 803 n.5 (1993).

<sup>4</sup> *See Frank J. Mela, Jr.*, 41 ECAB 115 (1989).

<sup>5</sup> *See Laura H. Hoexter (Nicholas P. Hoexter)*, 44 ECAB 987 (1993).

<sup>6</sup> *Gary L. Fowler*, 45 ECAB 365, 371; *Ern Reynolds*, 45 ECAB 690, 695 (1994).

<sup>7</sup> *See William S. Wright*, 45 ECAB 498, 504 (1994); *Ern Reynolds*, *supra* note 6 at 696.

left eye was clear when appellant had the operation on his right eye “mitigated against the possibility” that the cataracts were the result of the trauma. The subsequent medical evidence appellant submitted consisting of Dr. Johns’ November 16, 1989 progress notes did not address causation. In his August 25, 1995 report, the second opinion physician, Dr. Berrie, stated that he was unable to give an opinion on the cause of appellant’s cataracts because they had been removed.

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>8</sup> In the present case, Dr. Bond’s October 7, 1994 report constitutes the weight of the evidence. Although he opined that it was difficult for him to render an opinion on the cause of appellant’s cataracts because they had been removed, he opined that there was no relationship between appellant’s cataracts and the August 19, 1970 car accident because appellant had posterior subcapsular cataracts, the cataracts developed bilaterally, and the lens was clear in the left eye at the time appellant was operated on for his right eye. Dr. Bond’s statement that appellant had posterior subcapsular cataracts and the lens in his left eye was clear at the time of appellant’s right eye operation is supported by the record. The subsequent medical evidence in the record consisting of Dr. Johns’ November 16, 1989 progress notes and Dr. Berrie’s August 25, 1995 opinion does not negate Dr. Bond’s opinion because Dr. Johns did not address causation and Dr. Berrie stated that he could not address the etiology of appellant’s cataracts when the cataracts had been removed. Therefore, the Office properly rescinded its acceptance of appellant’s claim for a right eye cataract because the opinion of the impartial medical specialist, Dr. Bond, constitutes the weight of evidence in this case and establishes that the right eye cataract was not work related.

Similarly, Dr. Bond’s opinion also constitutes the weight of the evidence that appellant’s left eye cataract was not work related. In his May 21, 1993 opinion, Dr. O’Day stated that he was unable to state that the cause of the left eye was trauma but he could not exclude trauma as a contributing factor. In his July 7, 1993 report, the Office medical adviser attributed the cataracts in appellant’s eyes to age. In his August 2, 1993 opinion, Dr. O’Day stated that the etiology of cataracts is conjectural but appellant’s cataracts could have arisen from a multiplicity of causes including normal aging changes, corticosteroid administration and concussive trauma. He was unable to conclusively state what caused the cataracts in appellant’s eyes. Dr. Bond’s October 7, 1994 opinion that appellant’s cataracts were not work related because they were posterior subcapsular, they developed bilaterally, and the eye in the left lens was clear at the time of the operation on the right eye, establishes that the left eye cataract as well as the right eye cataract were not work related. As noted above, the subsequent medical evidence in the record does not negate Dr. Bond’s opinion on causation. Appellant has therefore failed to establish that the cataracts in his left and right eyes were work related.

Accordingly, the decision of the Office of Workers’ Compensation Programs dated October 3, 1996 is hereby affirmed.

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<sup>8</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

Dated, Washington, D.C.  
March 9, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member