

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES DIGIANTOMMASO and U.S. POSTAL SERVICE,
POST OFFICE, Melville, N.Y.

*Docket No. 97-1326; Submitted on the Record;
Issued March 24, 1999*

DECISION and ORDER

Before DAVID S. GERSON, 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 April 22, 1996.

In the present case appellant filed a claim alleging that he sustained a low back injury while lifting at work on April 22, 1996. The Office accepted the claim for cervical and lumbar sprains, and appellant began receiving compensation for temporary total disability.

In a letter dated March 20, 1996, the Office advised appellant that it proposed to terminate his compensation on the grounds that the weight of the medical evidence established that his employment-related disability had ceased. By decision dated April 22, 1996, the Office terminated appellant's compensation. Appellant requested reconsideration and by decision dated December 20, 1996, the Office denied modification of its prior decision.

The Board has reviewed the record and finds that the Office did not meet its burden of proof in terminating appellant's compensation effective April 22, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹

In this case, the Office found that a conflict in the medical evidence existed between an attending physician, Dr. P. Arjen Keuskamp, a neurologist and Dr. William H. Bloom, a neurosurgeon, serving as a second opinion referral physician. In a report dated November 22, 1994, Dr. Bloom opined that appellant's employment-related conditions had resolved. In a

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

report dated January 3, 1995, Dr. Keuskamp indicated that appellant continued to have residuals of the April 22, 1994 injury.

Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.² To resolve the conflict in this case, the Office referred appellant, along with medical records and a statement of accepted facts, to Dr. Richard S. Goodman, a Board-certified orthopedic surgeon.³ In a report dated March 30, 1995, Dr. Goodman provided a history and results on examination. Dr. Goodman diagnosed cervical and lumbar herniated discs, and indicated that appellant was disabled. Dr. Goodman did not discuss the relevant issues. The Office, by letter dated April 18, 1995, requested additional information from Dr. Goodman.

In a report dated April 24, 1995, Dr. Goodman stated that he agreed with Dr. Bloom that appellant had degenerative disc disease of the cervical spine and the disc herniation was part of the degenerative or arthritic process. He indicated that while that physical examination did not have classical neurological findings, appellant did have neurologic abnormalities. Dr. Goodman further stated in pertinent part:

“Dr. Bloom and I agree that the patient does have degenerative disease in the cervical and lumbar spine. I also agree that the degenerative findings are not related to the accident. However, I disagree with Dr. Bloom since the findings can limit the patient’s ability to do physical activity. I also agree that the cervical and lumbar disc sprains, which were temporary, have resolved.

“I also agree that the cervical and lumbar herniated discs are not directly related to the original injury but are related to the preexisting degenerative conditions.”

It is well established that when 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.⁴ In this case, however, Dr. Goodman merely indicates his agreement with the second opinion referral physician without providing his own reasoning. A similar situation was presented in *Frederick Justiniano*,⁵ where the impartial medical specialist indicated his agreement with a referral physician without providing further medical explanation for his opinion. The Board found that

² *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

³ Appellant argues that since the conflict arose between neurologists, referral to an orthopedic surgeon was inappropriate. The Board notes that the accepted conditions were orthopedic, as well as the continuing diagnoses of herniated discs; there is no indication that a referral to an orthopedic surgeon was unreasonable in this case.

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁵ 45 ECAB 491 (1994). In that case the impartial specialist made statements such as “I must agree with [the referral physician’s] conclusion that the patient has an underlying personality disorder” and “I also agree ... such adjustment disorder would have long since resolved without residuals.”

such statements were of diminished probative value without supporting medical rationale and would not be a sufficient basis to terminate compensation.⁶ Similarly, Dr. Goodman's statements in his April 24, 1995 report that he agreed with Dr. Bloom, without any medical explanation of his own to support his conclusions, do not constitute a well-reasoned medical opinion.

It is, as noted above, the Office's burden to terminate compensation. The Board finds that the Office did not meet its burden in this case.

The decisions of the Office of Workers' Compensation Programs dated December 20 and April 22, 1996 are reversed.

Dated, Washington, D.C.
March 24, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ *Id.*, 497.