

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH B. GERTMAN and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, N.Y.

*Docket No. 98-2575; Submitted on the Record;
Issued May 4, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective May 25, 1997.

Appellant filed a claim for an injury sustained on December 18, 1968 which the Office accepted for a lumbosacral strain. In 1972 appellant was approved for disability retirement.

In a report dated August 7, 1995, Dr. Leon Sultan, appellant's treating Board-certified orthopedic surgeon, opined that appellant was permanently disabled due to his lumbar spine injury of December 18, 1968.

In work restriction evaluations (Form OWCP-5) dated August 7, 1995, July 18 and September 30, 1996 and January 22, 1998, Dr. Sultan indicated that appellant was capable of working two to four hours per day with rest periods and restrictions.

By letter dated April 23, 1996, the Office referred appellant, together with a statement of accepted facts and questions, appellant to Dr. John S. Mazella, a Board-certified orthopedic surgeon, for a second opinion as to whether appellant was still disabled due to his accepted employment injuries.

In a report dated May 15, 1996, Dr. Mazella, based upon a statement of accepted facts, employment history, review of medical records and physical examination, diagnosed lumbosacral strain/sprain without radiculopathy and osteoarthritis of the spine, not an accepted condition. Dr. Mazella noted that appellant had reached maximum medical improvement previously and that further treatment or diagnostic studies for appellant's accepted lumbosacral strain/sprain was not required. Dr. Mazella opined that appellant "will never return to his previous occupation because of deconditioning and progressive arthritis of the spine over the years."

By letter dated May 30, 1996, the Office requested clarification from Dr. Mazella regarding his opinion that appellant was totally disabled.

In a supplemental report dated June 12, 1996, Dr. Mazella opined that appellant's accepted employment injuries had "resolved long before my evaluation on May 15, 1996." Dr. Mazella opined that appellant is currently disabled to his progressive arthritis of the spine and deconditioning due to lack of activity which are unrelated to the accepted employment injuries.

By letter dated July 10, 1996, the Office referred appellant, together with a statement of accepted facts, to resolve the conflict in the medical opinion evidence between Dr. Mazella, the Office second opinion physician and Dr. Sultan, appellant's treating physician.

In a report dated July 18, 1996, Dr. Sultan opined that appellant continued to have a permanent disability due to his employment-related back injury. Dr. Sultan noted that appellant had "mild osteoporosis and early osteoarthritic changes throughout the lumbar spine" by x-ray interpretation.

In a report dated July 30, 1996, Dr. Harvey R. Grable, a Board-certified orthopedic surgeon, based upon a review of the medical record, statement of accepted facts and physical examination, opined that there was no objective evidence of any radiculitis and that appellant's back pain is due to his osteoarthritis which is unrelated to his employment injury. Dr. Grable opined that appellant's December 18, 1968 injury "may have caused a temporary aggravation of his arthritic pain" he did not believe that the "effects would last longer than a few months at most."

By letter dated August 27, 1996, the Office requested clarification from Dr. Grable.

In a letter dated August 28, 1996, Dr. Grable stated that appellant was disabled due to his preexisting osteoarthritis which is unrelated to his December 18, 1968 employment injury. Dr. Grable noted that "a herniated disc which impinges on a nerve root" can be caused by a traumatic event which will cause special neurological deficits. In the instant case, Dr. Grable noted that "while the straight leg raising was positive bilaterally, dorsiflexion of the ankles did not alter the pain. This is further evidence that the problem is arthritic in nature and not from an injury."

In a letter dated September 3, 1996, Dr. Grable in response to the Office's question on "straight leg raising," noted that "[a]nyone with low back pain from any reason or hip pain will have a positive response" and that a complete test is required. Dr. Grable noted that "[t]he complete test is called a 'Laseague's sign and implies pathology involving the nerve root (usually a herniated disc.)" and that this part of the test was negative for appellant.

In a September 6, 1996 notice of proposed termination of compensation, the Office notified appellant that it proposed to terminate appellant's compensation for wage loss and medical benefits on the grounds that the medical evidence demonstrated that he had no residual impairment due to his accepted employment injury. In an attached memorandum to the Director, the Office stated that the weight of the medical evidence rested with the impartial specialist,

Dr. Grable, who opined in a well-rationalized July 30, 1996 report and supplemental reports dated August 28 and September 3, 1996, that appellant had no disability relating to his accepted employment injury.

In a supplemental report dated September 16, 1996, Dr. Grable stated that he believed appellant's low back pain was due to his osteoarthritis and not due to a herniated disc with radiculitis. Dr. Grable stated that as appellant did not have a positive response to a full Laseague's test that appellant's pain is due to his osteoarthritis and not related to his December 18, 1968 employment injury.

By letter dated September 20, 1996, appellant through counsel, disagreed with the Office's proposal to terminated benefits and requested information.

In a report dated September 30, 1996, Dr. Sultan opined that appellant had a permanent disability of his back due to his accepted December 18, 1968 employment injury.

Appellant submitted a report dated November 7, 1996, from Dr. Reuben S. Ingber, Board-certified in physical medicine and rehabilitation, who noted the history of employment injury and physical examination diagnosed lumbar spinal stenosis/left lumbar radiculitis.

In a report dated January 22, 1997, Dr. Ingber noted that he continued to treat appellant for left lumbar radiculopathy and that prognosis for complete recovery was guarded.

By decision dated May 8, 1997, the Office terminated appellant's compensation for wage loss and medical benefits¹ as of May 25, 1997.² In the attached memorandum, the Office found that the weight of the evidence remained with Dr. Grable, the impartial medical specialist.

By letter dated April 22, 1998, appellant requested reconsideration and submitted evidence in support of his claim.

In reports dated January 22 and February 13, 1998, Dr. Sultan opined that appellant was permanently disabled due to his lower back injury which are directly related to his accepted December 18, 1968 employment injury.

In a report dated February 18, 1998, Dr. Richard J. Radna, a Board-certified neurological surgeon, based upon a physical examination, magnetic resonance imaging test and medical and employment history given by appellant, diagnosed lumbosacral radiculopathy with "essentially total paralysis of the dorsiflexion of the left side. In his report, Dr. Radna opined that appellant's "derangements are causally related to the patient's work-related trauma in the [employing establishment] of 1968, to which he was predisposed to by a progressive hypertrophic spinal stenosis which persists and progresses until the current time."

¹ See *Calvin S. Mays*, 39 ECAB 993 (1988) (The Board held that, to terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that requires further medical attention.)

² In the attached memorandum, the Office informed appellant that his last compensation check would cover the period April 27 to May 24, 1997.

In a March 9, 1998 report, Dr. Ingber diagnosed left lumbar radiculopathy with lumbar disc protrusion and that the prognosis for recovery is poor. He opined that “[t]he injuries appear to be directly related to the work-related injury that caused the disc protrusion. He continues to be disabled from this work-related injury and his is disabled for all work.”

In a March 10, 1998 report, Dr. Boris Tsatskis, an attending physician, diagnosed post-traumatic stress disorder, left foot drop and traumatic lumbosacral derangement with radiculopathy and herniated disc syndrome. Dr. Tsatskis opined that appellant’s symptoms are causally related to his accepted December 18, 1968 employment injury.

In a letter dated March 18, 1998, Dr. Robert Goodman, a Board-certified diagnostic and nuclear radiologist, diagnosed “multi-level advanced degenerative disc disease with central spinal stenosis and chronic lumbar derangement with residual lumbosacral radiculopathy.” Dr. Goodman opined that appellant’s “injury has caused him to be debilitated and homebound. He is unable to work, walk, sit or stand for periods of time.”

By decision dated June 17, 1998, the Office denied appellant’s request to modify the prior decision after a merit review. The Office determined that the weight of the medical evidence remained with Dr. Grable, the impartial medical examiner.

The Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits effective May 25, 1997.

Once the Office accepts a claim, it has the burden of proof to justify termination of compensation benefits.³ After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴

In this case, Dr. Sultan, opined that appellant was totally disabled due to his accepted employment injury. Dr. Mazella, opined in reports dated May 15 and June 12, 1996 that appellant’s accepted conditions had resolved and that appellant’s current disability was not related to his arthritis of the spine which is unrelated to his accepted employment injury. To resolve the conflict in the medical evidence, the Office referred appellant to Dr. Grable.

Where there exists a conflict in the medical opinion evidence and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon proper factual background, is entitled to special weight.⁵

In this case, Dr. Grable’s opinion is sufficiently rationalized and based upon a proper factual and medical background, such that it is entitled to special weight. Dr. Grable, in his

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Gail D. Painton*, 41 ECAB 492 (1990).

⁵ *Aubrey Belnavis*, 37 ECAB 206 (1985)

July 30, 1996 report, noted appellant's work injury, reviewed the medical record, thoroughly examined appellant and concluded that appellant had no residuals of the accepted December 18, 1968 lumbosacral strain. In supplemental reports dated August 28 and September 3, 1996, Dr. Grable noted that based upon appellant's negative Laseague's sign and appellant's positive bilateral straight leg raising, appellant's disability was not due to a herniated disc, but rather the problem was arthritic in nature. Dr. Grable explained that appellant's current disability is due to his osteoarthritis which is unrelated to his accepted employment injury. He clearly distinguished appellant's osteoarthritic condition from appellant's claimed residual disability due to his accepted employment injury and concluded that appellant no longer had any residual disability from the December 18, 1968 employment injury.

Consequently, Dr. Grable's opinion represents the weight of the medical evidence and establishes that appellant had no residuals from his December 18, 1968 work injury subsequent to May 25, 1997, the date the Office terminated appellant's compensation.

The Board finds that the medical evidence submitted after Dr. Grable's examination is insufficient to overcome the opinion of Dr. Grable. The additional report from appellant's attending physician, Dr. Sultan, whose previous reports were specifically identified as creating the conflict that was resolved by Dr. Grable. The content of the additional reports merely reports prior assessments and the opinion that appellant is totally disabled, and as Dr. Sultan was on one side of the conflict that Dr. Grable resolved, Dr. Sultan's additional report is insufficient to overcome the special weight accorded to Dr. Grable's opinion or to create a new conflict with it.⁶

Dr. Goodman opined that appellant was disabled from his job, but provided no opinion as to whether appellant's disability was employment related. Dr. Radna's opinion does not provide supporting medical rationale regarding why appellant would have any continuing disability caused or aggravated by her accepted employment-related conditions beyond noting that the appellant's derangements are employment related because appellant was predisposed due to a progressive hypertrophic spinal stenosis. Dr. Ingber's opinion is speculative as he stated that appellant's injuries appear to be related to his employment injury. Dr. Tsatskis' opined that appellant's disability was employment related but failed to provide any supporting medical rationale for his opinion. The Board finds that the opinions of Drs. Tsatskis and Radna are not well rationalized and are, therefore, insufficient to create a conflict with the complete and well-rationalized opinion of Dr. Grable. Dr. Goodman's opinion is insufficient to create a conflict as it fails to attribute any disability to employment-related factors. Lastly, Dr. Ingber's opinion is insufficient to create a conflict as it is speculative and thus of diminished probative value.⁷ These reports are not sufficient to establish a medical conflict or any continuing employment-related disability.⁸

⁶ *Dorothy Sidwell*, 41 ECAB 857 (1990); see also *Helga Risor (Windell A. Risor)*, 41 ECAB 929 (1990) (additional reports from Office medical adviser, who was on one side of a conflict resolved by an impartial medical specialist, could not be used as a basis for creating another conflict in medical opinion.)

⁷ *Philip J. Deroo*, 39 ECAB 1294 (1988); *Jennifer Beville*, 33 ECAB 1970 (1982).

⁸ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

The decision of the Office of Workers' Compensation Programs dated June 17, 1998 is hereby affirmed.

Dated, Washington, D.C.
May 4, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member