

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS L. HALL and DEPARTMENT OF THE NAVY,
NORFOLK NAVAL SHIPYARD, Portsmouth, VA

*Docket No. 98-793; Submitted on the Record;
Issued November 10, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 2, 1997 on the grounds that he had no disability due to his March 15, 1989 employment injury after that date.

The Board finds that the Office properly terminated appellant's compensation effective February 2, 1997 on the grounds that he had no disability due to his March 15, 1989 employment injury after that date.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

On March 15, 1989 appellant, then a 36-year-old rigger helper, sustained a "low back sprain episode." The Office paid compensation for appropriate periods of disability. The Office later determined that there was a conflict in the medical opinion between Dr. Robert S. Neff, appellant's attending Board-certified orthopedic surgeon and the government physician, Dr. Colin W. Hamilton, a Board-certified orthopedic surgeon acting as an Office referral physician, regarding whether appellant continued to have disability due to his March 15, 1989

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

employment injury. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Robert J. Snyder, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.⁵ By decision dated February 6, 1997, the Office terminated appellant's disability compensation effective February 2, 1997 based on the opinion of Dr. Snyder.⁶ By decisions dated April 28, July 30 and December 18, 1997, the Office denied modification of its February 6, 1997 decision.

In situations where there exist 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 upon a proper factual background, must be given special weight.⁷

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Snyder, the impartial medical specialist selected to resolve the conflict in the medical opinion. The October 15, November 1 and December 4, 1996 reports of Dr. Snyder establish that appellant had no disability due to his March 15, 1989 employment injury after February 2, 1997.

The Board has carefully reviewed the opinion of Dr. Snyder and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Snyder's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up to date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Snyder provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁸ Dr. Snyder provided medical rationale for his opinion by explaining that the findings on examination and diagnostic testing did not reveal any objective evidence of disabling residuals of appellant's March 15, 1989 employment injury, a low back sprain. Dr. Snyder indicated that appellant's continuing problems were due to his underlying degenerative disc disease.

⁵ Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a). In order to resolve the conflict in the medical opinion, appellant had initially been referred to Dr. Douglas Kells, a Board-certified orthopedic surgeon and the Office terminated appellant's compensation effective August 15, 1995 based on the opinion of Dr. Kells. By decision dated and finalized April 29, 1996, an Office hearing representative reversed the Office's termination of appellant's compensation on the grounds that the opinion of Dr. Kells was not sufficiently well rationalized to constitute the weight of the medical evidence. The case was remanded to the Office for referral to another impartial medical examiner.

⁶ The Office did not, however, terminate appellant's compensation for medical benefits related to the March 15, 1989 employment injury.

⁷ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁸ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

The decisions of the Office of Workers' Compensation Programs dated December 18, July 30, April 28 and February 6, 1997 are affirmed.

Dated, Washington, D.C.
November 10, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member