U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TED A. STANCZAK and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, MI

Docket No. 99-682; Submitted on the Record;
Issued November 4, 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 properly terminated appellant's compensation effective May 25, 1996 on the grounds that he had no disability due to his employment injury after that date.

The Board finds that the Office improperly terminated appellant's compensation effective May 25, 1996 on the grounds that he had no disability due to his 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]

The Office accepted that appellant sustained employment-related acceleration of degenerative arthritis of both knees and paid compensation for periods of disability. The Office accepted that appellant's injury was due to employment factors such as carrying heavy parcels, twisting his knees and experiencing slips and falls. The Office authorized the surgical replacement of appellant's right knee in 1984 and his left knee in 1987. By decision dated May 23, 1996, the Office terminated appellant's compensation benefits effective May 25, 1996.

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[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).

An Office hearing representative affirmed the termination of appellant's compensation benefits on August 18, 1998. On November 4, 1998 the Office denied modification of the prior decision after merit review.

The Office determined that there was a conflict in the medical opinion between Dr. James Zurawski, appellant's attending Board-certified orthopedic surgeon, and Dr. Jerry Matlen, a Board-certified orthopedic surgeon acting as an Office referral physician, regarding whether appellant continued to have residuals of the accepted employment injury.[5] In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Norman Pollak, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.[6]

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 notes that the opinion of Dr. Pollak, the impartial medical specialist selected to resolve the conflict in the medical opinion, is not sufficiently well rationalized to constitute the weight of the medical evidence.

In a report dated October 13, 1995, Dr. Pollak indicated that appellant could perform some form of light-duty work and stated:

> "This man appears to [have] had bilateral total knee arthroplasties for wear and tear arthritis of his right and left knees. There is no specific instance of injury on or off the job. I do not feel that frequent bumping of the knees or the fact that this man was required to work on his feet were specific causes of the arthritis, nor do I feel that they accelerated it."

The Office requested that Dr. Pollak clarify his October 13, 1995 report and, in a supplemental report dated March 8, 1996, Dr. Pollak stated:

> "Unless there can be pointed out specific instance of injury that may have accelerated an early degenerative condition, I do not feel this man's work activities can be said to have caused his degenerative knee problems. [Appellant] was likely preordained to develop degenerative arthritis of his knees at some time in later life and most likely would have developed degenerative arthritis no matter what his activities were prior to that development.

[5] In a report dated August 2, 1995, Dr. Zurawski indicated that appellant had continuing employment-related disability; in reports dated April 11 and May 9, 1995, Dr. Matlen noted that appellant did not have continuing employment-related disability.

[6] 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).

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

> "Without history of a specific and more than a minimal injury, I do not feel that one can relate [appellant's] job activities over a period of years to his eventual knee problems. I, therefore, do not feel that these problems are work related."

The Board notes, however, that Dr. Pollak's reports are of diminished probative value regarding the cause of appellant's continuing disability because they do not contain adequate medical rationale in support of their opinions on causal relationship.[8] Dr. Pollak did not adequately explain the medical process through which the accepted employment injury, acceleration of degenerative arthritis of both knees, would have ceased to contribute to appellant's disability. Dr. Pollak's opinion is of limited probative value for the further reason that it is not based on a complete and accurate factual and medical history.[9] Dr. Pollak suggested that appellant's arthritic condition could not have been accelerated by employment activities such as working on his feet and bumping his knees. However, as noted above, the Office accepted that the employment factors experienced by appellant, such as carrying heavy parcels, twisting his knees and having slips and falls, were sufficient to cause an acceleration of his arthritic condition.[10]

For these reasons, the Board notes that there is an unresolved conflict in the medical evidence between the government's physician Dr. Matlen and appellant's physician, Dr. Zurawski, regarding whether appellant continues to have employment-related disability. The Board finds that since the Office relied on the opinion of Dr. Pollak to terminate appellant's compensation benefits effective May 25, 1996 the Office failed to meet its burden of proof in terminating appellant's benefits.[11]

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

[9] *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

[10] Moreover, the record contains other medical evidence which supports a finding that appellant had continuing employment-related residuals. In reports dated August 1 and October 24, 1996 and October 6, 1998, Dr. Charles Townly, an attending Board-certified orthopedic surgeon, indicated that appellant continued to suffer residuals of the employment-related acceleration of his arthritic condition.

[11] *See Gail D. Painton*, 41 ECAB 492, 498 (1990); *Craig M. Crenshaw, Jr.*, 40 ECAB 919, 922-23 (1989).

The decisions of the Office of Workers' Compensation Programs dated November 4 and August 18, 1998 are reversed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member