

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT A. CONCORDIA and DEPARTMENT OF THE AIR FORCE,
WILLOW GROVE AIR RESERVE FACILITY, PA

*Docket No. 97-2844; Submitted on the Record;
Issued October 28, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits effective October 21, 1996.

On May 25, 1992 appellant, then a 44-year-old security guard, filed a claim for an injury he sustained to his lower back while in the performance of duty. The Office accepted appellant's claim for lumbosacral strain and herniated nucleus pulposus at the L4-5 and L5-S1 levels. Appellant filed claims for continuing compensation and received appropriate compensation for temporary total disability. In a letter dated June 2, 1994, the Office proposed termination of appellant's compensation on the grounds that the medical evidence did not establish any continuing disability that was causally related to this accepted employment injury. On June 25, 1994 payment of appellant's compensation benefits ceased. On May 15, 1994 the Office of Personnel Management accepted appellant's application for disability retirement. Appellant filed a claim for a schedule award on July 31, 1995. In a decision dated September 9, 1996, the Office denied appellant's claim for a schedule award on the grounds that there was no permanent impairment that was causally related to his accepted employment injury. By letter dated September 11, 1996, the Office proposed termination of appellant's medical care benefits on the grounds that he had no residuals of his accepted employment injury. In a decision dated October 21, 1996, the Office terminated appellant's medical benefits. By decision dated June 25, 1997, an Office hearing representative affirmed the October 21, 1996 decision of the Office.

The Board has duly reviewed the entire case record on appeal and finds that the Office properly terminated appellant's medical benefits.¹

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on September 15, 1997, the only decisions before the Board are the Office's October 21, 1996 and June 25, 1997 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

The Office, to terminate authorization for medical treatment, has the burden of establishing that appellant no longer has residuals of the employment-related condition that requires further medical treatment.²

In the present case, the Office properly determined that there was a conflict in the medical evidence between the reports of Dr. Joseph P. Guagliardo, an osteopath, and the second opinion examination report of Dr. Kathleen Maloney, a Board-certified neurologist. In his reports, Dr. Guagliardo indicated that appellant continued to be treated for degenerative disc disease at the L3-4 level and L4-5 level with bulging disc herniation and impingement that was caused by his May 1992 employment injury. On the other hand, Dr. Maloney noted appellant's history of injury and stated that she could not relate the ongoing complaints to the May 1992 injury. She reported that, although appellant sustained lumbosacral strain superimposed on preexisting discogenic disease, all of his current disability was related to the preexisting discogenic disease, and appellant had returned to his baseline medical condition. Consequently, the Office referred appellant to Dr. John T. Williams, a Board-certified orthopedic surgeon, for impartial medical examination and report.

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 the resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³ The Board has carefully reviewed the opinion of Dr. Williams and finds that it has sufficient probative value, regarding the relevant issue in the present case, to be accorded such special weight.

In his report dated July 17, 1996, Dr. Williams provided a thorough review of the medical evidence of record and of his findings on physical examination of appellant. In providing his conclusions he cited recent articles in medical journals concerning back condition and magnetic resonance imaging (MRI) scans. Based on his review of appellant's history, physical findings on examination and a review of the MRI scans that were performed in 1992 and in 1989 when appellant had a prior back injury, Dr. Williams concluded that appellant's current condition was due to 48 years of wear and tear on a preexisting degenerative process. He noted that there was little difference between the MRI scan performed in 1989 and that performed in 1992. Although the 1992 MRI scan showed an additional mild broad base posterior bulging at the L3-4 and L4-5 in intervertebral disc spaces, this was only slightly more prominent than that which was revealed on the 1989 MRI scan. Dr. Williams concluded that therefore this condition preexisted the May 1992 injury and that the accepted employment injury aggravated it but only on a temporary or transitory basis. He concluded that this aggravation had resolved and that appellant's soft tissue injury of May 25, 1992 had resolved. Contrary to the allegations raised by appellant's attorney on appeal, Dr. Williams did not say that 90 percent of his opinion was based on his examination and history of appellant; rather, he indicated that in 90 percent of all cases a physician should be able to arrive at a primary diagnosis based on the history and physical examination of appellant. In addition, while Dr. Williams noted that he would not rely only on the conclusions reached in diagnostic tests, he did properly review said diagnostic tests and then rendered medical conclusions based on his review of the MRI scans.

² *Jose Hernandez*, 47 ECAB 288 (1996).

³ *Jack R. Smith*, 41 ECAB 691 (1990); *James P. Roberts*, 31 ECAB 1010 (1980).

Therefore, Dr. Williams properly reviewed all of the medical evidence of record including the 1989 MRI scan as compared to the 1992 MRI scan prior to reaching his conclusion that appellant's condition was preexisting and that he no longer had any residuals of his May 1992 injury. His report is well reasoned and rationalized. Consequently, it constitutes the weight of the medical evidence and it is entitled to special weight.

The decisions of the Office of Workers' Compensation Programs dated June 25, 1997 and October 21, 1996 are hereby affirmed.

Dated, Washington, D.C.
October 28, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member