

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM J. COREY and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Philadelphia, PA

*Docket No. 98-542; Submitted on the Record;  
Issued October 19, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that he had no continuing disability resulting from the accepted work injury.

The Board has carefully reviewed the case record and finds that the Office has met its burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act,<sup>1</sup> once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>2</sup> Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>3</sup>

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.<sup>4</sup> The Office burden

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

<sup>3</sup> *Id.*

<sup>4</sup> *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

In this case, appellant's notice of traumatic injury filed on February 26, 1996 was accepted for temporary aggravation of a preexisting herniated cervical disc. The Office advised appellant in its April 9, 1996 decision that his claim for continued compensation was denied as the medical evidence of record failed to support that appellant was disabled as a result of the work-related injury.<sup>6</sup>

On January 21, 1997 the Office issued a notice of proposed termination on the grounds that appellant no longer suffered from any residuals of his work-related injury. In its decision, the Office stated that Dr. Donald Turner, appellant's treating physician and an osteopath, failed to establish a causal relationship between appellant's diagnosed condition and the February 23, 1996 work-related injury.<sup>7</sup> The Office also noted that the September 11, 1996 medical report of Dr. Parviz Kambin, who is Board-certified in orthopedic surgery, in which the doctor diagnosed appellant as having severe neck and back pain, failed to establish a causal relationship between appellant's medical condition and the work-related injury. The Office relied on the opinion of Dr. Richard L. Trabulsi, a second opinion consultant and Board-certified in orthopedic surgery, who found that appellant's work-related injury had resolved and that he could return to work without restriction. In a decision dated March 17, 1997, the Office terminated compensation effective that date. The Office noted that Dr. Michael K. Chang, an orthopedic surgeon, provided no objective findings in his January 8, 1997 examination to support appellant's subjective complaints of increased symptoms.

On October 21, 1997 appellant, through his representative, requested a review of the written record. In a decision issued and finalized on November 13, 1997, the hearing representative affirmed the March 17, 1997 termination decision. The hearing representative noted that neither Drs. Turner nor Chang provided a rationalized medical opinion to support a conclusion that appellant had residuals of his work-related injury. Further, the hearing representative stated that the March 31, 1997 medical report of Dr. Steven W. Klinman, Board-certified in internal medicine, did not indicate whether appellant's condition was causally related to his February 23, 1996 injury.

The Board finds that Dr. Trabulsi's report is sufficient to meet the Office's burden of proof in terminating compensation.

On October 2, 1996 Dr. Trabulsi reported normal findings without evidence of a cervical or lumbar radiculopathy. He noted that appellant had sustained a cervical strain in a

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<sup>5</sup> *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

<sup>6</sup> Appellant advised the Office in an April 9, 1996 narrative that he had a preexisting lower lumbar herniation caused by a work-related injury on July 12, 1984, a cervical neck injury caused by a car accident in April 1987, a reagravation in May 1989 and an injury to his neck and back in January 1995.

<sup>7</sup> The Board notes that the Office noted Dr. Turner's credentials as a family practitioner. However, it appears on his reports that Dr. Turner is an osteopath. A review of relevant physician references failed to identify Dr. Turner as a medical doctor specializing in family practice.

February 23, 1996 work-related injury which was superimposed on preexisting degenerative disc disease of the cervical spine without any evidence of disc herniation. Dr. Trabulsi added that appellant's subjective complaints were consistent with degenerative disc disease of the cervical spine, that no further medical treatment was necessary and that appellant could return to his regular duty without restriction. Upon physical examination, he found that appellant could walk on his toes and heels, climb a stool, easily move his neck in a fluid manner and could extend his neck without guarding. Forward bending at the waist was 80 degrees, back bending was 30 degrees, side bends to left and right were 30 degrees, rotation at the waist was 45 degrees. Dr. Trabulsi observed no weakness on manual muscle testing of the foot or ankle, knee extension was zero degrees right and left, knee flexion was calf to thigh, no effusion of the knees noted. Shoulder elevation was 160 degrees, external rotation of the arms 30 degrees, internal rotation "was to about the second lumbar segment a good bit of which was hindered by his obesity." Neck extension was 45 degrees, neck flexion was chin to chest, rotation was 45 degrees, left and right and appellant's Spurling sign was negative, left and right. No weakness was observed on manual muscle testing of the upper extremity musculature. Dr. Trabulsi also noted that appellant removed his shirt, sneakers and socks in a normal manner with ease of lifting. He further noted that straight leg raising produced subjective complaints of pain at 30 degrees of elevation, right and left, not relieved by knee flexion. Reverse straight left raising was negative, with no sciatic notch tenderness in right or left in the lumbar area, no spasms noted in the spinal musculature from neck to the low back area, in either erect, sitting or prone position. Dr. Trabulsi noted that appellant was able to attain supine and prone positions and get up from the prone position without help and without difficulty. He reviewed the June 5, 1996 magnetic resonance imaging (MRI) scan and stated that it revealed moderate degenerative disease at C5-6 and anterior bulging of the intervertebral disc and no evidence of posterior disc herniation nor spinal stenosis or disc herniation. Dr. Trabulsi diagnosed appellant with degenerative disc disease, cervical spinal, C5-6 and C4-5 and preexisting herniated lumbar disc. In the comment section of his report, Dr. Trabulsi noted that appellant had recovered from the February 23, 1996 work-related cervical strain. He found that appellant's physical examination was "normal without evidence of a cervical and lumbar radiculopathy," that appellant's subjective complaints were "consistent with degenerative disc disease of the cervical spine," and that appellant could return to work without restriction to his position as a tax examiner.

The Board finds that none of the other medical records provide a medical opinion as to whether appellant had residuals of his February 23, 1996 work-related injury. For example, Dr. Turner, appellant's treating osteopath, submitted multiple medical reports from February 26, 1996 to March 17, 1997 in which he diagnosed appellant with cervical and lumbar strain with radiculopathy sustained in a work-related injury on February 23, 1996. In these reports, Dr. Turner checked a box indicating that appellant's condition was work related. However, in none of these reports did Dr. Turner provide a rationalized medical opinion establishing that appellant's condition was causally related to the February 23, 1996 injury. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>8</sup> The Board further notes that in a

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<sup>8</sup> *Lucrecia M. Nielsen*, 42 ECAB 583, 594 (1991).

report dated September 27, 1996 Dr. Turner stated that appellant “may return back to work in 90 to 120 days.”

Appellant also submitted two medical reports from Dr. Chang, an orthopedic surgeon, dated September 11, 1996 and February 7, 1997. In his September 11, 1996 report, Dr. Chang checked a box indicating that appellant’s condition of cervical spondylosis, degeneration at C5-6 and lumbar degenerative disc disease -- multiple levels, which, as stated with respect to Dr. Turner’s reports, fails to establish a rational basis for finding that appellant’s conditions were causally related to his February 23, 1996 work-related injury.<sup>9</sup> In his February 7, 1997 report, Dr. Chang diagnosed appellant with severe neck and back pain and restricted him to lifting no more than 10 pounds, with no twisting, bending or overhead reaching to “prevent recurrence episodes of aggravation.” This report is insufficient to establish that appellant has residuals of his work-related injury as it does not provide a rationalized medical opinion establishing a causal relationship between his condition and the February 23, 1996 injury. Further, the Board has held that fear of a recurrence of disability is not a valid basis for an award of compensation.<sup>10</sup>

In a medical report dated<sup>11</sup> July 1, 1996, Dr. Kambin, Board-certified in orthopedic surgery, stated essentially that appellant had “extradural defect at C5-6 due to degenerative disc changes.” However, he did not establish a causal relationship between appellant’s condition and his work-related injury. Similarly, Dr. Klinman, Board-certified in internal medicine, stated in a March 31, 1997 medical report, that appellant had cervical and lumbar discogenic disease but did not relate his condition to the February 23, 1996 injury.<sup>12</sup> The Board has held that medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant’s burden of proof.<sup>13</sup>

Therefore, the Board finds that the weight of the medical evidence rests with the opinion of Dr. Trabulsi, the second opinion specialist, who provided a rationalized medical explanation of why the accepted condition had resolved and why appellant had no continuing disability from the

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<sup>9</sup> *Id.*

<sup>10</sup> See *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>11</sup> In medical reports dated March 25 and September 11, 1996, Dr. Kambin did not state a definite diagnosis. For example in his March 25, 1996 report he noted that appellant’s symptoms were “suggestive” of a sprained cervical and lumbar sprain superimposed on preexisting degenerative changes. The September 11, 1996 report stated that appellant continued to have severe neck and back pain.

<sup>12</sup> Dr. Klinman’s report was directed to the Pennsylvania Bureau of Disability Determination.

<sup>13</sup> *Arlonia B. Taylor*, 44 ECAB 591 (1993).

condition he sustained on February 23, 1996 and is sufficient to meet the Office's burden of proof in terminating appellant's compensation.<sup>14</sup>

The November 13 and March 17, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.<sup>15</sup>

Dated, Washington, D.C.  
October 19, 1999

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>14</sup> See *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician's opinion was thorough, well rationalized and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

<sup>15</sup> The Board notes that since none of appellant's medical reports stated a basis for establishing a causal relationship between appellant's condition and his work-related injury, the Office properly found that no conflict of medical opinion existed and thus did not refer appellant's case record to an impartial medical specialist. See also *Gertrude T. Zakrajsek*, 47 ECAB 770 (1996).