

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUIZ MARTINEZ and DEPARTMENT OF THE AIR FORCE,
AIR FORCE COMMISSARY SERVICE, CANNON AIR FORCE BASE, NM

*Docket No. 98-629; Submitted on the Record;
Issued September 8, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

On the prior appeal of this case,¹ the Board found a conflict in medical opinion between appellant's attending physician, Dr. Allan L. Haynes, Sr., a Board-certified general surgeon specializing in general practice, and the Office second-opinion physician, Dr. Richard W. Blide, an internist specializing in physical medicine and rehabilitation, on the nature and extent of disability due to the accepted employment injury. Given this unresolved conflict, the Board held that the Office did not meet its burden of proof to justify the termination of appellant's compensation benefits. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

Upon return of the case record, the Office referred appellant, together with copies of the medical records and a statement of accepted facts, to Dr. Stephen J. Ringle, a Board-certified orthopedic surgeon, for resolution of conflict. In a report dated August 8, 1996, Dr. Ringle related appellant's history of injury, current complaints and past surgical history. After describing his findings on physical examination and the results of x-rays obtained on July 29, 1996, he reported his relevant impression as follows: Chronic low back pain, probably secondary to degenerative changes, in particular, lumbar spondylosis or facet arthritis, and degenerative disc disease at L4-5. Dr. Ringle reported that he found no evidence of low back muscle/lumbosacral strain but did note objective radiographic evidence of osteoarthritis of the lumbar spine. He stated that he could find no evidence of current work-related conditions "as I would not expect development of diffuse osteoarthritic changes in the lumbar spine to follow an injury such as that which occurred on August 21, 1970. These are, rather, findings that might be expected in someone [appellant's] age." Dr. Ringle explained that objective findings would

¹ Docket No. 94-1321 (issued March 5, 1996).

prevent appellant from returning to the position held at the time of injury but he did not feel that these findings were related to the incident of August 21, 1970. He stated that he “would tend to agree” with Dr. Blide, the Office second-opinion physician, that appellant’s low back strain and chronic recurrent lumbosacral strain/sprain ceased to exist when appellant returned to work several months after the injury.

In a decision dated July 29, 1997, the Office terminated appellant’s compensation benefits effective July 28, 1997 on the grounds that the weight of the medical evidence established that he had no continuing disability due to the employment injury of August 21, 1970. In a decision dated October 29, 1997, the Office denied modification of its prior decision.

The Board finds that the Office improperly terminated appellant’s compensation benefits. The opinion of the impartial medical specialist is of diminished probative value and is insufficient to resolve the outstanding conflict in medical opinion.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁴

To resolve the conflict between appellant’s attending physician, Dr. Haynes, and the Office second-opinion physician, Dr. Blide, the Office referred appellant to Dr. Ringle, who reported that he found no evidence of low back muscle/lumbosacral strain and that he “would tend to agree” with Dr. Blide that appellant’s low back strain and chronic recurrent lumbosacral strain/sprain ceased to exist when appellant returned to work several months after the injury. Dr. Ringle did not explain the basis on which he determined appellant’s recurrent lumbosacral strain ceased and noted that he was unable to respond with medical certainty as to when appellant’s low back strain and chronic recurrent lumbosacral strain/sprain ceased. His opinion in this regard is unsupported by medical rationale.

Dr. Ringle noted objective radiographic evidence of osteoarthritis of the lumbar spine but did not consider this evidence of a current work-related condition because he would not expect development of diffuse osteoarthritic changes in the lumbar spine to follow appellant’s injury of August 21, 1970. It is not apparent whether Dr. Ringle was aware that appellant’s osteoarthritis preexisted the employment incident of August 21, 1970 and that the Office accepted the injury as having caused an aggravation of osteoarthritis. While stating that appellant’s arthritis was

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

expected for someone of his age, he did not address whether the accepted aggravation had ceased or was no longer employment related.

Dr. Ringle appears to conclude that all residuals of appellant's August 21, 1970 employment injury ceased within several months of the incident.

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.⁵

Dr. Ringle's opinion lacks sufficient medical reasoning to establish that appellant no longer suffers residuals of the accepted employment injuries. There is also a substantial question whether he based his opinion on a complete factual background, given the Office's acceptance of an employment-related aggravation of preexisting osteoarthritis.⁶ For these reasons, the Board finds that Dr. Ringle's August 8, 1996 opinion is of diminished probative value and is insufficient to resolve the conflict between Dr. Haynes and Dr. Blide. Accordingly, as the conflict remains unresolved, the Office has not met its burden of proof to justify the termination of appellant's compensation benefits.

The July 29, 1997 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, D.C.
September 8, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁵ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

⁶ *See Henry J. Smith, Jr.*, 43 ECAB 524 (1992) (finding that a proper factual background is a prerequisite to the "special weight" granted the report of an impartial medical specialist).