

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL T. BARKER and U.S. POSTAL SERVICE,
POST OFFICE, Bohemia, NY

*Docket No. 99-1192; Submitted on the Record;
Issued February 28, 2000*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation, effective September 14, 1997; (2) whether appellant met his burden of proof to establish that he had any disability after September 14, 1997 causally related to the June 27, 1996 employment injury; and, (3) whether appellant established that he sustained further conditions causally related to the June 27, 1996 employment injury.

On June 27, 1996 appellant, then a 48-year-old postmaster, sustained an employment-related low back strain and skull contusion. He stopped work that day and received appropriate continuation of pay and compensation. On May 7, 1997 the Office referred appellant to Dr. Anthony Puglisi, a Board-certified orthopedic surgeon, and on June 30, 1997 to Dr. Dinesh Shukla, who is Board-certified in psychiatry and neurology, for second-opinion evaluations. By letter dated July 29, 1997, the Office informed appellant that it proposed to terminate his compensation based on the opinions of Drs. Puglisi and Shukla. In response, appellant submitted a medical report. By decision dated September 3, 1997, the Office terminated his compensation benefits effective September 14, 1997 on the grounds that the weight of the medical evidence established that his work-related disability had ceased. On October 20, 1997 appellant returned to work. He requested reconsideration and submitted additional medical evidence. The Office also continued to develop the claim and on December 9, 1997 referred him to Dr. William Bloom, a Board-certified neurosurgeon, for a second-opinion evaluation.¹ In a November 17, 1998 decision, the Office denied modification of the prior decision, crediting the opinions of Drs. Puglisi, Shukla and Bloom that his work-related disability had ceased.

The Board finds that the Office met its burden to terminate appellant's compensation benefits.

¹ Drs. Puglisi, Shukla and Bloom were provided with the medical record, a statement of accepted facts and a set of questions.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.²

The medical evidence relevant to the termination of appellant's compensation includes a computerized tomography (CT) study of the head dated July 2, 1996 that was unremarkable without evidence of hemorrhage. An October 22, 1996 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated degenerative changes with posterior herniations at C5-6 and 7, which caused extrinsic impression on the spinal cord with impingement of the nerve roots secondary to osteophyte formation. An October 24, 1996 MRI of the lumbosacral spine showed a mild degree of degenerative change at L4-5 with a small posterolateral herniation encroaching the left neural foramen. Nerve roots were unaffected. Nerve roots at L5-S1 were in close proximity with the vertebral body. A November 11, 1996 brain MRI, was normal and electromyography that same day demonstrated a normal study of the left leg with C6-7 radiculopathy demonstrated in the left arm.

Appellant submitted a number of unsigned treatment notes submitted by his treating Board-certified orthopedic surgeon, Dr. Shlomo Piontkowski who noted complaints of neck pain with radiation to the upper extremities and lower back pain with radiation to the leg with findings of restriction of range of motion and weakness, spasm and pain on examination.

Appellant also submitted reports from Dr. Richard A. Pearl, who is Board-certified in psychiatry and neurology. In an April 4, 1997 treatment note, Dr. Pearl noted appellant's complaints of neck and back pain and headaches and made findings on examination. He diagnosed chronic cervical and lumbosacral sprain with radiculitis and a post-traumatic headache syndrome. In a May 15, 1997 report, Dr. Pearl recommended that appellant be treated at a pain center. In an August 13, 1997 report, he noted additional complaints of dizziness, forgetfulness and vertigo. He diagnosed chronic pain syndrome involving the brain, cervical and lumbosacral area and concluded, "I believe he is disabled and ... I believe his symptoms are related to the accident."

In a June 9, 1997 report, Dr. Puglisi, who is a Board-certified orthopedic surgeon, diagnosed resolved cervical and lumbosacral strain with underlying degenerative disc disease. On examination he found no objective basis for appellant's subjective complaints and advised that he was capable of performing his normal work duties. Dr. Puglisi also submitted a work capacity evaluation in which he advised that appellant could work eight hours per day without limitations and that maximum medical improvement had been reached on June 8, 1997.

Dr. Shukla, who is Board-certified in psychiatry and neurology, submitted a report dated July 16, 1997 in which he diagnosed lumbosacral sprain syndrome and cervical pain syndrome. He advised that appellant had no neurological disability and no neurological condition, which would restrict him from his regular work duties or daily living activities. In a work capacity evaluation he advised that appellant could work eight hours per day without restriction.

² See *Patricia A. Keller*, 45 ECAB 278 (1993).

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors, which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.³

On appeal appellant contends that a conflict of medical opinion existed between the opinions of Drs. Pearl and Piontkowski, his treating physicians and Drs. Puglisi and Shukla, who examined appellant for the Office. The term "disability" under the Federal Employees' Compensation Act⁴ means incapacity because of injury in employment to earn the wage, which the employee was receiving at the time of such injury.⁵ In assessing the medical reports in the instant case, the Board notes that, while Dr. Pearl advised that he believed appellant was disabled and believed the symptoms were related to the work injury, a medical opinion consisting solely of a conclusory statement regarding disability without supporting rationale, is of little probative value⁶ Dr. Piontkowski provided no opinion regarding whether appellant was disabled from his normal work duties. The Board finds that the weight of the medical evidence regarding the termination of appellant's compensation rests with the opinions of Drs. Puglisi and Shukla as they provided comprehensive, well-rationalized reports in which they explained their findings and conclusions. The Office, therefore, met its burden of proof to terminate appellant's compensation benefits.

The Board further finds that appellant failed to establish that he had an employment-related disability after September 14, 1997.

As the Office met its burden of proof to terminate appellant's compensation benefits the burden shifted to him to establish that he had disability causally related to his accepted injury.⁷ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background supporting such a causal relationship.⁸ Causal relationship is a medical issue⁹ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and

³ *Gary R. Sieber*, 46 ECAB 215 (1994).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Major W. Jefferson, III*, 47 ECAB 295 (1996).

⁶ *See Marilyn D. Polk*, 44 ECAB 673 (1993).

⁷ *See George Servetas*, 43 ECAB 424 (1992).

⁸ *See 20 C.F.R. § 10.110(a); Kathryn Haggerty*, 45 ECAB 383 (1994).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰ Medical evidence of bridging symptoms between the current condition and the accepted injury must support a physician's conclusion of a causal relationship.¹¹

The evidence submitted by appellant subsequent to the September 3, 1997 Office decision terminating his compensation includes a number of unsigned treatment notes in which, Dr. Piontkowski continued to note findings on examination and advise that appellant had signs compatible with aggravation of cervical and lumbosacral derangement with radiculopathy.¹² Dr. Pearl submitted treatment notes dated September 30 and November 6, 1997 in which he reiterated his previous diagnosis of chronic pain syndrome involving the brain and cervical spine.

Dr. Bloom, a Board-certified neurosurgeon, who provided a second-opinion evaluation for the Office, advised in a December 23, 1997 report that, while appellant may have sustained sprains to the lumbar and cervical areas on June 27, 1996 he had "long since" recovered. Dr. Bloom concluded that there was no objective evidence of disability and nothing to preclude appellant from working. In an attached work capacity evaluation he advised that appellant had no limitations.

In their reports submitted subsequent to the September 3, 1997 Office decision, neither Dr. Piontkowski nor Dr. Pearl provided an opinion that appellant was disabled from his normal work. Dr. Bloom provided a comprehensive evaluation in concluding that appellant could return to his position as postmaster. The Board, therefore, finds that appellant failed to meet his burden of proof to establish that he continued to be disabled after September 14, 1997 due to the June 27, 1996 employment injury.

Lastly, the Board finds that appellant did not meet his burden of proof to establish that he sustained further conditions causally related to the June 27, 1996 employment injury.

On appeal appellant also contends that the accepted conditions should be expanded to include aggravation of cervical and lumbar derangement, post-traumatic headaches, post-traumatic dizziness, cervical radiculopathy, lumbosacral radiculopathy, multiple herniated cervical discs with radiculopathy, herniated lumbar disc with radiculopathy, chronic strain of the cervical spine, chronic strain of the lumbosacral spine and postconcussion syndrome.

Initially, the Board notes that the July 2, 1996 CT of the head and November 11, 1996 MRI of the brain were normal. While positive findings were noted on MRIs of the cervical and lumbosacral spine, the scan reports failed to address the relationship of the reported findings to the June 27, 1996 employment injury. Dr. Piontkowski's reports do not contain an opinion

¹⁰ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *See Leslie S. Pope*, 37 ECAB 798 (1986).

¹² These notes were dated September 23 and December 4, 17 and 29, 1997.

regarding causal relationship and while Dr. Pearl provided a cursory opinion that he believed appellant's symptoms were related to the injury, he failed to explain with specificity the relationship between the claimant's diagnosed conditions and the employment injury of June 27, 1996. Appellant, therefore, failed to establish further employment-related conditions.¹³

The decision of the Office of Workers' Compensation Programs dated November 17, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 28, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ The Board notes that with his appeal to the Board appellant submitted additional medical evidence. The Board, however, cannot consider this evidence as its review of the case is limited to the evidence of record, which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).