

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN CANNON and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 97-1689; Oral Argument Held December 16, 1999;  
Issued January 21, 2000*

Appearances: *Simon J. Rosen, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective February 2, 1997 on the grounds that he had no further disability due to his August 22, 1994 employment injury.

On August 22, 1994 appellant, then a 39-year-old electrician, filed a traumatic injury claim alleging that he bruised his lower back on that date in the performance of duty. Appellant stopped work on August 22, 1994 and did not return. The Office accepted appellant's claim for lumbar and thoracic strain and paid him appropriate compensation benefits.

By decision dated January 24, 1997, the Office terminated appellant's compensation benefits based on the opinion of Dr. E. Michael Okin, a Board-certified orthopedic surgeon, to whom the Office referred appellant for an impartial medical examination to resolve a conflict in medical opinion.

The Board has duly reviewed the case record and finds that the Office improperly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.<sup>1</sup>

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<sup>1</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

In a report dated January 29, 1996, Dr. Okin discussed appellant's history of injury, the results of objective tests and listed findings on physical examination. He diagnosed degenerative disc disease of the lumbar spine and stated:

“[Appellant] is still disabled from his prior occupation as a ship's electrician and continues to suffer from the residual of the injury to his lumbar spine which I believe was superimposed on disc degenerative disease. I do not accept that his condition has resolved since he has been symptomatic subsequent to the injury and has not come back to his preinjury status.”

Dr. Okin opined that a lumbar discectomy would not resolve appellant's problems and recommended a lumbar myelogram and computerized tomography (CT) scan.

In an addendum dated May 29, 1996, Dr. Okin opined that a myelogram performed on February 28, 1996 was normal, that a CT scan revealed a disc bulge at L5-S1 without nerve root impingement and an August 22, 1994 magnetic resonance imaging (MRI) scan showed disc degenerative disease.

By letter dated September 19, 1996, the Office requested that Dr. Okin discuss whether appellant's accepted conditions of lumbar and thoracic sprain had resolved.

In a supplemental report dated December 5, 1996, Dr. Okin stated that appellant's “lumbosacral spine sprain from an injury on August 22, 1994 was an exacerbation of an underlying condition. At the present time I believe his major symptomatology is based on the underlying condition and the lumbosacral spine sprain has resolved.”

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 on proper factual backgrounds, must be given special weight.<sup>2</sup> The Board finds, however, that Dr. Okin's medical reports are not sufficiently rationalized to be entitled to special weight. In his initial report dated January 29, 1996, Dr. Okin opined that appellant continued to have residuals of his employment injury and found that he was disabled from his regular employment. Dr. Okin further diagnosed degenerative disc disease and concluded that appellant's employment injury “was superimposed on disc degenerative disease.” In a supplemental report dated December 5, 1996, Dr. Okin found that appellant's August 22, 1994 lumbosacral sprain had exacerbated an underlying condition and indicated that “his major symptomatology is based on the underlying condition and the lumbosacral spine sprain has resolved.” Dr. Okin's reports are inconsistent as he found in his January 29, 1996 report that appellant continued to have residuals of his employment injury yet concluded in his December 5, 1996 report that appellant's lumbosacral spine sprain had resolved. Further, Dr. Okin provided no medical rationale to support his conclusion that appellant's employment-related lumbosacral spine sprain had resolved or to explain the inconsistencies between his findings. Additionally, Dr. Okin's statement that appellant's “major symptomatology” was due to a nonemployment-related underlying condition

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<sup>2</sup> *Terrance R. Stath*, 45 ECAB 412 (1994).

is insufficient to affirmatively establish that no part of appellant's condition was related to his accepted employment injury. Thus, Dr. Okin's opinion is of limited probative value and is not sufficient to meet the Office's burden of proof to terminate benefits.

The decision of the Office of Workers' Compensation Programs dated January 24, 1997 is hereby reversed.

Dated, Washington, D.C.  
January 21, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member