

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID M. HENTZ and U.S. POSTAL SERVICE,
POST OFFICE, Red Bank, NJ

*Docket No. 98-509; Submitted on the Record;
Issued January 31, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective August 9, 1996; (2) whether appellant has met his burden of proof to establish that he is entitled to continuing compensation benefits on or after August 9, 1996.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective August 9, 1996.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

In the present case, the Office accepted that appellant, then a 37-year-old letter carrier, sustained employment-related injuries on April 15, 1989 which resulted in cervical and lumbar strains and subluxations at C2-6. Appellant has been working in a limited-duty capacity since March 23, 1994 for six hours per day. Appellant is in receipt of compensation for two hours per

¹ *Lawrence D. Price*, 47 ECAB 120 (1995).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

day for partial disability due to continuing residuals from this injury. Appellant filed a recurrence of disability on February 24, 1996 for February 23, 1996 onwards.

Appellant's treating physician, Dr. William Halligan, a Board-certified orthopedic surgeon, has continued to report in his attending physician's report (Form CA-20a) and physician notes that appellant has a cervical strain and suffers from bilateral trapezius spasm for which continuation of medication for pain and spasms was needed.

The Office referred appellant, a statement of accepted facts and a list of specific questions to Dr. Ira Kasoff, a Board-certified neurologist, for a complete medical evaluation. In a report dated March 12, 1996, Dr. Kasoff noted that appellant brought plain x-rays dated April 2, 1992 which showed mild degenerative changes of the cervical spine and the magnetic resonance imaging (MRI) scans of the thoracic and cervical spine from September 1992 showed only mild degenerative changes. He summarized the results of the physical and neurological examinations and diagnosed cervical sprain, remote, chronic. He stated that appellant's presentation and complaints are well out of proportion to his neuroimaging studies as well as his objective neurological examination. Dr. Kasoff opined that he believed there was a good deal of symptom magnification as well as emotional overlay. He felt that appellant had maximally benefited from the treatment afforded him and saw no reason why appellant should not be working full time. Dr. Kasoff also opined that appellant has a potentially serious problem in the nature of having taken narcotic pain medication for the last several years nonstop and opined that the narcotic pain medication must be terminated.

The Office provided a copy of Dr. Kasoff's report to Dr. Halligan. In an April 1, 1996 report, Dr. Halligan noted that appellant was being treated for a neck and back condition which resulted from his work injury of April 15, 1989. He was reinjured on April 2, 1992 and since April 1993 has been seen approximately every six weeks for muscle spasms. Dr. Halligan noted that, depending on the visit, appellant has almost no palpable spasm to moderate spasm to severe spasm. He diagnosed cervical muscle spasm with radicular pain and stated that there was "no question that some of the spasm is stress related." Dr. Halligan wrote "with regard to an opinion as to how this is related to the incident of April 15, 1989, the only thing one is able to say is that it is not unusual for injuries to the neck to result in intermittent spasm and disability for the rest of one's life after the original injury." He continued to opine in Form CA-20a reports that appellant could only work six hours a day light duty.

Based on the medical evidence of record, the Office proposed to terminate both appellant's wage-loss and medical benefits for the reason that the weight of the medical evidence established that disability causality related to the injury of April 15, 1989 no longer existed. The Office allowed appellant 30 days to submit additional evidence or argument. Progress notes and Form CA-20a reports from Dr. Halligan continued to document a bilateral trapezius spasm and light-duty work for six hours a day.

By decision dated August 9, 1996, the Office terminated compensation and denied the claimed recurrence as the weight of the evidence failed to demonstrate a causal relationship between the injury and the claimed condition or disability.

Appellant requested an oral hearing before an Office representative and submitted additional medical evidence in support of his claim. In an August 29, 1996 letter, Dr. Halligan

noted that appellant continues to complain of discomfort in both his shoulders radiating down into his midback along with some lower back pain which has had its onset of him sitting for six hours a day. Dr. Halligan stated that he reviewed the March 24, 1995 job offer⁵ and stated that appellant could perform those duties as outlined.

In a February 19, 1997 letter addressed to appellant's attorney, Dr. Halligan stated that he began treating appellant in 1989 when he had an accident with his employing establishment vehicle, sustaining injuries to his back and neck. After providing a brief account of appellant's treatment, Dr. Halligan stated that appellant attempted to return to full duty, but has been unable to do so. He noted that appellant was maintained on a six-hour workday as it allowed appellant to go home, rest, take medication at night and still be able to function at least in a part-time capacity in his work program. Dr. Halligan stated that appellant's condition is permanent in that he will continue to have these symptoms for the rest of his life. He stated that the maximum appellant would be able to work would continue to be six hours a day as he would still require medication for muscle relaxation and pain. Dr. Halligan further stated that the reasons for his opinion that appellant's condition is related to the original accident is "because of the fact of seeing patients for 30 years with neck injuries sustained in motor vehicle accidents they all seem to get flare-ups in the future and [are] bothered by it for the rest of their life."

In a decision dated April 11, 1997, the Office hearing representative affirmed the August 9, 1996 decision terminating appellant's compensation and medical benefits. The hearing representative further noted that there was evidence of a narcotics addiction as referenced by both Drs. Halligan and Kasoff and that the Office should develop this issue.

In a June 17, 1997 letter, appellant's attorney requested reconsideration and submitted a May 28, 1997 report from Dr. Halligan. In that report, Dr. Halligan reiterated his opinion that appellant has trapezius spasm on both sides, varying in degree based upon different appointments and visits. Dr. Halligan explained that these findings obviously would not be found on either x-ray, electromyogram or MRI scan reports and could only be found by palpating the muscles tissues and comparing them to the normal muscle tissues that one experiences without spasm. He stated that the spasms were involuntary and could not be caused by appellant at will. Dr. Halligan further reiterated his opinion that appellant's condition is a flare-up of the original injury in 1989.

By decision dated September 10, 1997, the Office denied appellant's application for review finding that the evidence was insufficient to warrant review of the prior decision. The Office further noted that contrary to appellant's argument, the Office had met its burden of proof in establishing that appellant had no continuing work-related disability and that the matter concerning narcotic addiction was an issue to be developed.

With respect to the Office's decision to terminate appellant's compensation and wage-loss benefits effective August 9, 1996, Dr. Kasoff, the Office referral physician upon whom the Office relied in terminating appellant's benefits, provided a detailed report based upon his own physical and neurological examination of appellant, relied on the statement of accepted facts, as

⁵ The March 24, 1995 job offer was for the position of modified letter carrier which was approved by the employing establishment's Associate Medical Director on March 21, 1995 and accepted by appellant on April 2, 1995.

well as appellant's personal history and medical records, and concluded that, while appellant does have a remote, chronic cervical sprain, appellant was capable of working full time. Dr. Kasoff opined that appellant presented a good deal of symptom magnification as well as emotional overlay as appellant's presentation and complaints were out of proportion to his neuroimaging studies, objective neurologic examination, and the examination of appellant's neck revealed an excellent range of motion with little to no limitation. Although Dr. Halligan, appellant's treating physician, continued to opine that appellant had an ongoing condition of bilateral trapezius strain, he did not identify any objective findings substituting continuation of the accepted conditions or offer any medical rationale explaining how appellant's symptoms of bilateral neck strain were causally related to the original injury other than providing generalized statements that it was not "unusual for injuries to the neck to result in intermittent spasm and disability for the rest of one's life after the original injury" or that "patients with neck injuries sustained in motor vehicle accidents seem to get flare-ups." Dr. Halligan's general statements that a traumatic neck injury can result in intermittent spasms is not one of reasonable medical certainty,⁶ as he does not explain what convinced him with regards to appellant's situation that his current condition is related to the 1989 injury other than asserting a general proposition. Moreover, although Dr. Halligan continued to opine that appellant could only work six-hour days as he required medication for muscle relaxation and pain, he failed to explain with specificity why the 1989 injury is still causing appellant problems or why appellant appears to need medication for his symptoms on a continued basis. Dr. Halligan's reports are, therefore, of diminished probative value. Accordingly, the Office properly determined that Dr. Kasoff's March 12, 1996 report constituted the weight of the medical evidence under the circumstances in this case. The Board has held that in assessing medical opinion evidence, the weight to be accorded such medical evidence is determined by its reliability, its probative value and its convincing quality. 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 analysis manifested, and the medical rationale expressed in support of the physician's opinion are factors which enter into this evaluation.⁷ The Office therefore met its burden of proof to terminate appellant's compensation benefits on August 9, 1996 on the grounds that Dr. Kasoff's report constituted the weight of the medical evidence.

Dr. Halligan's subsequent report of May 28, 1997 is insufficient to overcome the weight of Dr. Kasoff's report. Although Dr. Halligan explained that the trapezius spasms could only be found by palpations and opined that appellant's condition is a flare-up of the original injury in 1989, he failed to furnish any medical documentation to support his opinion as to how appellant's condition is related to his work injury and his inability to work more than six hours. Accordingly, his report is insufficient to overcome the weight of Dr. Kasoff's report.

The Board further finds that appellant has not met his burden of proof to establish entitlement to continuation of compensation benefits on or after August 8, 1996.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he has a disability causally related to his accepted

⁶ See *Morris Scanlon*, 11 ECAB 384 (1960).

⁷ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

employment injury.⁸ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 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. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

Although Dr. Halligan's reports continue to document a bilateral trapezius spasm condition and assert that appellant can only work six hours a day light duty, as previously discussed, all of the reports are lacking in medical rationale and are therefore insufficient to support appellant's burden of proof.

The decisions of the Office of Workers' Compensation Programs dated September 10 and April 11, 1997 are hereby affirmed.

Dated, Washington, D.C.
January 31, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁸ *George Servetas*, 43 ECAB 424, 430 (1992).

⁹ *James Mack*, 43 ECAB 321 (1991).