

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAHLID SIAL and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, New York, NY

*Docket No. 00-45; Submitted on the Record;
Issued July 5, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's wage-loss compensation and medical benefits as of March 26, 1999 on the basis that appellant no longer had any disability or residuals causally related to his January 20, 1996 employment injury.

On January 20, 1996 appellant, then a 38-year-old distribution clerk sustained an injury to his lower right back while in the performance of duty. He ceased work on the day of his injury. The Office accepted appellant's claim for lumbar strain,¹ and appellant was placed on the periodic compensation rolls. After a prolonged period of conservative medical treatment, appellant underwent back surgery in March 1998.² Appellant subsequently returned to work in a part-time, limited-duty capacity as a modified distribution clerk on August 1, 1998. Upon returning to work, appellant continued to receive compensation for lost wages because of his inability to work more than four hours per day.

By decision dated March 26, 1999, the Office terminated appellant's wage-loss compensation and medical benefits on the basis that the evidence of record established that appellant was no longer disabled and the residual effects of his work-related injury of January 20, 1996 had ceased. The Office based its decision on the opinion of Dr. Harvey R. Grable, a Board-

¹ A February 12, 1996 magnetic resonance imaging scan of the lumbar spine revealed that appellant had a preexisting condition of spinal stenosis at L2-3 through L4-5.

² On March 19, 1998 Dr. Noel I. Perin, a neurosurgeon, performed a lumbar decompressive laminectomy at L2-3 through L4-5. In a decision dated April 10, 1998, the Office denied authorization for the March 19, 1998 surgery because the weight of the medical evidence established that the procedure was for treatment of appellant's preexisting spinal stenosis and, therefore, was unrelated to the accepted employment injury of January 20, 1996.

certified orthopedic surgeon and impartial medical examiner,³ who found that appellant was capable of working eight hours per day. He explained that, while the soft tissue injury appellant sustained on January 20, 1996 could temporarily aggravate appellant's underlying spinal stenosis, an injury of this type would not permanently change the underlying condition. Dr. Grable further indicated that appellant would have reverted to "status quo ante" by July 1, 1996. Therefore, Dr. Grable concluded that appellant's current subjective complaints of low back pain were attributable to his preexisting back condition and unrelated to the January 20, 1996 employment injury.

On April 20, 1999 appellant requested reconsideration and he submitted additional medical evidence. After reviewing appellant's claim on the merits, the Office denied modification by decision dated June 16, 1999.

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵

In the instant case, the Office determined that a conflict of medical opinion existed based on the opinions of Drs. Perin and Heyman. Therefore, the Office properly referred appellant to an impartial medical examiner who concluded that appellant no longer had any continuing disability or residuals related to his January 20, 1996 employment injury.⁶ The Board finds that the Office properly relied on the impartial medical examiner's opinion as a basis for terminating benefits effective March 26, 1999.⁷ Dr. Grable's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. Grable also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to Dr. Grable's findings.

³ In December 1998, the Office referred appellant to Dr. Grable for examination in order to resolve a conflict in the medical opinion evidence between appellant's neurosurgeon, Dr. Perin, and Dr. Norman M. Heyman, a Board-certified orthopedic surgeon and an Office referral physician. Whereas Dr. Heyman indicated that following surgery appellant should be able to resume an eight-hour workday as of October 1, 1998, Dr. Perin reported on December 10, 1998 that appellant was still limited to working only four hours per day.

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁷ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

On reconsideration appellant submitted an April 12, 1999 report from his neurosurgeon, Dr. Perin. Although Dr. Perin noted that appellant continued to experience some pain in his leg despite the decompressive laminectomy, the doctor did not offer an opinion regarding appellant's ability to work eight hours per day. With respect to the cause of appellant's current condition, Dr. Perin explained that, as appellant was asymptomatic prior to the work-related injury, the most likely causation was the aggravation by the "repetitive injuries at work." Whereas Dr. Perin attributes appellant's current condition to "repetitive injuries at work," the Office accepted the instant claim based on a single lifting incident that occurred on January 20, 1996. Thus, the doctor's opinion appears to have been based on an inaccurate history of injury. In light of the noted deficiencies in Dr. Perin's April 12, 1999 report, the Board finds that this evidence is insufficient to overcome the weight of the prior medical evidence as represented by the opinion of Dr. Grable.

Appellant also submitted reports dated January 4 and March 26, 1999 from Dr. R.C. Krishna, a neurologist, who diagnosed multilevel lumbosacral radiculopathies and chronic neuropathic pain syndrome, which he attributed to appellant's January 20, 1996 employment injury. However, the doctor did not provide an explanation for his opinion regarding causation. Additionally, while Dr. Krishna indicated that appellant was unable to return to his full-duty capacity, he did not specifically state that appellant was precluded from working eight hours per day nor did he express any knowledge of appellant's particular duties as a modified distribution clerk. Consequently, Dr. Krishna's opinion is similarly insufficient to overcome the weight of the medical evidence as represented by the opinion of the impartial medical examiner, Dr. Grable.

In light of the foregoing discussion, the Office properly concluded that the evidence submitted on reconsideration was insufficient to warrant modification of the prior decision terminating benefits effective March 26, 1999.

The decisions of the Office of Workers' Compensation Programs dated June 16 and March 26, 1999 are, hereby, affirmed.

Dated, Washington, D.C.
July 5, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member