

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID L. LEVIN and DEPARTMENT OF THE NAVY,  
PEARL HARBOR NAVAL SHIPYARD, HI

*Docket No. 99-1019; Submitted on the Record;  
Issued June 16, 2000*

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DECISION and ORDER

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

The issue is whether appellant has any continuing disability causally related to his accepted employment injuries on or after February 1, 1998.

The Board has duly reviewed the case on appeal and finds that appellant has no continuing disability causally related to his accepted employment injuries on or after February 1, 1998.

This case has previously been before the Board on appeal. In its July 10, 1989 decision, the Board found that the impartial medical examiner's report was not sufficient to constitute the weight of the medical opinion evidence as it was insufficiently rationalized and not based on a proper factual background. The Board determined that the Office of Workers' Compensation Programs failed to meet its burden of proof to terminate appellant's compensation benefits.<sup>1</sup> The facts and circumstances of the case as set out in the Board's prior decision are adopted herein by reference.

Following the Board's July 10, 1989 decision, the Office authorized compensation for the periods previously denied and entered appellant on the periodic rolls. The Office obtained additional medical records including operative reports that were not previously of record. On November 12, 1992 the Office referred appellant for an impartial medical evaluation with Dr. Bruce E. Bradley, a Board-certified orthopedic surgeon, who completed a report on December 21, 1992. The Office proposed to terminate appellant's compensation benefits by letter dated November 10, 1997. Appellant responded on December 5, 1997, but did not submit additional medical evidence. By decision dated January 26, 1998, the Office terminated appellant's compensation benefits effective February 1, 1998 finding that he had no continuing injury-related disability for work.

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<sup>1</sup> 40 ECAB 1076 (1989).

Appellant requested reconsideration of the Office's January 26, 1998 decision on February 16, 1998. By decision dated February 27, 1998, the Office declined to reopen appellant's claim for consideration of the merits. Appellant requested reconsideration on May 4 and August 24, 1998. The Office denied modification of its January 26, 1998 decision on July 17 and October 15, 1998, respectively.

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.<sup>2</sup> 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>3</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>4</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>5</sup>

In this case, the Office referred appellant, a statement of accepted facts and a list of specific questions to Dr. Bradley, a Board-certified orthopedic surgeon, to resolve a conflict of medical opinion evidence between appellant's attending physician, Dr. Robert P. Watkins, a Board-certified orthopedic surgeon and the Office medical adviser regarding whether appellant was capable of performing his date-of-injury position of naval mechanist.

In his December 21, 1992 report, Dr. Bradley noted appellant's history of injuries to his left knee and resulting surgeries. He performed a physical examination and reviewed x-rays. Dr. Bradley found that appellant had normal equal weight-bearing gait and that he could perform a full deep knee bend. On examination of the left knee, he found surgical scars and no swelling. Dr. Bradley noted that appellant did not have crepitation and that his patella tracked well with no fusion of the left knee and no synovial thickening. He found that patella manipulation was negative and that appellant had good quadriceps and hamstring strength as well as negative Lachman's and McMurray's tests. Dr. Bradley stated that knee jerks and ankle jerks were equal bilaterally and that appellant had good peripheral pulses. He stated that sensation was intact to pinprick and that thigh and calf circumferences differed by ¼ inch with the right larger and that knee circumferences were equal. Dr. Bradley diagnosed left medial meniscus tear, treated arthroscopically, related to the employment injuries. He concluded, "At present the claimant has subjective symptoms but no objective findings of knee pathology except for postoperative scars on his left knee which are slightly tender. I feel that he is capable of performing the duties of a marine machinist without specific restrictions. I think the claimant has recovered from the residuals of the injuries of August 22, 1977 and September 14, 1979."

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<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Id.*

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>5</sup> *Id.*

In situations where there are 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 a proper factual background, must be given special weight.<sup>6</sup> The Board finds that Dr. Bradley's report is entitled to special weight. He based it on a proper factual background and provided detailed physical findings in support of his conclusion that appellant had no objective findings of knee pathology and that, therefore, he could return to his date-of-injury position.

In a note dated December 24, 1992, Dr. Watkins stated that appellant twisted his knee on rough ground and that he exhibited no effusion but considerable medial tenderness. He diagnosed degenerative joint disease. This note does not address the issue of appellant's disability for work. As Dr. Watkins was on one side of the conflict that Dr. Bradley resolved, the additional report from Dr. Watkins is insufficient to overcome the weight accorded Dr. Bradley's report as the impartial medical specialist or to create a new conflict with it.<sup>7</sup>

The weight of the medical evidence at the time of the Office's January 26, 1998 decision rested with Dr. Bradley's report concluding that appellant had no objective findings of knee pathology and was capable of performing his date-of-injury position. Therefore, the Office met its burden of proof to terminate appellant's compensation benefits effective February 1, 1998.

Following the Office's January 26, 1998 decision, appellant submitted additional medical evidence to establish his continuing disability. As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had disability causally related to his accepted employment injury.<sup>8</sup> 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 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.<sup>9</sup>

In a report dated June 22, 1998, Dr. Rick Dickson, a Board-certified neurologist, noted appellant's history of injury and medical history. He stated that appellant was unable to return to his position as a marine machinist secondary to his knee problems and the pain generated. He

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<sup>6</sup> *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

<sup>7</sup> *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

<sup>8</sup> *George Servetas*, 43 ECAB 424, 430 (1992).

<sup>9</sup> *James Mack*, 43 ECAB 321 (1991).

stated that appellant could not crouch in the small compartments aboard naval vessels. Dr. Dickson found slight asymmetry in his thigh measurements and crepitus on left knee flexion. He concluded that appellant had symptoms as a result of his employment injuries. Dr. Dickson provided similar findings and conclusions in a March 24, 1998 note. In a form report dated March 29, 1998, he stated that appellant had limited mobility to run and pain when squatting. In a note dated March 13, 1998, Dr. Dickson noted appellant's history of injury and medical history and stated, "I do n[o]t believe that he could return to the marine machinist type work." Dr. Watkins also signed this report on April 12, 1998.

These reports are not sufficient to meet appellant's burden of proof as Dr. Dickson did not provide sufficient medical reasoning explaining why he believed that appellant's current condition was related to his employment injuries. He also failed to explain the correlation between his objective physical findings and appellant's inability to perform the duties of his date-of-injury position. Without this necessary medical reasoning, Dr. Dickson's reports are not sufficient to meet appellant's burden of proof to establish continuing disability causally related to his accepted employment injuries and are insufficient to create a conflict with the detailed report of Dr. Bradley.

In a report dated July 29, 1998, Dr. Watkins described appellant's left knee surgeries. He stated, "[H]e is unable to return to his job as a naval machinist secondary to his knee condition and specifically because of the inability to get into crouched positions." He stated that appellant's current condition was due not only to his accepted employment injuries and resulting surgeries but "also due to the usual expected wear that occurs to all of us with that passage of time."

As noted previously, Dr. Watkins was on one side of the conflict resolved by Dr. Bradley. As his report does not contain a clear opinion that appellant is disabled for his date-of-injury position due to his accepted employment injury and as he fails to provide the necessary physical findings and medical rationale explaining how and why appellant's employment injuries resulted in his current condition and disability for work, his reports are insufficient to meet appellant's burden of proof or to create a conflict with the detailed report of Dr. Bradley.

The October 15, July 17, February 27 and January 26, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
June 16, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member