

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILSON A. RIEDESEL and DEPARTMENT OF VETERANS AFFAIRS,
REGIONAL OFFICE & INSURANCE CENTER, St. Paul, MN

*Docket No. 98-2052; Submitted on the Record;
Issued March 23, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he had continuing disability after August 31, 1986 causally related to his accepted employment injury, temporary aggravation of irritable bowel syndrome.

This is the third appeal in this case. In a decision dated November 1, 1990,¹ the Board found that the case was not in posture for a decision on the issue of whether appellant had continuing disability causally related to factors of his federal employment due to an unresolved conflict in medical opinion. On remand, the Office of Workers' Compensation Programs referred appellant to Dr. Robert B. Lasser, a Board-certified internist specializing in gastroenterology, for an impartial medical examination. By decision dated January 10, 1992, the Office found that the weight of the medical evidence established that appellant had no disability after August 31, 1986 due to his accepted employment injury.² In a decision dated January 7, 1993,³ the Board set aside the Office's January 10, 1992 decision after finding that the opinion of Dr. Lasser was insufficient to resolve the conflict in medical opinion. The Board instructed the Office on remand to obtain a rationalized report from Dr. Lasser, or if necessary a second impartial specialist, addressing whether appellant's federal employment temporarily or permanently aggravated his preexisting condition and, if the aggravation was temporary, a finding regarding when the aggravation ceased. The facts and history of the case, as set forth in the Board's prior decisions, are hereby incorporated by reference.

After further development of the evidence, by decision dated February 24, 1994, the Office denied appellant's claim for continuing disability after August 31, 1986 on the grounds that the weight of the medical evidence established that he had no further condition or disability

¹ Docket No. 90-722.

² The Office indicated that it found that appellant had no disability after August 31, 1988 rather than August 31, 1986; however, this appears to be a typographical error.

³ Docket No. 92-1002.

after that date causally related to his accepted employment injury. In decisions dated March 29, 1995, and June 12, 1997, the Office denied modification of its February 24, 1996 decision.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that he had continuing disability after August 31, 1986 causally related to his accepted employment injury.

When employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation. However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.⁴

By letter dated March 9, 1993, the Office requested that Dr. Lasser provide a rationalized opinion regarding whether factors of appellant's federal employment caused a temporary or permanent aggravation of his preexisting condition and, if the aggravation was temporary, a rationalized opinion regarding when the aggravation ceased.

In a report dated February 21, 1994, Dr. Lasser noted that appellant "has good evidence for functional bowel disease since his early adulthood." Dr. Lasser found that appellant's employment aggravated his condition due to his exposure to smoke, a heavy work load, problems with supervisors and failing to receive a promotion. The physician noted, however, that upon appellant's retirement in August 1986 his symptoms lessened and he returned to full-time employment. Dr. Lasser opined:

"I feel that the factors in [appellant's] employment only temporarily aggravated his irritable bowel syndrome. It is true that he is still having symptoms, however, he was having comparable symptoms prior to his employment at the [employing establishment].

"With respect to the question of when the disability related to his employment ceased; [appellant] retired from the [employing establishment] August 21, 1986. At that time, he was no longer directly exposed to the conditions, which temporarily aggravated his underlying disorder. In addition, by his own admission, at that time his symptoms diminished. Therefore, I feel that the aggravation of his disability ceased at the time of his retirement on August 21, 1986."

When there exists 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 rationalized and based upon a proper factual background, is entitled to special weight.⁵ The Board has carefully reviewed the opinion of Dr. Lasser and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Lasser provided medical rationale for his opinion that appellant's temporary aggravation of his irritable bowel syndrome

⁴ *Larry Warner*, 43 ECAB 1027 (1992).

⁵ *Henry P. Evans*, 43 ECAB 510 (1992).

ceased when he stopped working for the employing establishment based on his decreased symptoms and lack of further exposure to the aggravating conditions. The Board finds that the February 21, 1994 report of Dr. Lasser, the impartial medical specialist, is sufficiently well rationalized to be accorded special weight and supports the Office's determination that appellant had no further disability causally related to his accepted employment injury after August 31, 1986.

In support of his claim for continuing disability, appellant submitted chart notes dated 1975 through 1980, documenting his treatment for hay fever and allergies. Appellant further submitted a duplicate copy of the 1989 hearing transcript, and raised arguments regarding the issue of air quality at the employing establishment. The evidence submitted is not relevant to the main issue in the present case, which is whether the medical evidence establishes that appellant had further employment-related disability after August 31, 1986. The issue is medical in nature and thus must be resolved by the submission of pertinent medical evidence.⁶

Accordingly, as appellant has not submitted sufficient rationalized medical opinion evidence establishing that he had continuing disability causally related to his accepted employment injury, he has not met his burden of proof.

The decision of the Office of Workers' Compensation Programs dated June 12, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 23, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁶ *Ronald M. Cokes*, 46 ECAB 967 (1995).