U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VAN McGOWAN and DEPARTMENT OF THE ARMY, DETROIT ARSENAL, Warren, MI

Docket No. 99-119; Submitted on the Record;
Issued May 1, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective March 1, 1997.

On December 15, 1960 appellant, then a 37-year-old laborer, sustained an injury to his back while unloading a desk in the performance of duty. He continued to work in a light-duty position under medical restrictions, until he was approved for full duty on July 23, 1964. Appellant was discharged from his federal employment on September 25, 1964. He subsequently filed a traumatic injury claim, which was accepted by the Office for low back strain and aggravation of degenerative disc disease.[1] Appellant last worked in April 1965 in nonfederal employment on a construction job.

Upon acceptance of his claim, appellant was placed on the periodic rolls and received compensation for wage loss and medical benefits related to his back condition. The last medical report of record submitted by appellant's treating physician, Dr. Watson A. Young, a Board-certified orthopedist was dated May 15, 1980. He noted that appellant was last examined on April 21, 1980 for lower back pain with radiation to the legs. Dr. Young related that appellant had been totally disabled by a work injury in 1960 and was unable to work. He noted physical findings and diagnosed chronic and traumatic lumbar spondylomyofascitis, degenerative arthritis in the lower back and neck, early benign prostatic hypertrophy, possible left, inquinal hernia and obesity. Dr. Young reported that appellant was prescribed muscle

[1] The record indicates that appellant injured his back in 1949 while using a jackhammer to open a wall. He filed a Form CA-1 on January 12, 1966 claiming a traumatic injury related to the 1949 incident. The Office informed appellant that his application was untimely, as it was not filed within five years of the work injury. The Office apparently advised him to file a Form CA-1 related to the 1961 injury since the record established that the 1961 injury was timely reported to appellant's supervisor. It is noted, however, that there is no copy of a revised Form CA-1 in the record before the Board.

relaxants, a graduated exercise regime, heat and massage, a back brace and physical rest as needed. He concluded that appellant was permanently and totally disabled from work.

On August 22, 1985 the Office requested that appellant submit a medical report pertaining to his continuing disability from work due to the December 15, 1960 injury.

Although appellant did not submit any additional medical reports to support his continued disability, the Office referred appellant over the years to several Board-certified orthopedic surgeons for second opinion evaluations. The most recent second opinion examination was performed at the request of the Office by Dr. Jerry Matlen, a Board-certified orthopedic surgeon, on August 17, 1994. In a report dated August 29, 1994, he discussed appellant's medical history and physical findings, noting that appellant stated that, he was last seen by his treating physician in 1991. Dr. Matlen opined that "there was little to suggest" that appellant's clinical condition was work related, particularly since appellant's symptoms have progressed independent of the workplace. He diagnosed that appellant suffered from degenerative arthritis and degenerative disc disease, commonly seen in the general population. Dr. Matlen noted that, even though appellant had been able to remove himself from the productive work force, it was apparent from his medical records that his back condition did not preclude him from all gainful employment.

The Office determined that a conflict existed between the last medical report prepared by Dr. Watson, in 1982 and the 1994 report of Dr. Matlen.[2] The Office, therefore, referred appellant, along with a statement of accepted facts and a copy of the medical record, to Dr. Michael Holda, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a report dated October 9, 1996, Dr. Holda described appellant's history of work injury and noted on physical examination findings of normal range of motion to flexion, extension and side bending with no complaints of pain. Under his medical "Impression," Dr. Holda identified degenerative arthritis, lumbar spine and degenerative lumbar disc disease. He opined that the diagnosed conditions were consistent with appellant's age and the aging process. Dr. Holda specifically stated: "I am unable to find evidence of injury or disability to the back from a 1961 injury as described to me. I would place no specific restrictions on [appellant] except for his age and size. I do not feel he requires treatment at this time, except for over-the-counter medication. I cannot relate his present condition to a 1961 work injury."

The Office issued a notice of proposed termination of benefits on January 2, 1997 and advised appellant of his right to submit additional evidence. The Office determined, based on the opinion of the impartial medical examiner, that appellant had no continuing disability or residuals related to the December 15, 1960 work injury.

Appellant submitted a January 29, 1997 report from Dr. Barry Broastern, a Board-certified orthopedic surgeon. He noted that appellant had low back pain since a work injury in 1960 and diagnosed degenerative changes of the lumbar spine and chronic severe lumbar

[2] The Office noted that there was no medical documentation submitted by appellant since 1982 and that the Office referral physician's report indicated that appellant was last seen by his treating physician in 1991.

myositis. Dr. Broastem opined that appellant's back condition was related to his work injury and concluded that he was and would remain permanently disabled for work.

In a decision dated February 20, 1997, the Office terminated appellant's compensation, finding that the report of Dr. Broastern was not sufficiently reasoned to outweigh the opinion of the impartial medical examiner.

Appellant requested an oral hearing, which was held on April 3, 1998.

In a decision dated August 4, 1998, an Office hearing representative affirmed the Office's February 20, 1997 decision.

The Board finds that the Office properly terminated appellant's compensation effective February 2, 1997.

Once an Office accepts a claim, it has the burden of justifying termination or modification of 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.[3]

In the instant case, the Office properly determined that a conflict existed in medical opinion evidence between Drs. Young and Matlen, as to whether appellant had any continuing disability or residuals related to his December 15, 1960 injury. As such, the Office correctly referred appellant to an impartial medical examiner to resolve the conflict.[4]

Where there exists a conflict of medical opinion 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 upon a proper factual background, is entitled to special weight.[5] The Board finds that the report of the impartial medical examiner, Dr. Holda, includes a discussion of appellant' work injury and thoroughly outlines appellant's physical findings in relation to the that injury. He provides a well-reasoned opinion that appellant has no continuing disability or residuals related to the December 15, 1960 back strain. Rather, Dr. Holda attributes appellant's back symptoms to degenerative arthritis consistent with the aging process. As his opinion is rationalized and based on a proper factual background, it is entitled to special weight.

Although appellant submitted a report from Dr. Broastern after receipt of the Office's notice of proposed termination of compensation, he offered no medical rationale for his opinion that appellant is totally disabled due to the December 15, 1960 work injury. He does not fully address the nature of appellant's work injury or adequately explain why a low back sprain that occurred over 20 years ago continues to aggravate appellant's preexisting degenerative back

[3] *Regina C. Burke*, 43 ECAB 399 (1992).

[4] 5 U.S.C. § 8123(a) states in pertinent part "[i]f there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." *See e.g. William C. Bush*, 40 ECAB 1064 (1989).

[5] *Aubrey Belvanis*, 37 ECAB 206 (1985).

condition. Consequently, the Board concludes that Dr. Broastern's opinion is insufficiently reasoned to overcome the special weight afforded to the report of the impartial medical specialist. The Board, therefore, concludes that the Office met its burden of proof in terminating appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated August 4, 1998 is hereby affirmed.

Dated, Washington, D.C.
May 1, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member