

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILLIP Z. GEER and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 99-400; Submitted on the Record;
Issued May 12, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of December 9, 1997.

On March 29, 1984 appellant, a 51-year-old truck driver, experienced a pulling sensation in his upper and lower back while loading a truck. He filed a claim for benefits on the date of injury, which the Office accepted for myofascitis of the thoracic and lumbar spine. Appellant intermittently missed work due to back pain and returned to work on limited duty. The Office paid him compensation for the appropriate periods.

In a report dated November 30, 1995, Dr. Bruce T. Cohn, a Board-certified orthopedic surgeon and appellant's treating physician, stated that appellant indicated his work-related back problem had been giving him intermittent pain but had not been as bad as it usually was. He advised that appellant continued to have lumbar myofascitis but was not currently experiencing any pain. Dr. Cohn thereafter submitted periodic medical reports in which he essentially reiterated these findings and conclusions.

In order to clarify appellant's current condition, the Office scheduled a second opinion examination for appellant with Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for August 25, 1997, to determine whether appellant was still disabled by residuals from his accepted lumbar and thoracic myofascitis conditions. In a report dated August 30, 1997, he stated that appellant complained of persistent pain in the lower and upper back which was intermittent in nature and aggravated by stress. Dr. Kaffen advised that appellant's current symptoms and findings were not solely attributable to the March 29, 1984 work injury. He indicated that appellant's soft tissue injury to the thoracic and lumbar spine would have healed without a subsequent reinjury, particularly with the restricted lifting activities under which he was placed. Dr. Kaffen opined that appellant had recovered from the original soft tissue injury of March 29, 1984 and estimated that five years after the injury would have constituted a

significant period in which to recover from this type of soft tissue injury. He concluded that appellant did not have residuals solely due to the March 29, 1984 employment injury.

The Office determined there was a conflict in the medical evidence between Dr. Kaffen and appellant's treating physician, Dr. Cohn, regarding whether appellant still experienced residuals from his accepted lumbar and thoracic myofascitis conditions and referred appellant for an impartial examination with Dr. Robert C. Corn, a Board-certified orthopedic surgeon, for October 27, 1997.

In a report dated October 27, 1997, Dr. Corn opined that appellant's intermittent low back pain was primarily due to degenerative spondylosis and that his current symptoms and findings were not due solely to the March 29, 1984 employment injury. He further stated:

“[Appellant] has objectively recovered from any acute injury. This type of recovery usually occurs within three months and with appropriate rehabilitation the bulk of the symptoms are usually improved by that time. It is not unusual to have intermittent symptoms after that but it is difficult to relate that to a singular traumatic incident. His intermittent symptoms, in my opinion, are probably not from a chronic soft tissue strain or sprain ... [and] are more likely than not as a result of his generalized arthritic condition.... In my opinion, [appellant] is probably objectively recovered from any singular soft tissue incident. He does continue to have chronic low back pain which he specifically relates to the March 29, 1984 accident. In my opinion, [appellant] has objectively recovered from this trauma.

On November 7, 1997 the Office issued a notice of proposed termination of compensation to appellant. In the memorandum accompanying the notice of proposed termination, the Office found that the case had been referred to an independent medical examiner, Dr. Corn, who opined that appellant no longer had residuals from the March 29, 1984 employment injury and that the weight of the medical evidence rested with his opinion. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. Appellant did not respond to this notice within 30 days.

By decision dated December 9, 1997, the Office terminated appellant's compensation.

By letter dated December 29, 1997, appellant's attorney requested a hearing, which was held on July 28, 1998. He did not submit any additional medical evidence in support of his request.

By decision dated September 3, 1998, an Office hearing representative affirmed its previous decision.

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

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

In the present case, the Office based its decision to terminate appellant's compensation as of December 9, 1997 on Dr. Corn's impartial medical opinion. Where there exists a conflict of medical opinion and the case is referred to an impartial 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.³ After reviewing appellant's medical records, the statement of accepted facts and indicating findings on examination, Dr. Corn opined that appellant had objectively recovered from the March 29, 1984 employment injury. He advised that appellant's intermittent low back pain was primarily due to degenerative spondylosis, and was probably not due to a chronic soft tissue strain or sprain. Dr. Corn stated that recovery from this type of injury typically occurs within three months and added that, while it was not unusual for someone who had sustained an acute injury to subsequently have intermittent symptoms, it was difficult to relate these symptoms to a singular traumatic incident. He therefore concluded that appellant was probably objectively recovered from any singular soft tissue incident.

The Board finds that Dr. Corn's opinion is sufficiently probative and well rationalized to merit the special weight accorded the impartial medical examiner. Therefore, the Office properly relied on Dr. Corn's opinion that appellant's accepted lumbar and thoracic myofascitis had resolved. Therefore, the Board affirms the Office's finding that his opinion represented the weight of the medical evidence in its December 9, 1997 termination decision.

Following the Office's termination of compensation, the burden to establish entitlement to compensation shifted to appellant. Causal relationship must be established by rationalized medical opinion evidence. Appellant, however, failed to submit any medical evidence following the Office's December 9, 1997 termination decision; therefore, he did not meet this burden. Accordingly, as there is no reasoned medical evidence addressing and explaining why his current claimed conditions and disability were caused by his original, accepted conditions, appellant has not met his burden of proof in establishing that he continues to suffer residuals from his employment-related back conditions. The Board therefore affirms the September 3, 1998 decision of the hearing representative affirming the December 9, 1997 decision terminating benefits.

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Aubrey Belnavis*, 37 ECAB 206 (1985); 5 U.S.C. § 8123(a).

The decisions of the Office of Workers' Compensation Programs dated September 3, 1998 and December 9, 1997 are hereby affirmed.

Dated, Washington, D.C.
May 12, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member