U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LELAND L. RIGGS, JR. and DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, Brownsville, TX

Docket No. 99-2296; Submitted on the Record;
Issued May 8, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation on the grounds that he had no continuing residuals related to the accepted work injury; and (2) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On December 11, 1975 appellant filed a traumatic injury claim alleging that he injured his right ankle and foot, back and right wrist when he was attacked in Bogota, Columbia en route to a conference. The Office accepted the claim for severe sprain of the dorsal and lumbar spines and right ankle and compression fracture at D6. Appellant was placed on the periodic rolls for temporary disability effective April 1, 1976.

In an annual medical report dated June 30, 1997, Dr. S. Gopal Krishnan, an attending Board-certified orthopedic surgeon, noted that he had treated appellant for nearly 20 years for his pain episodes and discomfort in the mid-thoracic and lumbar regions. He noted that appellant's range of motion in both shoulders was significantly limited, that abduction beyond 90 degrees was extremely painful as is external rotation. Lastly, Dr. Krishnan stated that "[t]here are many days when he must lie down because he is disabled from pain and this is understandable."

By letter dated May 20, 1998, the Office requested clarification on appellant's condition and whether appellant remained totally disabled due to his accepted employment injury.

In response to the Office's May 20, 1998 letter, Dr. Krishnan noted:

> "The only objective evidence that I can demonstrate on [appellant] is pain and discomfort on a subjective basis with restricted motion. I do n[o]t see any evidence of any new compression fractures. If he had any previously, they are stable. I am of the opinion that with time the degenerative changes and the usual wear and tear has gradually made his back worse. I do n[o]t think that this man is

capable of returning to work as an investigator. There are several combinations that includes the lumbar and dorsal problems, his cardiac state and the old compression fracture of D6."

On February 10, 1999 the Office referred appellant, together with a statement of accepted facts and medical records, to Dr. William Blair for a second opinion as to whether appellant continued to have any disability causally related to his accepted employment injury.

In a medical report dated March 18, 1999, based upon a review of the medical record, statement of accepted facts and physical examination, Dr. Blair noted that, due to "the time interval, there is no evidence that there is any significant structural deficiency of the lumbar spine, other than associated changes secondary to normal life changes." Dr. Blair indicated that appellant should "refrain from frequent or continuous bending, stooping, squatting, twisting, crouching, kneeling, climbing or maintaining any encumbered spinal position," no sitting for more than one hour without changing position, no standing in place for more than one hour, no "tasks which require repetitive outreach or overhead positioning or lifts" and appellant should refrain from tasks which required "frequent or constant pushing, pulling or imparting direct axial load on the scapula/thoracic region." As to the issue of appellant's disability, Dr. Blair opined that appellant was not totally disabled and could perform light-duty work with restrictions on his lumbar spine and cervical thoracic region were followed. Regarding appellant's ability to perform his date-of-injury position, the physician opined that appellant would be unable to return to his position of special agent due to the "current clinical findings, as well as the subsequent changes in" appellant's body.

In a history and physical exam[ination] section dated March 18, 1999,[1] Dr. Blair noted:

"IMPRESSION: I believe that this gentleman has [c]hronic [t]horacic and [l]umbar problems and now [s]houlder problems. I do not think with the combination of all of this as well as his cardiac disease, that he is capable of return to work. Our present course of management is medications. He is not a candidate for any surgical procedures. He has a compression fracture of the thoracic six vertebra. Also, degenerative changes are being added on at this point from clinical point of view. I do not think work hardening or PT modalities will facilitate any return to work."

By letter dated March 25, 1999, the Office requested Dr. Blair for clarification of his opinion as to whether appellant was capable of returning to his date-of-injury position and if not was appellant disabled due to his accepted employment injuries and enclosed an amended statement of accepted facts.

In an April 1, 1999, Dr. Krishnan opined that appellant was incapable of performing his position as a special agent due to the chronic problems in his thoracic and lumbar spine from his accepted employment injury. Regarding appellant's limitations, Dr. Krishnan noted:

[1] The Board notes that under "history and physical exam[ination]" there is a notation of (c) 1999, Phillip Osborne, MD.

"His limitations are certainly plentiful. The range of motion in his lumbar spine has decrease. He has a kyphosis now, which is more prominent than before. He continues to have shoulder discomfort with numbness in both upper extremities. He has demonstrated a positive Adson[']s] [t]est on abducting the shoulder, more prominent on the right than on the left side. In addition he has palpable lumbar discomfort with restricted motion. Limitation and flexion extension, right to left flexion and rotation is present. Neurologically, he is intact in the lower extremities."

Dr. Krishnan disagreed with Dr. Blair on the issue of whether appellant was totally disabled.

In response to the Office's March 25, 1999 letter requesting clarification,[2] Dr. Blair opined that the medical evidence failed to support that appellant was disabled due this lumbar strain. He noted that there was "evidence of a compression fracture of D6, which is not causing any myelopathy. It is possible it may be causing some residual pain and discomfort with activity." Regarding appellant's right ankle, Dr. Blair noted that appellant had "some range of motion deficiencies in comparison to the opposite side" and there were not current x-ray interpretations "which would either refute or support the possibility of residual post-traumatic arthritis." He determined that none of appellant's accepted employment injuries precluded him from performing his date-of-injury position of special agent. In conclusion, Dr. Blair indicated that he did not believe that appellant's "current physical capacity as a result of life processes, which do not consist of residuals from a dorsal-lumbar sprain or compression fracture to D6, to be his major limiting factor. These other factors would be his age, cardiovascular status, vascular status and lack of conditioning."

On April 23, 1999 the Office issued a notice of proposed termination based upon the report of Dr. Blair. The Office found Dr. Krishnan's opinion to be of diminished probative value as the physician failed to address how appellant continued to be totally disabled due to his accepted September 30, 1975 employment injury.

By letter dated April 26, 1999, appellant disagreed with the proposed notice of termination.

In a decision dated May 28, 1999, the Office terminated appellant's medical and compensation benefits effective June 20, 1999 on the basis that appellant no longer had any continuing disability due to his accepted employment injury. In the attached memorandum, the Office noted that it had relied upon Dr. Blair's report in determining that appellant no longer suffered from any residuals due to his September 30, 1975 employment injury.

By letter dated June 3, 1999, appellant requested reconsideration of the termination of his benefits and enclosed a copy of Dr. Krishnan's April 1, 1999 letter.

[2] The Board notes that this letter was faxed to the Office on April 2, 1999. In addition, the date of the letter was noted as March 18, 1999, but Dr. Blair refers to the Office's March 25, 1999 letter which indicates that the "March 18, 1999" date noted on the letter is a typographical error.

On July 6, 1999 the Office denied appellant's request for reconsideration on the basis that the evidence submitted was repetitious and insufficient to warrant a merit review.

The Board finds that there is a conflict of medical opinion in this case, of the type pursuant to section 8123(a) of the Federal Employees' Compensation Act.[3]

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.[4] 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.[5] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[6] 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.[7]

In the present case, the Office accepted appellant's claim for severe sprain of the dorsal and lumbar spines and right ankle and compression fracture at D6. The Office, therefore, has the burden of proof to justify termination of compensation for disability resulting from those conditions.

Appellant's attending physician, Dr. Krishan, a Board-certified orthopedic surgeon, supported appellant's continuing disability due to his accepted September 30, 1975 employment injury. In a report dated April 1, 1999, he opined that appellant was incapable of performing his position as special agent due to appellant's chronic thoracic and lumbar spine problems caused by his accepted employment injury. Dr. Krishan indicated that appellant was totally disabled due to his accepted employment injuries as well as his cardiac problems and the arthritis and degeneration that has occurred in appellant's thoracic spine.

In his March 18, 1999 report, Dr. Blair opined that appellant was not totally disabled and was capable of performing light-duty work with restrictions. In response to the Office's request for clarification, Dr. Blair opined that appellant's current disability was due to normal life processes and that appellant no longer had any residual disability due to his accepted employment injuries.

Thus, there was a conflict of medical opinion evidence on whether appellant continued to be disabled for work due to the accepted employment injuries on and after June 20, 1999. Due

[3] 5 U.S.C. § 8123(a) states in pertinent part: "If there is a 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."

[4] *Mohamed Yunis*, 42 ECAB 325 (1991).

[5] *Id.*

[6] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[7] *Id.*

to the conflict in the medical opinion evidence, the record as a whole was equivocal on the critical issue of the causal relationship between appellant's claimed continuing disability for work and the accepted September 30, 1975 injuries. Therefore, the Office did not have a sufficient basis on which to terminate appellant's compensation.

In light of the Board's resolution of the first issue, the Board need not address the second issue in this case.

The decisions of the Office of Workers' Compensation Programs dated July 14 and May 28, 1999 are hereby reversed.

Dated, Washington, D.C.
May 8, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member