U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS V. BROCKMAN and DEPARTMENT OF THE NAVY, CONSOLIDATED CPO, Honolulu, HI

Docket No. 99-2199; Submitted on the Record;
Issued November 27, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on October 10, 1998.

On December 13, 1976 appellant, then a 47-year-old plumber, was involved in a motor vehicle accident while in the performance of duty. Appellant worked intermittently following the injury, stopped work on January 10, 1977 and returned to duty on January 31, 1977. Appellant lost time from work intermittently until January 8, 1980, when he stopped working completely. Appropriate compensation was paid for all periods claimed. The Office accepted appellant's claim for a contusion to the left arm and neck and aggravation of cervical osteoarthritis with neural encroachment bilaterally at the 7th neural foramina.

During the period between August 1980 and July 1989, appellant reported that he performed odd jobs in carpentry, painting, electrical work and plumbing. No employment was reported after July 1989.

On October 8, 1998 the Office terminated appellant's compensation benefits on the grounds that the weight of medical opinion evidence rested with Dr. Arthur Lorber, a Board-certified orthopedic surgeon, who acted as an impartial medical specialist.[1] In an accompanying memorandum to the Director, the claims examiner noted that the evidence submitted by

[1] Once the Office accepts a claim it has the burden of proving that the employee's disability has ceased or lessened before it may terminate or modify compensation benefits. *Karen L. Mayewski*, 45 ECAB 219, 221 (1993); *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 238, 241 (1984). 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. *Jason C. Armstrong*, 40 ECAB 907 (1989). As with the case where the burden of proof is upon a claimant, the Office must support its position on causal relationship with a physician's opinion which is based upon a proper factual and medical background and which is supported by medical rationale explaining why there no longer is, or never was, a causal relationship. *Frank J. Mela*, 41 ECAB 115, 125 (1989).

appellant following the September 4, 1998 notice of proposed termination did not represent new medical or factual argument and was of little probative or evidentiary value as it was not germane to the issue of whether appellant continued to have residuals from his work injury.

In a decision dated April 19, 1999, the Office hearing representative concluded that the opinion of Dr. Lorber was entitled to special weight in his capacity as an impartial medical specialist and that his opinion that appellant's work-related contusion of the left arm and aggravation of preexisting cervical arthritis with encroachment of the 7th neural foramina had resolved as of January 28, 1979 constituted the weight of the medical evidence.[2] The hearing representative further found that the additional evidence submitted by Dr. Glock was of insufficient probative value to equal or outweigh the opinion of Dr. Lorber. Specifically, the hearing representative noted that Dr. Glock's diagnoses of "traumatic arthritis" and "traumatic degenerative arthritis" were without any supportive explanation or any objective findings as to how appellant's cervical condition was causally related to the December 13, 1976 motor vehicle accident. The hearing representative further rejected appellant's argument that he would be entitled to compensation benefits for the rest of his life as the Act allows for the Office to review an award for or against payment of compensation at any time. Accordingly, the hearing representative found that the Office met its burden to justify termination of compensation after October 10, 1998.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated April 19, 1999, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

[2] Section 8123(a) of the Federal Employees' Compensation Act provides that, "[i]f 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." 5 U.S.C. § 8123(a). The opinion of the physician selected by the Office, called an impartial medical examiner or independent medical specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215 (1994). In this case, the Office found a conflict in medical opinion to exist between appellant's attending physician, Dr. Sekhar Chandra, an internist, who opined that appellant continued to suffer from significant disabling work-related residuals, and Dr. Richard Sheridan, a Board-certified orthopedic surgeon and an Office referral physician, who opined that appellant no longer had residuals of the work injury, that the aggravation of cervical osteoarthritis had returned to its baseline level, and that appellant could return to his date-of-injury position.

The decision of the Office of Workers' Compensation Programs dated April 19, 1999 is hereby affirmed.[3]

Dated, Washington, DC
November 27, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[3] The Board notes that appellant's appeal to the Board was accompanied by new evidence. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence. Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606(b) (1999).