

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAGDISH BHATT and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Cincinnati, OH

*Docket No. 00-966; Submitted on the Record;
Issued April 12, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained a recurrence of disability on December 18, 1998 causally related to his July 30, 1995 employment injury; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective March 22, 1999 on the grounds that he no longer had any residuals of his July 30, 1995 employment injury.

On July 31, 1995 appellant, then a 44-year-old medical technologist, filed a traumatic injury claim alleging that on July 30, 1995 he injured his back and right hip while in the performance of duty. The Office accepted appellant's claim for right hip sprain and contusions of the buttocks and lower back.

By letter dated April 6, 1998, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon, to determine whether appellant had any residuals of his July 30, 1995 employment injury. Dr. Sheridan submitted an April 13, 1998 medical report finding that appellant no longer had any residuals of his July 30, 1995 employment injury.

By letter dated July 9, 1998, the Office requested that Dr. Umakant K. Patel, a Board-certified internist and appellant's treating physician, review Dr. Sheridan's report. In a July 27, 1998 response, Dr. Patel disagreed with Dr. Sheridan's opinion and stated that appellant continued to suffer from his July 30, 1995 employment injury.

The Office found a conflict in the medical opinion evidence between Drs. Sheridan and Patel. By letter dated January 6, 1999, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. James Duffy, a Board-certified orthopedic surgeon, for an impartial medical examination.

Dr. Duffy submitted a January 21, 1999 medical report finding that appellant had fully recovered from his July 30, 1995 employment injury.

On February 11, 1999 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability on December 18, 1998 accompanied by medical evidence. The Office advised appellant that the disability note he submitted was insufficient to establish that he was unable to work on December 18, 1998 and requested medical evidence supportive of his claim within 30 days.

In a notice dated February 17, 1999, the Office advised appellant that it proposed to terminate his compensation based on Dr. Duffy's medical opinion. The Office also advised appellant to submit additional medical evidence supportive of his continued disability within 30 days.

In a March 19, 1999 decision, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on December 18, 1998 causally related to his July 30, 1995 employment injury.

In a March 22, 1999 decision, the Office terminated appellant's compensation effective that date on the grounds that the medical evidence established that appellant no longer had any residuals of his July 30, 1995 employment injury. In a March 27, 1999 letter, appellant requested an oral hearing before an Office representative.

By decision dated December 23, 1999, the hearing representative affirmed the Office's March 19 and 22, 1999 decisions.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on December 18, 1998 causally related to his July 30, 1995 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.¹

In this case, appellant has not submitted rationalized medical evidence establishing that his current back condition was caused by the accepted July 30, 1995 employment injury. Dr. Patel's December 18, 1998 disability certificate failed to discuss whether or how the diagnosed condition of acute lumbosacral sprain was caused by appellant's July 30, 1995 employment-related injury.²

¹ *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

² *Daniel Deparini*, 44 ECAB 657, 659 (1993).

In further support of his claim, appellant submitted Dr. Patel's February 17, 1999 medical report relating that he saw appellant on December 18, 1998 for severe back pain. Dr. Patel diagnosed acute chronic lumbosacral sprain and advised appellant to remain off work. Appellant also submitted Dr. Patel's December 18, 1998 medical treatment notes regarding his back condition. Neither Dr. Patel's report nor his treatment notes addressed whether appellant's current back condition was caused by his July 30, 1995 employment injury.

Because appellant has failed to submit rationalized medical evidence establishing that his current back condition was causally related to his accepted July 30, 1995 employment injury, the Board finds that appellant has not satisfied his burden of proof.

The Board further finds that the Office properly terminated appellant's compensation benefits effective March 22, 1999.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³

Pursuant to section 8123(a) of the Federal Employees' Compensation Act, the Office properly referred appellant to Dr. Duffy for an impartial medical examination to resolve the conflict in the medical opinion evidence between Dr. Sheridan, a physician for the Office, and Dr. Patel, appellant's treating physician, on whether appellant had any residuals of his July 30, 1995 employment injury.⁴ In his January 21, 1999 medical report, Dr. Duffy provided a history of appellant's employment injury and medical treatment and related his normal findings on physical and objective examination. Dr. Duffy stated:

"It is my opinion that this [appellant] today, is fully recovered from the injuries sustained in his fall from a chair on July 30, 1995. There is no evidence of injury to the soft tissue structures, to the intervertebral discs or to the nerve roots in his lumbar spine. There is no evidence of injury to his right hip. It is my opinion, therefore, that he is completely recovered and has no disability as a result of this accident."

Appellant submitted an October 10, 1998 report regarding the results of magnetic resonance imaging (MRI) of the cervical spine, which indicated a congenitally small cervical canal and disc bulges at C5-6 and C6-7. This MRI report failed to address whether appellant's conditions were caused by his July 30, 1995 employment injury.

Appellant also submitted a March 10, 1999 report from Dr. G. Terence Reuland, a pulmonary specialist, who found that appellant had some poorly localized tenderness in the

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ 5 U.S.C. § 8123(a) states in pertinent part: "If 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."

posterior neck, with full range of motion and no radiating pain. Dr. Reuland suspected that appellant had a chronic muscular strain with associated headaches. He stated that “[t]he relationship of this to his incident in 1995 is not totally clear to me.” Dr. Reuland was unable to identify a causal relationship between appellant’s condition and his July 30, 1995 employment injury.

In situations where there are 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 well rationalized and based on a proper factual background, must be given special weight.⁵ In this case, the report of Dr. Duffy, obtained to resolve a conflict of medical opinion, was rationalized and based on an accurate factual and medical background. The report of Dr. Duffy constitutes the weight of the medical evidence and is sufficient to establish that appellant no longer has any residuals of his July 30, 1995 employment injury.

The December 23, March 22 and 19, 1999 decisions of the Office of Workers’ Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 12, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ *James P. Roberts*, 31 ECAB 1010 (1980).