

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LANEY J. HARRIS and DEPARTMENT OF THE ARMY,  
RED RIVER ARMY DEPOT, Texarkana, AK

*Docket No. 00-1514; Submitted on the Record;  
Issued April 30, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective November 5, 1998 on the grounds that his work-related disability had ceased and appellant no longer had residuals of the accepted injury.

This case has been on appeal previously.<sup>1</sup> In a March 24, 1995 decision, the Board found that the Office improperly determined that appellant was not entitled to compensation after November 7, 1991 on the grounds that he refused suitable work. On reversal, the Office reinstated payment of temporary total disability compensation.<sup>2</sup>

In a July 16, 1996 work restriction evaluation, Dr. Jeffrey T. DeHaan, a Board-certified orthopedic surgeon, indicated that appellant could return to work four hours a day with no bending, kneeling or crawling and no lifting more than 10 pounds. He also checked the box "yes" with regard to whether appellant had reached maximum improvement and wrote in the date July 16, 1996.

In an August 20, 1996 progress note, Dr. DeHaan indicated that appellant continued to have back problems, but declined a myelogram or a computerized tomography (CT) scan because he did not wish to have surgical procedures performed on his back. Appellant's examination revealed that he moved all motor units fairly well with no obvious limp, antalgia or foot drop when walking. Dr. DeHaan noted that appellant's symptoms had not changed since studies were done previously. He also indicated that if appellant were not going to opt for

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<sup>1</sup> Docket No. 93-2228 (issued March 24, 1995). The history of the case is contained in the prior decision and it is incorporated by reference.

<sup>2</sup> The record reflects that appellant was placed on the periodic rolls on February 27, 1992 after his limited-duty position was terminated.

surgery, “he was as good as he was going to get medically.” Dr. DeHaan advised sedentary work with no lifting more than 10 pounds, no repetitive bending, stooping, climbing, crawling or working with heavy machinery. He advised starting out with half days of four-hour intervals.

On October 8, 1997 the Office referred appellant to vocational rehabilitation.

In progress notes from February 3 to June 25, 1998, Dr. DeHaan indicated that appellant wanted his restrictions decreased to a no-work status. He stated that, based on the magnetic resonance imaging (MRI) scan and a nerve conduction study which were essentially normal, he could not place appellant in a no-work status. He also noted that appellant had subjective pain but objectively, appellant had a normal motor and sensory examination.

On July 7, 1998 the vocational rehabilitation file was closed.

In a July 23, 1998 report, Dr. DeHaan indicated that appellant was “about as good as he was going to be.” He stated that appellant subjectively still had lower back pain and problems, but prior MRI scans showed nothing that would require surgical intervention. Dr. DeHaan indicated that suitable employment that did not require physical labor should be sought for appellant. He also indicated that, to his knowledge, appellant did not have any other injuries and therefore his current symptoms were due to his back. Dr. DeHaan also agreed that, normally, lumbar strains should improve within six weeks. He stated: “I think he probably had a little bit more than a lumbar strain, but certainly at this point he [is] recovered as well as he [is] going to recover.”

In an August 20, 1998 report, Dr. DeHaan indicated that appellant continued to have lower back pain with objective findings to include primarily the EMG/NCV’s which did show peroneal difficulty. He noted that the majority of appellant’s symptoms were pain in the lower back with some lower extremity paresthesia. Dr. DeHaan also noted that the effects of the work injury had not ceased and were still causing appellant persistent pain in the back and in the legs. He stated that appellant’s current disability was due to his work injury since he had no other significant injury and appellant was restricted from returning to his preinjury job.

The Office referred appellant, with a statement of accepted facts and a copy of the case record, to Dr. Edwin C. Simonton, a Board-certified orthopedic surgeon, for a second opinion evaluation as to the nature and extent of appellant’s work-related disability. In a September 1, 1998 report, he indicated that anterior-posterior and lateral x-rays of the lumbar spine revealed no evidence of fracture, dislocation, or anomaly. No joint narrowing or marginal spurring was present. Dr. Simonton reviewed the MRI scan and nerve conduction studies, which were essentially normal. He also noted that the 1996 report referred to an EMG and nerve conduction study in which “findings were consistent with mild peripheral neuropathy.”

Dr. Simonton indicated that appellant presented with a few subjective complaints, including pain at the extreme of flexion of the lumbar spine but not with other ranges of motion. He also complained of pain with certain motions of the hips, and straight leg raising elicited a complaint of pain bilaterally when tested specifically. Dr. Simonton also indicated that there were no positive objective findings to substantiate appellant’s complaints. He opined that, nine years from the date of injury, there should be some positive objective findings if injury were still

present or had been present for any appreciable length of time. He noted that no atrophy and no muscular weakness were demonstrated. Dr. Simonton indicated that appellant had a normal gait and good range of motion in all joints with no reflex changes. He concluded his report by indicating that there was no evidence to support the presence of a low back strain at this time and that appellant could perform any type of work for which he was qualified.

On September 15, 1998 the Office issued a proposed notice of termination of compensation on the grounds that appellant had no continuing injury-related disability. The Office indicated that the weight of the medical evidence demonstrated that appellant's work injury had resolved. Appellant was given 30 days to submit additional evidence or argument.

In a May 18, 1990 report, which was received by the Office on September 24, 1998, Dr. Kimberly Day, a surgeon, indicated that she had carefully reviewed appellant's medical record and found him permanently restricted from any heavy lifting or repeated bending, which disqualified him from his job as an electronic integrated systems mechanic.

By decision dated October 15, 1998, the Office finalized its proposed termination of benefits. The Office indicated that Dr. Simonton's opinion remained the weight of the medical evidence.

On November 10, 1998 appellant requested an oral hearing.

By letter dated September 18, 1999, appellant cancelled his request for a hearing and requested a review of the written record. In support of his request, appellant submitted the October 12, 1998 report of Dr. Harold R. Bicknell, a Board-certified orthopedic surgeon, who indicated that appellant brought copies of an EMG and nerve conduction studies which revealed mild peroneal neuropathy on the left. He also indicated that appellant remained under the care of Dr. DeHaan, who believed that appellant's current disability was related to his injury at work and continued the light-duty restrictions of no repetitive bending, stooping, climbing, crawling or prolonged walking or standing. Dr. Bicknell asserted that "I cannot fully explain [appellant's] continued difficulty; however, he does continue with chronic low back, left lower extremity pain. I have no further suggestions as to treatment at this time. I agree with Dr. DeHaan's assessment."

In progress notes dated from August 20 to November 10, 1998, which were received by the Office on September 24, 1999, Dr. DeHaan noted that appellant had a follow-up MRI scan of his lumbar spine that the radiologist interpreted as normal and he agreed that it was normal. Additionally, he noted there was no disc herniation or other neurological compromises that he could detect although appellant did have some facet hypertrophy at the L4-5 level and this might be causing him some back pain.

In a decision dated December 8, 1999, the Office hearing representative affirmed the Office's October 15, 1998 termination of benefits.

The Board finds that the Office met its burden of proof in terminating appellant's compensation effective November 5, 1998 on the grounds that his work-related disability had ceased by that date.

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.<sup>3</sup> 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.<sup>4</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>5</sup> 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.<sup>6</sup>

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.<sup>7</sup>

In this case, Dr. DeHaan, appellant's treating physician, indicated in his reports from August 16, 1996 to November 10, 1998 that appellant had reached maximum medical improvement and that appellant remained disabled from work with the exception of various light-duty restrictions. He also discussed appellant's lower back and degenerative disc problems but did not distinguish the degenerative problems from his accepted injury for low back strain.

Additionally, Dr. DeHaan failed to discuss how or why appellant continued to be disabled due to his July 13, 1989 accepted employment injury. He indicated that "appellant was about as good as he was going to be" and noted that he did not see anything serious in the MRI scans. Dr. DeHaan noted mild peroneal neuropathy but did not explain how this was related to appellant's employment injury. He also offered an equivocal opinion concerning whether appellant's current condition was related to his accepted injury, stating that since appellant had no other significant injury it was due to his accepted employment injury.<sup>8</sup> Additionally, Dr. DeHaan did not explain the process of how a lumbar strain could cause disability for more than nine years.<sup>9</sup>

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<sup>3</sup> *Lawrence D. Price*, 47 ECAB 120 (1995).

<sup>4</sup> *Id.*; see *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>5</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>6</sup> *Id.*

<sup>7</sup> See *Connie Johns*, 44 ECAB 560 (1993).

<sup>8</sup> *Roger Dingress*, 47 ECAB 123 (1995).

<sup>9</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

In his October 12, 1998 report, Dr. Bicknell, also noted mild peroneal neuropathy but did not explain how this was related to appellant's accepted employment injury. He indicated that he could not fully explain appellant's continued difficulty, however, he does continue with chronic back and left, lower extremity pain. Dr. Bicknell did not explain how or why specific factors of appellant's employment would cause or aggravate appellant's condition. Furthermore, his opinion was couched in speculative terms and his medical report did not indicate a familiarity with appellant's employment history as he did not identify any employment factors alleged to have caused appellant's conditions.<sup>10</sup>

Appellant also submitted an eight-year-old report from Dr. Day, who asserted that appellant was permanently restricted from any heavy lifting or repeated bending. This report was outdated and thus of limited probative value. Dr. Day indicated that she had carefully reviewed appellant's medical record but did not describe what she was reviewing. Her report contained no history of injury, no familiarity with appellant's employment history other than appellant's title, and no rationalized opinion. None of the physicians explained why appellant was disabled as a result of his work injury. Absent a rationalized medical opinion in support of their conclusions, the reports are of limited probative value.<sup>11</sup>

The Board finds that at the time the Office terminated benefits, the weight of the medical evidence rested with Dr. Simonton who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. He opined that appellant had no continuing residuals from his accepted employment injury and was capable of performing his usual employment. Dr. Simonton found that the x-rays of appellant's lumbar spine revealed no evidence of fracture, dislocation, joint narrowing or marginal spurring. He also noted that MRI scans and nerve conduction studies were essentially normal. Because Dr. Simonton provided the only rationalized medical opinion of record addressing whether appellant continued to suffer residuals of his accepted employment injury, his opinion constitutes the weight of the medical evidence.<sup>12</sup>

The Board therefore finds that Dr. Simonton's report established that appellant ceased to have any disability or condition causally related to his employment injuries, thereby justifying the Office's October 15, 1998 final termination of benefits effective November 5, 1998.

The December 8, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC

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<sup>10</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are based on an incomplete history or which are speculative or equivocal in character have little probative value); see also *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

<sup>11</sup> See *Connie Johns*, *supra* 7 at 569, citing *Philip J. Deroo*, 39 ECAB 1294, 1298 (1988) (finding a physician's opinion on causal relationship must be one of reasonable medical certainty, supported by affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background).

<sup>12</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

April 30, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member