

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of REGINALD L. SYDNOR and EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, Philadelphia, PA

*Docket No. 00-2823; Submitted on the Record;  
Issued October 5, 2001*

---

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof in establishing that his disability after August 5, 1994 was causally related to factors of his July 14, 1992 employment injury.

The case has been on appeal to the Board before.<sup>1</sup> Previously, the Board found that the Office of Workers' Compensation Programs had met its burden of proof in terminating appellant's compensation on August 4, 1994, based on the report of Dr. Seymour Shlomchik, a Board-certified orthopedic surgeon acting as an impartial medical specialist. The Board noted that an Office hearing representative had found that a subsequent report from Dr. William Atkins, a physiatrist, had created a new conflict in the medical evidence.

In an April 19, 1999 letter, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Herbert Stein, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence between Dr. Atkins and Dr. Shlomchik.

In a June 9, 1999 report, Dr. Stein diagnosed chronic lumbosacral sprain with radiculitis. He noted that appellant had almost no spinal motion on testing, had difficulty walking, and claimed that he could not stand on heels and toes due to severe back pain. Dr. Stein noted that appellant had a marked restriction of motion, marked positive straight leg raising test in an unanatomical way, no objective neurological abnormalities and objective reports of only a bulging disc. He pointed out that none of the medical reports indicated any evidence of a disc protrusion into a caudal sac or nerve roots. Dr. Stein indicated that appellant had a positive electromyogram for L4 distribution but no definite objective neurological abnormality in that distribution. He concluded that appellant had an extreme inconsistency in regard to physical findings. Dr. Stein indicated that appellant had an extreme exaggeration of symptoms in

---

<sup>1</sup> Docket No. 95-2978 (issued December 22, 1997). The history of the case is contained in the prior decision and is incorporated by reference.

examination. He commented that the extreme degree of overreaction appeared to make it very difficult to determine what degree of symptomatology was real on an objective basis. Dr. Stein related appellant's symptoms to the employment injury but stated that, on the basis of the x-rays, magnetic resonance imaging scans and computerized axial tomography scans, appellant's current significant symptomatology is unexplainable. He stated that, on an objective basis, disregarding the extreme inconsistencies of appellant's examination, and the obvious overreaction on examination, appellant was able to return to work at his original job when injured and was able to work as an administrative law judge.<sup>2</sup>

The Office requested clarification on whether appellant could have performed the duties of his original position as of August 1994. In a July 27, 1999 response, Dr. Stein stated that, while he did not examine appellant back in August 1994, all his studies did not show anything more than a bulging disc with no herniation. He concluded that the objective evidence would indicate that appellant was able to work in his preinjury state as of August 1994.

In a February 1, 2000 decision, the Office denied appellant's claim for compensation on the grounds that the weight of the medical evidence showed that he had no employment-related disability after August 4, 1994.

Appellant requested a hearing before an Office hearing representative which was subsequently amended to request a written review of the record. He submitted in support of his request a series of reports from a physical therapist who described appellant's limitations of motion, complaints and physical therapy treatment. She stated that appellant could not return to work.

Appellant also submitted an October 13, 1999 report from Dr. Ronald Brody, a Board-certified physiatrist, who stated that appellant had spasm and tenderness in the lumbosacral region, particularly on the left side. He noted that appellant had increased discomfort on movement. Dr. Brody found full range of motion in all joints of the extremities with hypesthesias in the left leg. He indicated that appellant had breakaway weakness in the left leg distally. Dr. Brody diagnosed chronic low back syndrome and left lumbar radiculopathy. He made recommendations on appellant's continued treatment.

In a September 7, 2000 decision, the Office hearing representative, based on Dr. Stein's report, found that the medical evidence of record failed to support appellant's disability after August 4, 1994 was in any way causally related to the July 14, 1992 employment injury.

The Board finds that the weight of the medical evidence establishes that appellant's disability after August 4, 1994 was not causally related to the July 14, 1992 employment injury.

Once the Office meets its burden of proof in terminating a claimant's compensation, it becomes the claimant's burden of proof to establish that he has continuing disability due to his employment.<sup>3</sup>

---

<sup>2</sup> The record shows that appellant returned to work as an administrative law judge from April to September 1997.

<sup>3</sup> *Joseph Campbell*, 34 ECAB 1389 (1983).

In this case, appellant presented reports from Dr. Atkins which the Office found caused a conflict in the medical evidence with the report of Dr. Shlomchik, the first impartial medical specialist whose report forms the basis of the termination of appellant's compensation. The Office therefore referred appellant to Dr. Stein for an examination to resolve the new conflict in the medical evidence. Dr. Stein indicated that appellant's subjective complaints were exaggerated and not supported by the objective evidence of record. He noted that the reports of record showed appellant did not have a herniated disc. Dr. Stein concluded that appellant could perform the duties of his preinjury position and was able to perform those duties as of August 1994 when his compensation was terminated. In situations when there exists opposing medical reports of virtually equal weight and rationale, 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, must be given special weight.<sup>4</sup> In this case, Dr. Stein's report was based on an accurate medical history and concluded, on the basis of a medical examination, that appellant had no objective evidence of disability that would be related to the employment injury. His report therefore is entitled to special weight and, in the circumstances of this case, represents the weight of the medical evidence.

Appellant submitted reports from a physical therapist in support of his claim of continued disability. The reports of a physical therapist, however, have no probative value because a physical therapist is not defined as a physician under the Federal Employees' Compensation Act and therefore cannot give competent medical evidence.<sup>5</sup> The only medical evidence submitted was the report of Dr. Brody who diagnosed chronic low back syndrome and left lumbar radiculopathy. However, Dr. Brody did not discuss whether appellant's condition was related to the employment injury and did not give an opinion on whether appellant could return to work. His report therefore has limited probative value because it did not address the paramount issue in this case, whether appellant had any remaining disability due to the employment injury. Dr. Brody's report was insufficient to overcome the probative value of Dr. Stein's report.

---

<sup>4</sup> *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>5</sup> 5 U.S.C. § 8101(4); *see Jennifer L. Sharp*, 48 ECAB 209 (1996).

The decisions of the Office of Workers' Compensation Programs, dated September 7 and February 1, 2000, are hereby affirmed.

Dated, Washington, DC  
October 5, 2001

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member