U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM A. FROELICH and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

Docket No. 99-2469; Submitted on the Record;
Issued September 6, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation entitlement effective July 18, 1999 under 5 U.S.C. § 8106(c) on the grounds that he refused an offer of suitable work; and (2) whether the Office properly terminated appellant's medical benefits entitlement effective August 13, 1999 on the grounds that he required no further medical treatment for his work-related conditions.

The Office accepted that on June 15, 1985 appellant, then a 45-year-old tractor trailer operator, sustained a cervical strain when he pulled a stabilizer rod up from the floor of a trailer. Appellant stopped work on June 19, 1985 and did not return until January 10, 1986. He filed a claim for a recurrence of disability on March 7, 1986 which was accepted for herniated nucleus pulposus at C5-6 and C6-7. On June 10, 1986 appellant underwent cervical disc surgery.

On December 6, 1986 appellant was first treated for depression by Dr. Wilbur Gearhart, a Board-certified psychiatrist. Treatment was terminated on May 8, 1987 by mutual agreement, but was resumed on June 20, 1989.

Appellant returned to duty on August 3, 1987 working a limited-duty position which required that he handwrite reports, file and repair damaged mail in an office setting. Restrictions included no lifting over 10 pounds. Appellant stopped work on June 9, 1989 and did not return. He claimed a recurrence of disability due to his emotional condition.

On June 8, 1990 the Office accepted that appellant sustained a depressive reaction condition.

By report dated October 21, 1991, Dr. R. Eugene Holemon, appellant's Board-certified psychiatrist, noted that appellant was severely depressed with secondary paranoid somatic symptoms and noted that he remained somatically fixated. Dr. Holemon opined that appellant was permanently disabled due to a combination of his psychiatric and physical injuries.

By report dated March 1, 1993, Dr. Holemon discussed appellant's symptomatology and opined that appellant would again become paranoid if he were pushed to work, that he was chronically depressed with underlying paranoid personality, and that he did not feel appellant could return to work as his paranoid ideation would significantly interfere with any type of work.

On October 27, 1993 the Office decided that a current orthopedic evaluation was necessary and it referred appellant, together with a statement of accepted facts, questions to be addressed, and the relevant case record, to Dr. Allen G. Adams, a Board-certified orthopedic surgeon, for a second opinion orthopedic examination.

By report dated November 9, 1993, Dr. Adams reviewed appellant's history, examined appellant, and opined "there is no objective basis at this time on which to establish further work restrictions at this time." Dr. Adams also opined that "no further surgical intervention is indicated."

On March 21, 1995 the Office determined that a second opinion psychiatric evaluation was required and it referred appellant to Dr. Thomas K. Mangelsdorf, a Board-certified psychiatrist, together with a statement of accepted facts, specific questions to be addressed, and the relevant case record, for a second opinion psychiatric evaluation.

By report dated April 26, 1995, Dr. Mangelsdorf noted that he examined appellant three times between April 3 and 11, 1995; he reported appellant's subjective complaints, performed a mental status examination, reviewed psychological testing results, and opined that his presentation was loaded with secondary gain. He diagnosed a somatoform disorder, a pain disorder, psychotic disorder, and a paranoid personality, and he opined that the pressure to return to light-duty work aggravated his psychological condition and caused more regression. Dr. Mangelsdorf opined in an attached work capacity evaluation that appellant could work in his usual workplace, communicate clearly, cooperate with others, respond to persons in authority, interact appropriately, organize work and complete tasks without supervision, and participate in group activities without problems. Dr. Mangelsdorf opined, however, that appellant could not perform high volume work or adapt to stressful work situations. He further recommended that appellant continue treatment with his psychiatrist and should take medications for sleep and for his considerable paranoia.

On September 27, 1995 the Office again referred appellant, together with a statement of accepted facts, questions to be addressed, and the relevant case record, to Dr. Adams for another second opinion orthopedic examination.

By report dated October 19, 1995, Dr. Adams reviewed appellant's history, performed a complete physical examination, and noted that appellant had normal cervical, thoracic and lumbar alignment, cervical range of motion within normal limits, a normal motor examination, normal deep tendon reflexes, a healed and nontender cervical area incision, and normal shoulder range of motion without signs of impingement or muscle atrophy. He found that there was no basis for orthopedic work restrictions and that therefore he could return to duty as a tractor trailer operator from an orthopedic standpoint. He indicated that appellant had reached maximum medical improvement and that no further medical treatment was needed for appellant's

orthopedic condition; however, Dr. Adams noted that appellant had substantial psychological problems.

By letter dated May 11, 1996, the employing establishment noted that Dr. Adams had found appellant fit for full duty, but indicated that he had been removed from the employing establishment for cause and noted that they did not wish to reemploy him.

By report dated May 15, 1996, Dr. Holemon opined that appellant's somatic symptoms were part of his decompensation of his paranoid personality after the accident. Dr. Holemon opined that appellant's paranoid reaction was the most dominant, and that he had serious doubts as to whether appellant would ever be compliant with medication treatment. Illegible medical progress notes were also submitted.

By letter dated June 6, 1996 Dr. Adams indicated that he had reviewed the duties of a tractor trailer operator and opined that, from an orthopedic standpoint, appellant could return to those job duties without restrictions.

The Office determined that a conflict in psychiatric medical opinion existed between Dr. Holemon and Dr. Mangelsdorf, and on November 6, 1996 it referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Wayne A. Stillings, a Board-certified psychiatrist, to resolve the existing conflict in psychiatric medical opinion.

By report dated December 9, 1996, Dr. Wayne A. Stillings, a Board-certified psychiatrist and the impartial examiner, reviewed appellant's, factual and medical history, including the relevant medical reports of record, noted his present complaints, conducted a mental status examination and reviewed psychological testing results, noted that "several indices indicate this individual is overemphasizing his subjective complaints," noted that appellant had a histrionic construct to his personality and was prone to exaggerate his physical complaints, and diagnosed factitious disorder. Dr. Stillings, in a well-rationalized and comprehensive report, opined that appellant had no psychiatric disorder causally related to nor aggravated by the June 1985 work incident, that from a psychiatric standpoint appellant was able to return to his preinjury job as a tractor trailer operator, and that he needed no further treatment with respect to the accepted injury.

On February 4, 1997 Dr. Holemon, provided a copy of his office notes which stated that appellant had complaints of arm, chest and back pain.

A February 11, 1997 magnetic resonance imaging (MRI) scan was reported as showing solid interbody fusion at C5-6 and C6-7, a posterior central disc herniation with slight cord impingement at C4-5, and a smaller central protrusion at C3-4 without cord impingement.

By report dated February 24, 1997, Dr. James H. Esther, a Board-certified internist, opined that appellant had bulging discs with arthritis in the cervical spine, which was enough to explain his pain.

On July 30, 1997 the Office issued appellant a notice of proposed termination of compensation on the basis that Dr. Adams found that appellant had no further orthopedic

disability and could perform his date-of-injury job, and that Dr. Stillings, the impartial medical examiner, found no continuing psychological disability. The Office advised that Dr. Adams had found that appellant's examination was within normal limits and that there was no objective basis for any continuing work restrictions. It also advised that the psychiatric impartial medical examiner resolved the conflict on whether appellant had disability due to a psychiatric condition, finding that appellant had no further psychiatric disorder, causally related to his accepted employment injury, and did not need continuing psychiatric treatment. The Office advised that, if appellant disagreed with the proposed termination, he had 30 days within which to submit evidence or argument as to why compensation should not be terminated.

In response to the notice of proposed termination of compensation, appellant argued that he had a stiff neck and indicated that he had another appointment with Dr. Esther. Appellant argued that the physician had advised him that his condition would only get worse.

On September 4, 1997 the Office advised appellant that his compensation would not be terminated based upon the February 24, 1997 report from Dr. Esther and the February 11, 1997 radiology report.

On January 30, 1998 the Office referred appellant to Dr. Russell C. Cantrell, a Board-certified orthopedic surgeon, with a statement of accepted facts, questions to be addressed and the relevant case record, for a second opinion orthopedic examination.

By narrative report dated February 26, 1998, Dr. Cantrell reviewed appellant's factual and medical history, including the medical reports of record, noted his subjective complaints, performed a complete physical examination, and noted that since 1989 appellant had played in six golf tournaments and had performed all of the repairs and maintenance of an apartment building he owned including lawn maintenance, plumbing, cleaning and painting. Dr. Cantrell noted that appellant had no positive neurological findings upon examination and objective findings limited to a reduction in range of motion of his cervical spine in all directions and tightness in the upper trapezius musculature bilaterally. Dr. Cantrell diagnosed successful interbody fusion at C5 through C7 with associated myofascial pain syndrome secondary to the fusion and cervical degenerative disc disease at C3-4 and C4-5. He opined that appellant could not return to his date-of-injury truck driver job but that he could perform some sort of gainful employment where he was not required to drive for protracted periods of time and with lifting, pushing and pulling restrictions. Dr. Cantrell opined that appellant had reached maximum medical improvement and that further treatment would consist of a home exercise program of aerobic conditioning and maintenance of cervical range of motion with cervical stretching exercises. He opined that further diagnostic testing was not necessary and that appellant's pain was associated with not only his work injury but with the secondary natural progression of cervical spine degenerative disc disease.

In an attached work capacity evaluation dated February 20, 1998, Dr. Cantrell indicated that appellant could work eight hours per day and he enumerated his activity restrictions.[1]

[1] Restrictions included unlimited standing and walking, no more than 4 hours of sitting, 2 hours of reaching above the shoulder, 2 hours of operative a motor vehicle, 1 hour of climbing, lifting no more than 50 pounds, and pushing and pulling no more than 200 pounds.

On March 29, 1999 the employing establishment provided Dr. Cantrell a description of the position created for and offered to appellant within the medical restrictions he had specified,[2] and it requested that he opine as to whether such position was suitable to appellant's partially disabled condition. Dr. Cantrell opined that the offered position was suitable for appellant.

Also by letter dated March 29, 1999, the employing establishment offered appellant the position of modified manual distribution clerk and it enclosed a copy of the job description including physical requirements.

On April 7, 1999 the Office advised appellant that the offered position was found to be suitable to his partially disabled condition, and it advised him of the provisions of 5 U.S.C. § 8106(c)(2). The Office gave appellant 30 days within which to accept the position or to provide his reasons justifying refusal.

In response appellant submitted an April 1, 1999 report from Dr. Holemon which noted that appellant refused to take antipsychotic medications or antidepressants, and that he considered appellant disabled due to a combination of orthopedic problems and psychiatric disorders. Dr. Holemon opined that appellant was paranoid and too agitated to return to work. Appellant also advised the employing establishment verbally that he could not accept the offered job because he claimed it was impossible for him to work inside or maintain a set schedule.

By notice dated April 7, 1999, the Office advised appellant that it found the position he had been offered, that of modified manual distribution clerk, to be suitable to his partially disabled condition and work capabilities. It noted that the position remained currently available, and that upon acceptance he would be paid compensation based on the difference, if any, between the position's pay and the pay of his date-of-injury position. The Office advised appellant of the provisions of 5 U.S.C. § 8106(c), and it gave him 30 days within which to accept the position or to provide reasons justifying his refusal.

In response appellant submitted an April 1, 1999 report from Dr. Holemon which noted that appellant was being treated for severe depression and a paranoid disorder, that he "was disabled due to a combination of orthopedic problems and the above psychiatric disorder," and that, "[f]rom a psychiatric point of view, I think he is paranoid and too agitated to return to work."

Also in response, appellant telephoned the Office and claimed that he could not accept the job because it was impossible for him to work inside, that he could not maintain a set schedule, that he was a tractor trailer operator and not a clerk, and that he was tired of the employing establishment inspection service watching him all the time.

[2] The position of modified part-time flexible manual distribution clerk required that appellant answer telephones, file express mail labels, verify business replies, patch up broken mail, count postage due mail and case mail, and perform other duties as required within his delineated restrictions. The job required sitting up to 4 hours intermittently, standing and walking intermittently as needed lifting up to 30 pounds, intermittent bending and reaching above the shoulder, but none to minimal squatting, climbing, kneeling or twisting.

On May 14, 1999 appellant was advised that the reasons he provided for refusing the job were not acceptable, and he was allowed an additional 15 days within which to accept the position. The Office advised that Dr. Holemon's additional report was repetitive of his previous reports and it reiterated that the impartial medical specialist had resolved the conflict between Dr. Holemon and Dr. Mangelsdorf regarding appellant's ability to work based on his accepted emotional condition.

On May 27, 1999 appellant again rejected the May 14, 1999 job offer "due to [his] medical conditions."

By decision dated June 4, 1999, the Office terminated appellant's monetary compensation entitlement for wage loss under 5 U.S.C. § 8106(c) effective July 18, 1999, finding that he had refused an offer of suitable employment. The Office found that the report of the impartial medical specialist, Dr. Stillings, constituted the weight of the medical opinion evidence on the issue of whether appellant had any emotional condition, and established that he had no psychiatric condition. It found that Dr. Holemon's subsequent report was repetitive and that he was on one side of the conflict resolved by the opinion of Dr. Stillings, and therefore his subsequent report was insufficient to overcome the special weight accorded the impartial specialist's report. The Office further found that all of the orthopedic specialists of record, including but not limited to Drs. Adams and Cantrell, felt that he could perform some type of gainful employment with restrictions. The Office noted that Dr. Cantrell had reviewed the job offer and had found it medically suitable to appellant's orthopedic condition. The Office concluded that appellant was only partially disabled orthopedically and was able to perform the offered job as modified manual distribution clerk.

On June 26, 1999 appellant's vocational rehabilitation was formally terminated. The counselor noted that appellant felt that he was permanently and totally disabled.

On July 9, 1999 the Office issued appellant a notice of proposed termination of medical benefits finding that the weight of the medical evidence established that he no longer had any residuals of his work-related conditions which required further medical treatment. The Office found that appellant was currently not under any medical care for his orthopedic condition, that Dr. George R. Schoedinger, III, a Board-certified orthopedic surgeon, one of appellant's earliest treating orthopedist, had released his to return to work full time with restrictions on August 3, 1987, and that no orthopedist found him to be unable to work due to his orthopedic condition at the time of his 1989 recurrence.[3] The Office further found that the impartial medical specialist, Dr. Stillings, resolved the conflict in medical opinion between Dr. Holemon and Dr. Mangelsdorf regarding his ability to work and the presence of injury-related residuals which required further medical treatment.

By decision dated August 13, 1999, the Office terminated appellant's entitlement to medical benefits for his emotional condition finding that his emotional condition was no longer related to his employment injury or to compensable factors of his employment. The Office found that the report of the impartial medical examiner's report established that appellant had no further psychiatric disorder causally related to or aggravated by the June 1985 work incident. It

[3] Appellant claimed that he was suicidal.

further found that there was no evidence of record that supported that appellant had an orthopedic condition which required further medical treatment

The Board finds that the Office properly terminated appellant's compensation entitlement on the grounds that he refused an offer of suitable work.

Section 8106(c)(2) of the Federal Employees' Compensation Act states that a partially disabled employee who refuses to seek suitable work, or refuses or neglects to work after suitable work is offered to, procured by, or secured for him is not entitled to compensation.[4] The Office has authority under this section to terminate compensation for any partially disabled employee who refuses suitable work when it is offered. Before compensation can be terminated, however, the Office has the burden of demonstrating that the employee can work, setting forth the specific restrictions, if any, on the employee's ability to work, and has the burden of establishing that a position has been offered within the employee's work restrictions, setting forth the specific job requirements of the position.[5] In other words, to justify termination of compensation under 5 U.S.C. § 8106(c)(2), which is a penalty provision, the Office has the burden of showing that the work offered to and refused by appellant was suitable.[6]

The Office met its burden in this case.

In this case, following his 1986 surgery, appellant was found to be able to return to limited duty and did so on August 3, 1987. He thereafter worked successfully for almost two years until June 9, 1989 when he stopped work due to his emotional condition. No medical evidence was presented to the record that demonstrated that appellant had a recurrence of disability due to his orthopedic condition at the time he ceased limited duty.

Thereafter, in 1991 appellant's treating psychiatrist, Dr. Holemon opined that appellant was permanently disabled due to a combination of his psychiatric and physical injuries. However, Dr. Holemon did not discuss what aspect of appellant's physical injuries disabled appellant, and the Board notes that, even if he did, it would be of limited probative value as Dr. Holemon was a psychiatrist and not an orthopedist. The Board notes that the opinion of a physician who has specialized training in a particular field of medicine has greater probative value on issues involving that particular field than opinions of other physicians.[7]

Dr Holemon opined in 1993 that he did not feel appellant could return to work as his paranoid ideation would significantly interfere with any type of work.

The Office sought a second opinion psychiatric examination from Dr. Mangelsdorf, who opined, based upon a complete and accurate factual and medical background of appellant and his own examination and testing results, that appellant's presentation was loaded with secondary

[4] 5 U.S.C. § 8106(c)(2).

[5] *Frank J. Sell, Jr.*, 34 ECAB 547 (1983).

[6] *Glen L. Sinclair*, 36 ECAB 664 (1985).

[7] *See Effie Davenport (James O. Davenport)*, 8 ECAB 136 (1955).

gain. He did not diagnose the presence of the accepted depressive reaction, but instead diagnosed a somatoform disorder, a pain disorder, a psychotic disorder and a paranoid personality, none of which had been accepted by the Office as being employment related. Dr. Mangelsdorf opined that appellant could work in his usual workplace, could communicate clearly, could cooperate with others, could respond to persons in authority and interact appropriately could organize work and complete tasks without supervision, and could participate in group activities without problems.

The Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "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."

In this case, the Office properly determined that Dr. Holemon disagreed with the Office's second opinion specialist, Dr. Mangelsdorf, as to whether appellant was totally disabled due to his accepted emotional condition and whether he could return to some sort of work. Therefore, the Office properly found a conflict in medical evidence which required a referral to an impartial medical specialist for resolution.

The impartial medical specialist, Dr. Stillings, was provided with an accurate factual and medical history and the relevant medical reports of record; he performed a complete and thorough examination of appellant, reviewed psychological testing results, and opined in a well-rationalized medical opinion that appellant was overemphasizing his subjective complaints, that he had a histrionic construct to his personality and that he was prone to exaggerate his physical complaints. Dr. Stillings diagnosed a factitious disorder,[8] and opined that appellant had no psychiatric disorder causally related to or aggravated by the June 1985 work incident. He further opined that from a psychiatric standpoint appellant was able to return to his preinjury job as a tractor trailer operator and needed no further treatment with respect to the accepted emotional condition.

Where there exists a conflict of medical opinion 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, is entitled to special weight.[9]

As Dr. Stillings's report was based upon a complete and accurate factual and medical background and upon thorough examination and testing results, and as it was comprehensive and well rationalized, it is entitled to that special weight. According Dr. Stillings' report that special weight results in it constituting the weight of the medical opinion evidence on the issue of whether appellant has continued disability for work or could return to some sort of full-time employment.

Following Dr. Stillings's report appellant submitted an additional report from Dr. Holemon. The Board notes that the Office found that this subsequent report was repetitious

[8] A factitious disorder is artificial or contrived; not natural. *See* Dorland's Illustrated, *Medical Dictionary*, 27th Edition, 1988, p.607; The Random House *College Dictionary*, Revised Edition, 1980, p.473.

[9] *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

of previously submitted reports, and that Dr. Holemon was on one side of the conflict in medical opinion evidence that was resolved by the report of Dr. Stillings, and correctly determined that this report was insufficient to overcome the weight accorded to the impartial medical examiner.[10] The Board now agrees with this determination, and finds that the subsequent report from Dr. Holemon was repetitive of those already of record and previously considered and that Dr. Holemon was on one side of the conflict which was resolved by the well-rationalized report from Dr. Stillings, such that Dr. Holemon's subsequent report was of reduced probative value and therefore was insufficient to overcome the special weight accorded the report of Dr. Stillings.

With respect to the physical injury, the weight of the medical evidence of record supports that appellant was not totally disabled for work, causally related to the 1985 orthopedic injury. The record demonstrates that, with respect to the repaired herniated discs, appellant was able to return to light-duty work on August 3, 1987 and that he worked successfully in that limited-duty position for almost two years until June 9, 1989, when he became disabled due to an emotional condition. The record does not contain any rationalized medical evidence supporting that appellant again became disabled due to his treated orthopedic injuries at any time after he returned to limited duty. In 1993 Dr. Adams found, in a complete and well-rationalized report, that at that time there was no objective basis on which to establish further work restrictions, and he opined that no further surgical intervention was warranted. In 1995 Dr. Adams again found, in a thorough and well-rationalized report, based upon a complete and accurate factual and medical history, that there was no basis for orthopedic work restrictions and that, therefore, from an orthopedic standpoint, appellant could return to duty as a tractor trailer operator. In 1996 Dr. Adams reiterated that he had reviewed the duties of a tractor trailer operator and was of the opinion that, from an orthopedic standpoint, appellant could return to those job duties without restrictions.

Further, a February 11, 1997 MRI scan demonstrated solid interbody fusions at C5-6 and C6-7, the levels of the accepted disc herniations causally related to the 1985 injury, and therefore demonstrated no obvious pathology at those levels. This MRI report also indicated, however, that appellant had a posterior central disc herniation with slight cord impingement at C4-5 and a smaller central protrusion at C3-4 without impingement. The Board notes that these subsequent disc abnormalities were not evident at or immediately following the time of injury, were not diagnosed contemporaneously with the original C5-6 and C6-7 injuries, and were not, therefore, accepted as being employment related. As pathologies at these levels were not accepted as being employment related, no disability due to them would be compensable under the Act.

Moreover, the February 26, 1998 report from Dr. Cantrell, which was complete and thorough, was based upon an accurate factual and medical history, and was detailed and well rationalized, indicated that appellant could work eight hours per day, with certain activity restrictions, in a capacity that did not require driving for protracted periods. Specifically, Dr. Cantrell opined that appellant could work at a position with unlimited walking and standing, and with restrictions on more than 4 hours of sitting, 2 hours of reaching above the shoulder, 2 hours of operating a motor vehicle, 1 hour of climbing, lifting no more than 50 pounds, and

[10] *See Harrison Combs, Jr.*, 45 ECAB 716 (1994).

pushing and pulling no more than 200 pounds. The position offered was that of modified part-time flexible manual distribution clerk which required that appellant answer telephones, file express mail labels, verify business replies, patch up broken mail, count postage due mail and case mail, and perform other duties as required within his delineated restrictions. The job required sitting up to 4 hours intermittently, standing and walking intermittently as needed lifting up to 30 pounds, intermittent bending and reaching above the shoulder, but none to minimal squatting, climbing, kneeling or twisting.

The employing establishment provided Dr. Cantrell with a description of the position, including its activities and physical requirements, which was created for and offered to appellant, and Dr. Cantrell opined that such position was suitable to appellant's condition.

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by the opportunity for and thoroughness of examination; the reliability of the medical report; its probative value; its accuracy and the completeness of the physician's knowledge of the facts ands medical history of the case; its convincing quality; the care of analysis manifested; and the medical rationale expressed in support of the physician's opinion.[11]

In the present case, the Board finds that the reports of both Drs. Adams and Cantrell were based upon a complete and accurate factual and medical background, included a comprehensive physical examination of appellant, were convincing and of significant medical certainty, and were thorough and well rationalized in the analysis and conclusions offered. The multiple reports from these physicians established that appellant was no longer totally disabled due to his accepted C5-6 and C6-7 disc conditions, that he could work full time without restrictions according to Dr. Adams and with certain minor activity restrictions according to Dr. Cantrell. As the reports of Drs. Adams and Cantrell are complete and well rationalized, and as appellant had not submitted any contradictory probative medical evidence identifying or explaining why he remains totally disabled due to the C5-6 and C6-7 solid interbody disc fusions, or why he could not perform the duties of the offered modified clerk position, the reports of Drs. Adams and Cantrell constitute the weight of the medical evidence of record and establish that appellant is no longer totally disabled due to his accepted orthopedic employment conditions and can perform some sort of work within the restrictions enumerated by Dr. Cantrell.

As noted above, 5 U.S.C. § 8106(c)(2) states that a partially disabled employee who refuses to seek suitable work, or refuses or neglects to work after suitable work is offered to, procured by, or secured for him is not entitled to compensation.[12] Although the Office has the burden of proving that the offered position is suitable to an employee's partially disabled condition, the employee who refuses or neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified.[13]

[11] *Anna C. Leanza*, 48 ECAB 115 (1996); *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

[12] 5 U.S.C. § 8106(c)(2).

[13] 20 C.F.R. § 10.124.

Appellant has not met that burden in this case.

In response to the employing establishment's job offer appellant submitted an April 1, 1999 report from Dr. Holemon which noted that appellant refused to take antipsychotic medications or antidepressants, and that he considered appellant disabled due to a combination of orthopedic problems and psychiatric disorders. Dr. Holemon opined that appellant was paranoid and too agitated to return to work. Appellant also advised the employing establishment verbally that he could not accept the offered job because he claimed it was impossible for him to work inside or maintain a set schedule.

By notice dated April 7, 1999, the Office advised appellant that it found the position he had been offered, that of modified manual distribution clerk, to be suitable to his partially disabled condition and work capabilities as delineated by Dr. Cantrell. It noted that the position remained currently available, and that upon acceptance he would be paid compensation based on the difference, if any, between the position's pay and the pay of his date-of-injury position. The Office advised appellant of the provisions of 5 U.S.C. § 8106(c), and it gave him 30 days within which to accept the position or to provide reasons justifying his refusal.

In response appellant submitted an April 1, 1999 report from Dr. Holemon which noted that appellant was being treated for severe depression and a paranoid disorder, that he "was disabled due to a combination of orthopedic problems and the above psychiatric disorder," and that, "[f]rom a psychiatric point of view, I think he is paranoid and too agitated to return to work."

Also in response appellant telephoned the Office and claimed that he could not accept the job because it was impossible for him to work inside, that he could not maintain a set schedule, that he was a tractor trailer operator and not a clerk, and that he was tired of the employing establishment inspection service watching him all the time.

The Office considered these reasons and determined that Dr. Holemon's additional report was repetitive of his previous reports, and it reiterated that the impartial medical specialist had resolved the conflict between Dr. Holemon and Dr. Mangelsdorf regarding appellant's ability to work based on his accepted emotional condition. The Office found that there was no evidence of record supporting appellant's claims that it was impossible for him to work inside, that he could not maintain a set schedule, or that he was a tractor trailer operator and not a clerk, particularly since he had previously successfully worked at a limited-duty clerk-type position during the 1987 to 1989 time period.

On May 14, 1999 appellant was advised that the reasons he provided for refusing the job were not acceptable, and he was allowed an additional 15 days within which to accept the position. On May 27, 1999 appellant again rejected the May 14, 1999 job offer "due to [his] medical conditions."

By decision dated June 4, 1999, the Office terminated appellant's monetary compensation entitlement for wage loss under 5 U.S.C. § 8106(c) effective July 18, 1999, finding that he had refused an offer of suitable employment. The Office found that the report of the impartial medical specialist, Dr. Stillings, constituted the weight of the medical opinion

evidence on the issue of whether appellant had any emotional condition, and established that he had no employment-related psychiatric condition. It found that Dr. Holemon's subsequent report was repetitive and that he was on one side of the conflict resolved by the opinion of Dr. Stillings, and therefore his subsequent report was insufficient to overcome the special weight accorded the impartial specialist's report. The Office further found that all of the orthopedic specialists of record, including but not limited to Drs. Adams and Cantrell, felt that he could perform some type of gainful employment with or without restrictions. The Office noted that Dr. Cantrell had reviewed the job offer and had found it medically suitable to appellant's orthopedic condition. The Office concluded that appellant was only partially disabled orthopedically and was able to perform the offered job as modified manual distribution clerk. Therefore, the Office found that appellant had refused an offer of suitable work, and was not, consequently, entitled to further wage-loss compensation.

The Board further finds, however, that the Office improperly terminated appellant's medical benefits entitlement effective August 13, 1999 on the grounds that he required no further medical treatment for his work-related conditions.

The Board has held that the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[14] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[15]

The Office, however, has not met its burden of proof to terminate medical benefits in this case.

In this case, the Office accepted both a physical injury, herniated discs at C5-6 and C6-7, which were surgically treated in 1986, and an emotional condition, depressive reaction, which appellant claimed still disabled him as of 1999.

With respect to the physical injury, the weight of the medical evidence of record supports that appellant had no further disability for work, causally related to the 1985 orthopedic injury. The record demonstrates that, with respect to the repaired herniated discs, appellant was able to return to light-duty work on August 3, 1987 and that he worked successfully in that limited-duty position for almost two years until June 9, 1989, when he became disabled due to an emotional condition. The record does not contain any rationalized medical evidence supporting that appellant needed any further treatment for his treated orthopedic injuries at any time after he returned to limited duty. In 1993 Dr. Adams found, in a complete and well-rationalized report, that no further surgical intervention was warranted. In 1995 Dr. Adams again found, in a thorough and well-rationalized report, based upon a complete and accurate factual and medical history, that, from an orthopedic standpoint, appellant could return to duty as a tractor trailer operator. Dr. Adams found that appellant had reached maximum medical improvement and that no further medical treatment was required for appellant's orthopedic condition.

[14] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[15] *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

Further, a February 11, 1997 MRI scan demonstrated solid interbody fusions at C5-6 and C6-7, the levels of the accepted disc herniations causally related to the 1985 injury, and therefore demonstrated no obvious pathology requiring further treatment at those levels. This MRI report also indicated, however, that appellant had a posterior central disc herniation with slight cord impingement at C4-5 and a smaller central protrusion at C3-4 without impingement. The Board notes that these subsequent disc abnormalities were not evident at or immediately following the time of injury, were not diagnosed contemporaneously with the original C5-6 and C6-7 injuries, and were not, therefore, accepted as being employment injury related. As pathologies at these levels were not accepted as being employment related, no treatment for them would be compensable under the Act.

Moreover, the February 26, 1998 report from Dr. Cantrell, which was complete and thorough, was based upon an accurate factual and medical history, and was detailed and was well rationalized, indicated that appellant had reached maximum medical improvement, and that further medical treatment would consist only of a home exercise program performed by appellant.

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by the opportunity for and thoroughness of examination; the reliability of the medical report; its probative value; its accuracy and the completeness of the physician's knowledge of the facts ands medical history of the case; its convincing quality; the care of analysis manifested; and the medical rationale expressed in support of the physician's opinion.[16]

In the present case, the Board finds that the reports of both Drs. Adams and Cantrell were based upon a complete and accurate factual and medical background, included a comprehensive physical examination of appellant, were convincing and of significant medical certainty, and were thorough and well rationalized in the analysis and conclusions offered. The multiple reports from these physicians established that further medical treatment for the solid interbody disc fusions at the C5-6 and C6-7 levels was not required. As the reports of Drs. Adams and Cantrell are complete and well rationalized, and as appellant had not submitted any contradictory probative medical evidence identifying or explaining why he needs further medical treatment for the C5-6 and C6-7 solid interbody disc fusions, the reports of Drs. Adams and Cantrell constitute the weight of the medical evidence of record and establish that appellant requires no further medical treatment for these conditions.

However, with respect to appellant's emotional condition, which the Office accepted as a depressive reaction, the Office noted that appellant's treating psychiatrist, Dr. Holemon, opined in multiple reports that appellant continued to be totally disabled and in need of ongoing treatment due to severe depression with secondary paranoid somatic symptoms, and that if he were pushed to work he would become paranoid again which would significantly interfere with any type of work.

The Office sought a second opinion psychiatric examination from Dr. Mangelsdorf, who opined, based upon a complete and accurate factual and medical background of appellant and his

[16] *Anna C. Leanza*, 48 ECAB 115 (1996); *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

own examination and testing results, that appellant should continue treatment with his psychiatrist, should take medications for sleep and should take medications for his paranoia.

As both physicians agreed that appellant required further medical treatment, a conflict did not occur on that issue and the report of Dr. Stillings did not constitute an impartial medical examination on that issue.

Dr. Stillings, in his lengthy and comprehensive report, diagnosed a factitious disorder,[17] and opined that appellant had no psychiatric disorder causally related to or aggravated by the June 1985 work incident. He further opined that from a psychiatric standpoint appellant needed no further treatment with respect to the accepted emotional condition. As Dr. Stillings was not an impartial medical specialist on the issue of the need for continued medical treatment, his opinion does not carry the weight of the medical opinion evidence and constitutes only another second opinion on that issue.

As the reports of Dr. Holemon and Dr. Mangelsdorf disagree with the report of Dr. Stillings on the issue of whether appellant requires further medical treatment, a conflict arises on that issue. As this conflict in medical opinion evidence has not been resolved, the Office has not met its burden of proof to establish that appellant has no emotional injury residuals that require further medical treatment.

Although the Office has met its burden of proof to establish that appellant had no further disability for work due to his accepted employment-related conditions after July 18, 1999 it has not met its burden to terminated medical benefits.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 4, 1999 is hereby affirmed; the decision dated August 13, 1999 is reversed.

Dated, Washington, DC
September 6, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[17] A factitious disorder is artificial or contrived; not natural. *See* Dorland's Illustrated, *Medical Dictionary*, 27th Edition, 1988, p.607; The Random House *College Dictionary*, Revised Edition, 1980, p.473.