U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD R. KEENEY and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, NY

Docket No. 01-1301; Submitted on the Record;
Issued August 12, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating wage-loss compensation and medical benefits effective January 4, 1997 on the basis that appellant recovered from his January 26, 1975 employment-related injury.

This case is on appeal before the Board for the second time. Appellant sustained injuries to his right hand and back while in the performance of duty on January 26, 1975. The Office accepted appellant's claim for severe contusion and soft tissue injury of the right hand and contusion of the lumbosacral spine. Appellant ceased working the day of his injury and he received wage-loss compensation for approximately 21 years following his employment injury. By decision dated December 20, 1996, the Office terminated appellant's compensation and medical benefits on the basis that he recovered from his January 26, 1975 employment injury. The Office based its decision on the October 2, 1996 opinion of Dr. Irwin J. Nelson, a Board-certified orthopedic surgeon and impartial medical examiner. In a decision dated May 8, 1997, the Office hearing representative affirmed the December 20, 1996 decision terminating benefits. Appellant requested reconsideration on May 4, 1998, which the Office denied by decision dated June 18, 1998.

In a decision dated November 6, 2000, the Board set aside the Office's June 18, 1998 decision denying appellant's May 4, 1998 request for reconsideration.[1] The Board found that the Office failed to consider two recent medical opinions appellant submitted in conjunction with his May 4, 1998 request for reconsideration.[2] Accordingly, the Board remanded the case to the Office with instructions to fully consider the evidence that appellant properly submitted prior to the issuance of the Office's June 18, 1998 decision.

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[1] Docket No. 99-216 (November 6, 2000). The Board's November 6, 2000 decision is incorporated herein by reference.

[2] The Office erroneously stated that "[appellant] submitted no medical evidence in support of the request."

On remand, the Office reviewed appellant's claim on the merits and denied modification by decision dated January 17, 2001.[3]

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[4] Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[6] 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.[7]

The Office determined that a conflict of medical opinion existed and properly referred appellant to an impartial medical examiner.[8] In his report dated October 2, 1996, Dr. Nelson, the impartial medical examiner, noted that appellant had severe extraordinary subjective complaints, but no objective findings. He further noted that despite marked voluntary guarding in all ranges of motion of the back, there was no muscle weakness, measurable atrophy or reflex changes. Dr. Nelson commented that appellant had no intention of returning to work at the employing establishment. However, he stated that appellant has no physical disability that would prevent him from being gainfully employed. Dr. Nelson further stated that, after 20 years, appellant had received the maximum benefit of physical therapy and required no further treatment. The Board finds that the Office properly relied on the impartial medical examiner's October 2, 1996 opinion as a basis for terminating benefits. Dr. Nelson's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. Nelson also reported accurate medical and employment

[3] The Board's November 6, 2000 decision instructed the Office to "fully consider the evidence that was properly submitted prior to the issuance of the Office's June 18, 1998 decision." The Board did not specifically instruct the Office to conduct a merit review nor did the Board otherwise conclude that the evidence submitted on reconsideration was sufficient to warrant a full merit review of the claim.

[4] *Curtis Hall*, 45 ECAB 316 (1994).

[5] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[6] *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

[7] *Calvin S. Mays*, 39 ECAB 993 (1988).

[8] The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994). In this instance, the Office hearing representative in a decision dated July 19 and finalized July 23, 1996, found that a conflict existed between the opinions of Dr. Stanley Soren, appellant's treating physician, and Dr. Joel L. Teicher, a Board-certified orthopedic surgeon and Office referral physician. The hearing representative remanded the case to the Office with instructions to refer appellant for examination by an impartial medical examiner.

histories. Appellant alleged that Dr. Nelson was biased, and therefore, his opinion should be disregarded. The record, however, does not substantiate appellant's allegation of bias on the part of Dr. Nelson. Accordingly, the Office properly accorded determinative weight to the impartial medical examiner's findings.[9]

In a report dated January 2, 1997, Dr. Soren noted complaints of low back pain radiating to both feet. On physical examination of the lumboscracal spine, he noted tenderness with limitation of motion of the trunk on the pelvis. Dr. Nelson diagnosed lumbar herniated nucleus polpusus and he requested authorization for a magnetic resonance imaging (MRI) scan of the lumbar spine. In a handwritten letter dated April 30, 1998, Dr. Soren stated that appellant remained totally disabled. He diagnosed herniated disc at L5-S1 and further indicated that appellant could not perform duties in the [employing establishment] because he cannot lift and is markedly restricted in walking and standing. Additionally, Dr. Soren reiterated his earlier request for an MRI. The record also includes an April 20, 1998 letter from Dr. Eva Hirschenstein, a Board-certified neurologist, which reads as follows: "[Appellant] is under my care and remains totally disabled due to low back pain with disc disease and is unable to perform any type of work."

The recent reports from Drs. Soren and Hirschenstein are insufficient to overcome the weight properly accorded the impartial medical examiner's October 2, 1996 opinion. Although Drs. Soren and Hirschenstein indicated that appellant was totally disabled, neither physician attributed appellant's current back condition to the January 26, 1975 employment injury. Moreover, the Office did not accept appellant's claim for herniated nucleus pulposus at L5-S1.[10] The April 1998 reports from Drs. Soren and Hirschenstein cannot be considered rationalized medical opinions as neither physician explained how appellant's January 26, 1975 employment injury either caused or contributed to his current condition.[11] Therefore, the weight of the evidence, as represented by the impartial medical examiner's October 2, 1996 report, establishes that appellant no longer suffers from residuals of his January 26, 1975 employment injury.

[9] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[10] Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury. *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[11] *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).

The January 17, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 12, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member