

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. CORDOVA and DEPARTMENT OF THE ARMY,
PUEBLO DEPOT ACTIVITY, Pueblo, CO

*Docket No. 02-1703; Submitted on the Record;
Issued December 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 appellant's compensation.

Appellant's claim, filed on December 4, 1985, was accepted for a right trapezius strain and subluxations at C4 and L3 after he twisted his back and shoulder.¹ He returned to light duty and filed a claim on May 24, 1990 after he hurt his neck and back while unloading boxes from a truck. The Office accepted this claim for a lumbar strain and appellant stopped work.

Subsequently, the Office referred appellant to Dr. Robert C. Schutt, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation. Based on his April 15, 1997 report, the Office issued a notice of proposed termination on April 24, 1997, which was made final on May 27, 1997. Appellant requested a written examination of the record and on November 13, 1997 the hearing representative vacated the termination of benefits and remanded the case for the Office to resolve the conflict of medical opinion. The hearing representative noted that the statement of accepted facts should be updated to include claims previously filed and accepted by the Office.

On remand the Office submitted a revised statement of accepted facts and the medical records to Dr. Richard Pfeiffer, a Board-certified orthopedic surgeon, who examined appellant on January 27, 1998 and recommended a lumbar magnetic resonance imaging (MRI) scan and a functional capacity evaluation.

Based on Dr. Pfeiffer's October 2, 1998 report and follow-up clarifications, the Office issued a notice of proposed termination of compensation on April 14, 1999. Appellant objected, noting that the statement of accepted facts contained an incorrect description of appellant's job duties. On June 17, 1999 the Office determined that Dr. Pfeiffer did not qualify as an impartial

¹ A March 28, 1989 claim for a recurrence of disability was denied.

medical examiner who could resolve the conflict in medical opinion because he had not been informed of this role.

The Office then referred appellant to Dr. William J. Ciccone, a Board-certified orthopedic surgeon, who concluded, in a report dated July 14, 1999, that appellant was unable to work due to a chronic pain syndrome brought on by his numerous past injuries.² He stated that appellant was disabled from working as a warehouse supervisor and that his disability was due, in all probability, to a work-related condition.

On September 21, 1999 the Office revised the statement of accepted facts to reflect the specific physical requirements of a warehouse worker supervisor, the position appellant held at the time of injury.³ In a memorandum to the record, the Office stated that Dr. Ciccone's report was insufficient to resolve the conflict in the medical opinion evidence because his opinion contained equivocal, speculative and contradictory findings and was unsupported by medical rationale.

The Office referred appellant to Dr. Jack H. Akmakjian, a Board-certified orthopedic surgeon, to resolve the conflict. However, appellant was examined by Dr. John A. Reister, who worked for the same medical company as Dr. Akmakjian. The Office then rescheduled the impartial examination with Dr. Akmakjian.

Based on Dr. Akmakjian's December 29, 1999 report, and February 2 and June 5, 2000 letters, the Office terminated appellant's compensation, effective June 17, 2000. Appellant requested a hearing, which was held on December 4, 2000. On February 14, 2001 the hearing representative found that the Office met its burden of proof in terminating appellant's compensation and that the reports of Dr. Akmakjian represented the weight of the medical opinion evidence.

Appellant appealed to the Board, but later withdrew his request and the Board dismissed the appeal.⁴

² The statement of accepted facts listed claims for injuries on July 21, 1983 (denied), December 2, 1985 (accepted for right trapezius strain and C4, L3 subluxations), October 19, 1988 (denied) and October 23, 1989 (accepted for cervical strain).

³ Appellant was on light duty at the time of the May 22, 1990 back injury, but had been lifting heavy boxes.

⁴ Docket No. 01-1476 (issued February 8, 2002).

Appellant requested reconsideration and submitted a May 4, 2001 report from Dr. Denise E. Crute, Board certified in neurological surgery. He also submitted a legal argument.⁵ By decision dated April 9, 2002, the Office denied modification of its prior decision.

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

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁶ 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.⁷

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.⁸ The opinion of the specialist properly chosen to resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.⁹

In this case, the Office properly determined that a conflict of medical opinion existed over whether appellant's work-related conditions of cervical and lumbar strains, a right trapezius strain and subluxations at C4 and L3 had resolved. Dr. Robert L. Campbell, an osteopathic practitioner and appellant's treating physician, stated in an April 10, 1992 report that appellant was disabled from all work. He added on May 10, 1999 that appellant's current condition was "a direct result" of the injuries he sustained while doing his job and that he was now totally disabled.

Dr. Victor M. Alarcon, an emergency medicine practitioner, stated in an April 26, 1999 report that appellant had sustained a multitude of very serious injuries due to work-related accidents, which rendered him permanently and totally disabled. Dr. Gerald D. Reilly, Board certified in neurological surgery, stated in a November 29, 1999 report, that appellant's progressive cervical stenosis all began with the injuries in 1985 and that he was permanently disabled for manual labor.

⁵ Dr. Crute stated, in a September 11, 2000 report, submitted to the hearing representative that appellant had "largely recovered" from the lumbar strain and L3 subluxation, but that the C4 subluxation and cervical strain had resulted in herniated discs at C4-5 and C5-6 with spinal cord and nerve compression. She agreed with Dr. Reilly's assessment.

⁶ *Betty Regan*, 49 ECAB 496, 501 (1998).

⁷ *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

⁸ *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

⁹ *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

By contrast, Dr. L. David Crosson, a Board-certified orthopedic surgeon, stated in his April 26, 1991 report that appellant demonstrated “marked symptom magnification” and could perform his duties as a supervisor if he avoided heavy lifting. He added that appellant did not want to return to work. Dr. Schutt concluded, in his April 15, 1997 report, that appellant had no objective findings of any active or disabling residuals from the lumbar strain. He added that appellant’s subjective complaints were not commensurate with the objective findings and test results.

Dr. Pfeiffer concluded, in his reports dated October 2, 1998 and January 6 and February 19, 1999, that there were no objective clinical findings to support any active or disabling residuals of the accepted conditions. He found that appellant had preexisting cervical stenosis and that an MRI scan showed mild degenerative disc disease of the lumbar spine.

While the Office had initial difficulty in providing a proper independent medical evaluation for appellant, Dr. Akmakjian resolved the conflict over whether appellant had residuals of his accepted work injuries that disabled him for work. In his December 29, 1999 report, Dr. Akmakjian reviewed the revised statement of accepted facts, including the description of the physical duties required, appellant’s work history, the opinions of other physicians, diagnostic testing results and the records of appellant’s treatment for his various injuries.

Dr. Akmakjian stated that the physical examination was “replete” with nonorganic findings and that appellant’s subjective complaints were significantly out of proportion to objective findings. Responding to specific questions from the Office, Dr. Akmakjian found no objective signs of any strains or subluxations accepted as work related. He added that, based on the objective facts, appellant exaggerated his pain and disability and was capable of working full time as a warehouse supervisor. Dr. Akmakjian imposed a lifting restriction of 20 pounds and limited appellant’s sitting, walking, standing, twisting and driving to four hours a day.

By letter dated January 12, 2000, the Office asked Dr. Akmakjian to clarify whether there were any objective findings of the accepted conditions, whether appellant’s cervical stenosis was caused or aggravated by work injuries and whether all residuals of the work injuries have ceased, and to explain the significance of nonorganic findings on examination.

Dr. Akmakjian responded that he found no objective evidence of any of the accepted conditions and that all residuals of the work injuries had ceased. He added that appellant’s current complaints could be related to the natural progression of his underlying back condition. Dr. Akmakjian explained that his nonorganic findings indicated symptom embellishment, that there were no physical findings to explain appellant’s subjective complaints and that his complaints were inconsistent with the pressures applied and motions attempted during physical examination.

The Office raised an additional issue and Dr. Akmakjian responded that the 1985 and 1990 injuries were muscular and soft tissue ligament conditions as shown by the films taken on October 14, 1986 and October 24, 1989. He added that the work injuries possibly aggravated appellant’s cervical stenosis, but any aggravation had reached baseline because there were no objective findings that a permanent change had occurred.

Dr. Akmakjian reviewed the case record and various reports on appellant's medical treatment since the 1985 and 1990 injuries. He examined appellant thoroughly, discussed diagnostic testing, explained his clinical findings and provided medical rationale for his conclusion that appellant's work-related injuries had resolved. Thus, Dr. Akmakjian provided an opinion that was sufficiently well rationalized to support his conclusion that appellant had no residuals of his work-related conditions and was capable of working in his previous position.¹⁰ The Board finds that Dr. Akmakjian's report represents the weight of the medical opinion evidence and establishes that appellant's accepted work injuries had resolved.¹¹

On reconsideration appellant submitted the reports of Dr. Crute, who stated on May 4, 2002, that she had reviewed appellant's medical records, which showed a "long history" of neck and low back problems caused or aggravated by trauma occurring in 1985 and 1990. Medical records documented clear evidence of cervical spine cord compression.

Dr. Crute diagnosed underlying degenerative cervical spondylosis exacerbated by an accident in 1985 and markedly aggravated by an accident on May 22, 1990. Appellant also had low back pain with lumbar spondylosis that first became disabling after the 1995 accident and has progressed somewhat since that time.

The Board finds that Dr. Crute's opinion is insufficient to overcome the special weight accorded the opinion of the impartial medical examiner, Dr. Akmakjian, because Dr. Crute provided no medical rationale for her conclusion that appellant's underlying cervical disease and lumbar pain were causally related to the accepted strains and subluxations. Dr. Crute did not explain how the work-related injuries in 1985 and 1990 resulted in the diagnosed spondylosis of the cervical and lumbar spines or the cervical herniations, nor did she discuss appellant's capability for work. Dr. Crute's opinion is not rationalized and, therefore, cannot create a conflict of medical opinion with the well-rationalized conclusions of Dr. Akmakjian.¹² Therefore, the Office properly denied modification of its decision to terminate appellant's compensation.

¹⁰ Although Dr. Akmakjian limited appellant to lifting no more than 20 pounds and the position description states that appellant could be required to lift up to 44 pounds, appellant was assigned to light duty at the time of the 1990 injury and was voluntarily working outside his restrictions in lifting the boxes that caused his lumbar strain.

¹¹ See *Jimmie H. Duckett*, 52 ECAB ___ (Docket No. 99-1858, issued April 6, 2001) (opinion that appellant's back condition was due to the natural progression of his spondylitis was sufficiently rationalized to establish that his work-related back condition had resolved and to meet the Office's burden of proof in terminating compensation).

¹² See *Elizabeth Pauley-Wisniewska*, 49 ECAB 341, 344 (1998) (finding that the impartial medical examiner provided abundant rationale to support his conclusion that appellant's complaints were not related to the 1981 work injuries).

The April 9, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 12, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member