

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT PECINA and DEPARTMENT OF THE ARMY,  
ARMY DEPOT, Corpus Christi, TX

*Docket No. 00-1494; Submitted on the Record;  
Issued January 2, 2002*

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DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

On December 13, 1988 appellant, then a 31-year-old aircraft welder, filed a traumatic injury claim alleging that on October 26, 1988 he tried to keep an air diffuser from slipping through his hands and felt a sharp pain in his lower back. This claim was accepted for a lumbar sprain. On September 3, 1991 appellant filed an occupational disease claim alleging that he suffered from lumbar sprain with possible radiculopathy as a result of having to lift heavy parts in welding. This claim was also accepted for a lumbar sprain.

On November 16, 1993 he filed another claim alleging that he sustained a herniated nucleus pulposus, spinal stenosis and disc herniation as a result of his federal employment. This claim was accepted for aggravation of preexisting degenerative disc disease in the lumbar spine. These three cases were combined in June 1994.

In a report dated January 25, 1996, Dr. Richard Carlson, appellant's treating orthopedic surgeon, found "congenital spinal stenosis is present with a very narrow thin thecal sac associated with a central disc bulge at L5-S1 of questionable clinical significance." Dr. Carlson stated that if this were not surgically corrected, appellant ran the risk of permanent residuals. In medical opinions dated June 26 and September 9, 1996, he noted that appellant needed a decompression for spinal stenosis. On February 3, 1998 Dr. Carlson completed a work capacity evaluation indicating that appellant could not work at this time and that he was awaiting approval for spinal surgery.

By letter dated June 11, 1998, the Office referred appellant to Dr. Hyman Roosth, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated July 2, 1998, Dr. Roosth found that there was no proof of nerve root or cord irritation due to herniated disc material. Dr. Roosth saw no need for spine surgery. He noted no evidence of aggravation of

degenerative disc disease. Dr. Roosth opined that appellant would be able to return to light work after curative nonsurgical treatment, depending on his motivation.

To resolve the conflict between Drs. Carlson and Roosth, appellant was referred to Dr. Theodore Parsons, a Board-certified orthopedic surgeon. In a report dated August 15, 1998, Dr. Parsons diagnosed severe chronic pain syndrome with significant evidence of functional overlay, chronic low back pain of uncertain etiology, obesity, narcotic habituation and chronic deconditioning. He concluded that there was no medical basis that appellant suffered from lumbar strain, since he had no good objective findings on examination. Dr. Parsons found that his findings were consistent with chronic pain syndrome and significant nonorganic findings with evidence of functional overlay. He noted no objective finding of degenerative disc disease or lumbar sprain. Dr. Parsons stated:

“The medical disability associated with the lumbar sprain from earlier this decade that prevents [appellant] from returning to work is not any substantial degenerative change in his lumbosacral spine or any instability, but rather his chronic pain syndrome. This, on top of his mindset and his deconditioning, along with his probable lack of real significant incentive to return to work, is apt to prevent him from returning to work. I do not believe that he is capable of performing his duties as an aircraft welder because of his chronic pain syndrome, but not because I find some significant abnormality in his lumbosacral spine. Furthermore, I do not believe he will achieve full recovery, nor do I have a good recommendation for him to achieve full recovery other than a trial at chronic pain management and perhaps having him lose weight, getting him off the narcotics, having him work on aerobic conditioning and generalized conditioning, and perhaps having him focus his attention away from his pain syndrome and on to something more productive. [Appellant], in my opinion, would have the physical capacity to work in a light-duty position, but at the present time, he certainly has neither the mindset nor the motivation to do so. I do not feel that appellant is totally disabled for all work and certainly he has the physical capacity, in my opinion, to do a sedentary job.”

He did not recommend surgery.

The Office asked Dr. Parsons if the myofascial pain currently experienced by appellant was directly attributable to his injury. By letter dated September 19, 1998, Dr. Parsons responded:

“My answer to this question is no, the chronic pain syndrome and his myofascial pain, in my opinion, are not directly attributable to an injury in 1993, nor do I believe his chronic pain syndrome is necessarily so. As mentioned in my dictation, I feel that [appellant’s] current condition may very well be a baseline pathology had he never had a work-related exposure. He has never had a good diagnosis given regarding his back pain, and [appellant’s] biggest problems at the present time are chronic pain syndrome symptoms which have, in my opinion, nothing to do with acute lumbosacral strains or sprains that he may have suffered several years ago.”

On November 17, 1998 the Office issued a notice of proposed termination of compensation. In response, appellant submitted a form by Dr. Carlson who indicated that appellant's work-related injury had not ceased and that he would benefit from a decompression in his lumbar region. By decision dated December 29, 1998, the Office terminated benefits.

By letter dated January 25, 1999, appellant requested a review of the written record and appellant submitted an April 15, 1998 report by Dr. Carlson. He opined:

"The patient has had congenital spinal stenosis, but the patient's problem is an aggravation of a preexisting condition. Better stated is that this patient, had he not had the injury on the job, would not have the pain and symptomatology that he is suffering at the present time. Stenosis may be present but may not be symptomatic unless it has predisposing accident or injury that causes the symptomatology to flair up."

By decision dated December 6, 1999, the hearing representative affirmed the Office's December 29, 1998 decision.

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

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.<sup>1</sup> To terminate authorization for medical treatment, the Office has the burden of establishing that appellant no longer has residuals of the employment-related condition that requires further medical treatment.<sup>2</sup>

In this case, to resolve the conflict between appellant's treating physician, Dr. Carlson, and the physician giving the second opinion for the Office, Dr. Roosth the Office referred appellant to Dr. Parsons, a Board-certified orthopedic surgeon, for an impartial opinion. Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>3</sup>

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Parsons, the impartial medical specialist selected to resolve the conflict in medical opinion. After examining appellant and reviewing his medical records, Dr. Parsons concluded that appellant had no objective findings of degenerative disc disease or lumbar sprain. He noted that he did not believe that appellant was totally disabled for all work.

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<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>2</sup> *Jose Hernandez*, 47 ECAB 288, 295 (1996).

<sup>3</sup> *Charles E. Burke*, 47 ECAB 185, 191 (1995).

Dr. Parsons further noted that the chronic pain syndrome and myofascial pain which appellant currently suffered were not related to his injury in 1993. He believed that appellant's current condition "may very well be a baseline pathology had he never had a work-related exposure." Dr. Parsons' opinion is based on an accurate factual background supported by objective evidence. Therefore, it was entitled to special weight and the Office met its burden of proof in terminating appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated December 6, 1999 is hereby affirmed.

Dated, Washington, DC  
January 2, 2002

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member