

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL S. SPURKLE and DEPARTMENT OF THE NAVY,  
NAVAL SURFACE WARFARE CENTER, Philadelphia, PA

*Docket No. 00-2428; Submitted on the Record;  
Issued January 18, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective April 27, 2000 on the grounds that he had no employment-related disability after that date.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective April 27, 2000 on the grounds that he had no employment-related disability after that date.

Under the Federal Employees' Compensation Act,<sup>1</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

On July 8, 1997 appellant, then a 58-year-old police officer, sustained an employment-related cervical strain, cervical radiculopathy, lumbar strain, lumbar radiculopathy and left knee sprain when he stepped into a hole and fell down. Appellant stopped work on July 8, 1997 and the Office paid compensation for periods of disability.<sup>5</sup> By decision dated April 27, 2000, the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>3</sup> *Id.*

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>5</sup> The Office had previously accepted that appellant sustained an employment-related torn medial and lateral meniscus of his left knee on March 16, 1990 and in May 1990 he underwent arthroscopic knee surgery. In September 1990 appellant returned to his regular work as a police officer for the employing establishment.

Office terminated appellant's compensation effective April 27, 2000, on the grounds that he had no employment-related disability after that date. The Office based its termination on the opinion of Dr. Herbert Stein, a Board-certified orthopedic surgeon, who served as an impartial medical specialist.

In this case, the Office properly determined that there was a conflict in the medical opinion between appellant's attending physicians and the Office physicians regarding the extent of appellant's employment-related disability.

In a report dated November 6, 1997, Dr. Frederick L. Cole, Jr., an attending osteopath, stated that appellant was totally disabled due to his employment-related condition. In a report dated April 30, 1998, Dr. John K. Mariani, an attending osteopath, stated that appellant was restricted to sedentary work due to his employment-related condition. He indicated that he expected this impairment to be permanent. In a report dated August 13, 1999, Dr. Mariani provided a similar opinion on the cause of appellant's disability.

In contrast, Dr. Stephen M. Horowitz, a Board-certified orthopedic surgeon, to whom the Office referred appellant, indicated that appellant no longer had employment-related disability. In a report dated January 5, 1998, Dr. Horowitz stated that appellant's need to be restricted to sedentary work was related to his underlying osteoarthritis and heart condition rather than his July 8, 1997 employment injury.<sup>6</sup>

In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Stein, for an impartial medical examination and an opinion on the matter.<sup>7</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical 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>8</sup>

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Stein, the impartial medical specialist selected to resolve the conflict in the medical opinion. The report of Dr. Stein establishes that appellant had no employment-related disability after April 27, 2000.

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<sup>6</sup> In an earlier report dated October 6, 1997, Dr. Horowitz had suggested that appellant's current condition was due to his July 8, 1997 employment injury. He noted that appellant could return to a sedentary occupation in three months, but that he would not be able to return to his regular duties as a police officer. As noted above, Dr. Horowitz clarified his opinion on the cause of appellant's condition in his January 5, 1998 report.

<sup>7</sup> Section 8123(a) of the Act provides in pertinent part: "If there is 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." 5 U.S.C. § 8123(a). In March 1998, the Office had referred appellant to Dr. Frank Mattei, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence. By decision dated August 19, 1998, the Office terminated appellant's compensation based on the opinion of Dr. Mattei. The Office later determined that the April 22, 1998 report of Dr. Mattei was in need of clarification. When he failed to provide such a supplemental report, the Office correctly referred the case to Dr. Stein for an impartial medical examination.

<sup>8</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

In his March 2, 2000 report, Dr. Stein discussed appellant's factual and medical history and the findings on examination and diagnostic testing. He stated:

"It would be my opinion that the injury of July 1997 just aggravated temporarily the previously existent underlying degenerative changes in his neck, lower back and left knee. His neck symptoms have much improved although he still has mild symptoms there. I find no significant abnormality other than some minimal restriction of motion and pain on rotation. He may have a carpal tunnel syndrome but objectively he had an absent Tinel[']s sign. He did admit to paresthesias in the median nerve distribution and carpal tunnel syndrome is probably beginning on the right side.

"It is difficult to correlate the carpal tunnel symptoms to any of his falls. There is always the possibility of injury to the wrist and he did have an injury to the hand in the fall.

"I believe his low back problem is long standing and although it may have been aggravated by the fall of July 8, 1997, it is related strictly to the advanced degenerative changes that are present and the spondylolisthesis, most likely on a degenerative basis.

"His left knee symptoms are definitely related to degenerative osteoarthritis. He is getting along on it reasonably well. In someone who was more healthy, he might be a candidate for total knee joint replacement. However, in view of his significant underlying cardiac disease and pulmonary disease, I would not recommend surgery on the left knee unless he was unable to walk even short distances."

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"Finally, this patient is not capable of working as much, if not more, from his cardiac and pulmonary status than from his multiple orthopedic complaints.

"Based on the history with the injury in 1990 and subsequent surgery, I would have to relate his osteoarthritis of the left knee to the injury of 1990 and subsequent secondary injuries. As stated, he may need a total knee joint replacement although I think the risk in this man would be very high for that kind of surgery in view of his cardiopulmonary status.

"It is difficult to document the carpal tunnel syndrome as being injury related. He does indicate he had an injury to the left hand in the last fall but the development of bilateral symptoms would seem to indicate this is not work related. All the injuries may have aggravated a preexisting condition in the lower back but I do not believe any specific treatment is necessary for that at the present time."

The Board has carefully reviewed the opinion of Dr. Stein and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Stein's opinion is based on a proper factual and medical history in

that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.<sup>9</sup> Dr. Stein provided medical rationale for his opinion by explaining that the findings on examination and diagnostic testing did not support a conclusion that appellant continued to have employment-related disability. He indicated that appellant's continuing problems could be accounted for by his preexisting cardiac and degenerative conditions. Although Dr. Stein suggested that appellant's March 16, 1990 employment injury, torn medial and lateral meniscus of his left knee, contributed to his continuing disability, a reading of the entire report shows that Dr. Stein actually attributed appellant's knee problems to his preexisting degenerative condition.

For these reasons, the Office met its burden of proof to terminate appellant's compensation effective April 27, 2000 on the grounds that he had no employment-related disability after that date.<sup>10</sup>

The April 27, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
January 18, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member

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<sup>9</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

<sup>10</sup> As noted above, the Office properly determined that the opinion of Dr. Mattei did not justify its initial termination of appellant's compensation effective August 19, 1998. It remains unclear from the record whether the Office formerly vacated its August 19, 1998 termination decision. Appellant would be entitled to receive compensation between August 19, 1998 and April 27, 2000.