

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEO SPADA and U.S. POSTAL SERVICE,
SOUTH POSTAL ANNEX, Boston, MA

*Docket No. 01-670; Submitted on the Record;
Issued January 17, 2002*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation as of May 20, 2000, on the grounds that his work-related disability had ceased.

The Office, on February 27, 1973 accepted that appellant's condition of "chronic lumbosacral disc, L4-5 and status postoperative" was caused by an April 11, 1967 work injury. He retired on April 12, 1967.

In a report dated July 16, 1999, Dr. Gordon F. Lupien, a second opinion physician, determined that appellant had recovered from his work-related injuries and, absent age as a factor, could return to full duty as a mailhandler.

By decision dated September 9, 1999, the Office terminated appellant's compensation effective September 12, 1999.

By letter dated September 13, 1999, appellant submitted medical evidence in support of his claim. In a report dated August 17, 1999, Dr. Marilyn Rita Kassirer, Board-certified in psychiatry and neurology, stated that a 1992 magnetic resonance imaging (MRI) scan revealed L4-5 marked narrowing of the disc space, an enhancing defect within the posterior outer annular fibers indicating a tear of the annulus fibrosis and a narrowing and short pedicles at L5-S1. She also noted an old ossified disc herniation and stated that the combination of these changes resulted in a severe narrowing of the right recess at this level. Dr. Kassirer stated that appellant had L4-5 herniated disc pulposus with persistent pain and weakness and sensory loss indicating persistent problems. She stated:

"In my opinion, [appellant]'s problems have persisted since his injury in 1966 and despite surgical intervention, there is a continuing evidence of ossified disc herniation at L4-5 and L5-S1 with ongoing pain ... and ongoing neurological signs."

In a report dated August 17, 1999, Dr. John McArthur Harris, III, a Board-certified orthopedic surgeon, stated that appellant had been on “workers’ compensation” since “about 1968 for L5-S1 right radiculopathy and disc disease.” Dr. Harris examined appellant that day and found low back pain with radiation into his lower leg, but also noted that after six years of acupuncture the pain had lessened considerably. He also noted flat lordosis, with flexion only 15 degrees and no extension, rotation only 10 degrees in either direction and that the lumbar spine was absolutely rigid. Straight leg raising was limited and caused increased right low back pain. He stated that appellant had right L5-S1 radiculopathy.

By letter dated October 8, 1999, appellant, through his counsel, requested an oral hearing.

By decision dated December 29, 1999, the hearing representative reversed the Office’s termination on the grounds that Dr. Lupien “disregarded both the description of the work incident, the acceptance of the work injury” and that the medical evidence “overwhelmingly supports that the claimant does have a pathology of his lower back that effects his ability to work. The unaddressed question is whether [appellant]’s current back condition is causally related to the April 11, 1967 work incident.” The hearing representative added that “[t]he district Office may wish to arrange a new second opinion evaluation with a different physician to address the issues of ongoing residuals of the April 11, 1967 injury and the need for further acupuncture treatments.”

By letter dated January 11, 2000, the Office notified appellant that it was making arrangements for a referee examination.

By letter dated February 23, 2000, appellant, through his counsel, noted his disagreement with the Office’s referral to an impartial medical examiner on the grounds that no conflict existed in the case. Appellant noted the hearing representative’s finding that Dr. Lupien’s second opinion report had no probative value and thus was “insufficient to create a conflict.”

On January 18, 2000 the Office determined that there was a conflict in medical opinion between Drs. Lupien, Harris, Kassirer, McGillacuddy, Kneeland, Flinn and Ballantine.¹ Appellant was referred, together with a statement of accepted facts, questions to be answered and the complete case record, to Dr. Raymond Igou, a Board-certified orthopedic surgeon, for an impartial medical examination on whether appellant remained disabled due to his accepted employment-related conditions.

In a report dated February 2, 2000, Dr. Igou stated that he had examined appellant that day and noted a familiarity with his history of injury and treatment. He noted that appellant’s October 21, 1999 computerized tomography (CT) scan revealed at L4-5 a “marked degeneration at the level of the disc space” and moderate diffuse bony ridging which was a consequence of an old, now ossified broad based disc herniation, mild to moderate bilateral facet and ligament hypertrophy and an element of canal and recesses due to short pedicles of L5. Dr. Igou stated that “the combination of these changes moderately narrow the central canal and at least mild to moderate narrow if not moderately narrow the left recess regions bilaterally. The right foreman

¹ In a letter dated April 6, 2000, the Office stated that the conflict was between Dr. Lupien and Drs. Harris and Kassirer.

is moderately narrowed while the left is mildly narrowed.” He noted that appellant could not walk on his heels and toes. When standing, his attempts at flexion caused muscle spasm.

Appellant’s hyperextension sensory was nonexistent, with pain going forward and no side bending to the right. Left side bending causes muscle spasm. Lumbar spine was still and involuntary muscle spasm was produced with almost every movement. Dr. Igou noted a little sciatic notch tenderness, on the left with movement. Straight leg raising and dorsiflexion caused pain. Dr. Igou diagnosed appellant with degenerative disc disease of the paralumbar spine from D12 through S-1 with calcification of the L4-5 as well as L5-S1 disc spaces. He opined that appellant’s condition is not related to his history of injury of April 11, 1967. Dr. Igou stated: “[T]he lack of causal relationship is that [appellant]’s back is basically one at the present time of severe degeneration secondary to age.” He added:

“It can be assumed that when he went back to work [in 1967, prior to his work-related injury] he was no longer having problems with his back or legs and the pushing of a nutting cart would not in any way have the ability to cause [appellant]’s problems.”

By notice dated April 11, 2000, the Office proposed the termination of appellant’s compensation benefits, finding that Dr. Igou’s impartial medical report constituted the weight of the medical opinion evidence and established that appellant had no further disability causally related to his accepted employment injuries. The Office advised appellant that, if he disagreed with the proposed termination, he should submit additional evidence or argument within 30 days.

By decision dated May 18, 2000, the Office terminated appellant’s compensation benefits effective May 20, 2000 based on the medical report of Dr. Igou.²

On May 25, 2000 appellant, through counsel, requested an oral hearing. On September 25, 2000 a hearing was held and appellant’s counsel testified. By decision dated December 15, 2000, the hearing representative affirmed the Office’s May 18, 2000 decision terminating benefits. The hearing representative noted that Dr. Igou, as a second opinion physician, provided a well-reasoned rationalized medical opinion finding that appellant’s medical condition was attributable to his age and that he no longer had residuals from his work-related injury.

The Board finds that the Office failed to meet its burden of proof in terminating appellant’s compensation on the grounds that he had no disability due to his April 11, 1967 employment injury after that date.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.³

² By letter dated May 16, 2000, the Office determined that Dr. Igou was a second opinion physician and not an impartial medical examiner. The Office pointed out that when the physician designated by the Office as an impartial medical specialist was found to be in error, the impartial medical specialist was to be considered as a second opinion specialist.

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

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 disability has ceased or that it is no longer related to the employment.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ 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.⁶

In this case, the Office accepted appellant's claim for chronic lumbosacral disc, L4-5, status postoperative. In a second opinion report dated February 2, 2000, Dr. Igou diagnosed appellant with degenerative disc disease of the paralumbar spine. He opined that the condition was not related to his April 11, 1967 work-related injury because appellant's current condition is "a severe degeneration secondary to age." However, Dr. Igou does not support this conclusion with a rationalized medical opinion, which would explain how the mechanism for degeneration was exclusively a result of the aging process with no relationship to appellant's accepted chronic LS disc at L4-5. Further, he did not explain how appellant's accepted injuries "would not in any way have the ability to cause [appellant]'s problems."

Given that the accepted injury was of a chronic nature and thus would be expected to continue, Dr. Igou made no effort to explain why a chronic lumbosacral condition at L4-5 would have no causal relationship to calcification at L4-5. Further, he does not provide a rationalized medical opinion establishing that appellant's condition is a consequence of age. This report is insufficient to establish that appellant no longer has medical residuals from his April 11, 1967 work-related injury. Although he indicated that appellant had no residuals of the work-related injury, he failed to explain the medical process through which appellant's chronic LS disc at L4-5 would have resolved, only to degenerate as a consequence of age. The Board notes that Dr. Igou's conclusion, that appellant no longer had residuals of his work-related injury in spite of the chronic nature of the condition, cannot be considered rationalized medical opinion.

For these reasons, Dr. Igou did not provide an adequately rationalized medical opinion that appellant ceased to have residuals of his April 11, 1967 work-related injury. Because the Office did not provide an adequate basis for its determination that appellant ceased to have residuals of his April 11, 1967 work-related injury after May 20, 2000, the Office did not meet its burden of proof to terminate appellant's compensation effective May 20, 2000.

⁴ *Id.*

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Id.*

The decisions of the Office of Workers' Compensation Programs dated December 15 and May 18, 2000 are reversed.

Dated, Washington, DC
January 17, 2002

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member