

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BERNARD McDOWELL and U.S. POSTAL SERVICE,  
FLEET OPERATIONS, Atlanta, GA

*Docket No. 01-1997; Submitted on the Record;  
Issued July 9, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation.

The Board has reviewed the case record and finds that the Office properly terminated appellant's compensation due to his back injury.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>1</sup> 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.<sup>2</sup>

In this case, appellant's traumatic injury claim filed on April 24, 1986 was accepted for lumbar and left knee strains and knee contusions after appellant, a mail truck driver, was involved in an accident. In June 1994, appellant was offered a modified position as a mail handler, which his treating physician, Dr. Howard A. McMahan, a Board-certified orthopedic surgeon, found physically suitable. Appellant returned to work half time on July 16, 1994 and received partial wage-loss compensation.<sup>3</sup>

Subsequently, Dr. McMahan found appellant to be totally disabled due to back pain. The Office referred him for a second opinion examination to Dr. C. Lyn Crooms, a Board-certified

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<sup>1</sup> *Betty Regan*, 49 ECAB 496, 501 (1998).

<sup>2</sup> *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

<sup>3</sup> Appellant had twice previously returned to work for short periods.

orthopedic surgeon. Based on his February 26, 1997 report, the Office denied appellant's claim for a recurrence of disability on August 6, 1997.<sup>4</sup>

Because of a conflict of medical opinion between Dr. McMahan, who continued to find appellant unable to work and Dr. Crooms, who concluded that appellant's back condition was not related to his 1986 work injury, the Office referred appellant to Dr. Robert T. Greenfield, III, a Board-certified orthopedic surgeon, to resolve the issue.<sup>5</sup> Based on his reports, the Office proposed to terminate appellant's benefits on the grounds that his work-related back injury had resolved. Appellant disagreed with the May 23, 2000 notice and submitted a work status form from Dr. McMahan.

On June 27, 2000 the Office terminated appellant's compensation on the grounds that the weight of the medical evidence established that his work-related lumbar condition had resolved. Appellant requested an oral hearing, which was held on December 27, 2000.

The hearing representative remanded the case to the Office on the grounds that the conflict between Dr. McMahan and Dr. Crooms was not properly resolved. The Office was instructed to prepare a new statement of accepted facts and to determine whether appellant's current back condition was a progression of an underlying disease or developed after the 1986 work injury.

On remand,<sup>6</sup> the Office referred appellant, an amended statement of accepted facts, the case record and a list of questions to Dr. Christine D.V. Indech, a Board-certified orthopedic surgeon. Based on her conclusions, the Office terminated appellant's compensation and medical benefits due to his back condition in a decision dated July 26, 2001.<sup>7</sup>

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.<sup>8</sup> The opinion of the specialist properly chosen to

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<sup>4</sup> Appellant filed recurrence of disability claims on March 15, 1994 and January 12, 1995. The former was denied on October 29, 1996 and the latter on August 6, 1997. He appealed to the Board, which dismissed the case as untimely filed. Docket No. 99-33 (issued July 29, 1999).

<sup>5</sup> U.S.C. § 8123(a) states in pertinent part: "If there is a 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." The Office first referred appellant for an impartial medical examination on August 29, 1998 and Dr. Greenfield concluded in a September 15, 1998 report that the 1986 incident was not the etiology of appellant's lower back pain.

<sup>6</sup> Appellant returned to "permanent light duty" full time on September 3, 2000 with no loss of wage-earning capacity.

<sup>7</sup> The Office noted that appellant continued to be entitled to compensation for his accepted left knee condition.

<sup>8</sup> *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.<sup>9</sup>

In this case, the Office properly determined that a conflict of medical opinion existed over whether appellant's work-related lumbar condition had resolved. Because the hearing representative found that Dr. Greenfield's opinion failed to resolve the conflict sufficiently, the Office referred appellant to Dr. Indech.

The Board finds that the conclusions of Dr. Indech represent the weight of the medical opinion evidence and establish that appellant's lumbar condition caused by the 1986 work injury has resolved.<sup>10</sup>

In her reports dated July 3, June 20 and May 18, 2001, Dr. Indech noted that appellant's back complaints first occurred a month after the April 24, 1986 injury. A computerized tomography (CT) scan on May 29, 1986 showed minimal disc bulging and some degree of spinal stenosis. A myelogram on June 3, 1986 showed smooth disc bulges without nerve root encroachment. A 1995 CT scan revealed that the disc bulging and spinal stenosis had progressed, a 1990 magnetic resonance imaging (MRI) scan showed significant disc degeneration of the entire lumbar spine and an electromyography (EMG) demonstrated some radiculopathy.

Dr. Indech stated that appellant had early spinal stenosis and disc bulging in 1986, which were aggravated by the work incident, resulting in the diagnosed lumbar strain. Over the years his underlying condition worsened. While the accident may well have aggravated underlying problems, there was "no clear evidence" that it initiated the underlying conditions found in 1986. She opined:

"[Appellant's] physical findings and symptoms at this point are quite consistent with his diagnosis of spinal stenosis and radiculopathy. It would be my estimation that only a small minority of his symptoms would be directly related to the accident, most likely the initial muscle soreness and perhaps a small aggravating factor to the ongoing progression of degenerative disc disease and spinal stenosis. The great majority of his current symptoms, however, would not appear to be related."

Asked to clarify her opinion, Dr. Indech stated that the aggravation of appellant's spinal stenosis was temporary. While the 1986 work incident produced symptoms that persisted for more than six months, appellant's back condition was "a stable entity by 1997." She added that subsequent deterioration of function after that time was due to a worsening of appellant's spinal stenosis and disc degeneration and not to the 1986 injury.

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<sup>9</sup> *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

<sup>10</sup> 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).

Dr. Indech reviewed the entire case record and voluminous chart notes and reports on appellant's medical treatment over 15 years. She examined appellant thoroughly, discussed the diagnostic testing, explained her clinical findings and provided medical rationale for her conclusion that appellant's work-related lumbar condition had resolved. Thus, Dr. Indech provided an opinion that was sufficiently well rationalized to resolve the issue of whether appellant had any lumbar residuals of his 1986 work injury and to meet the Office's burden of proof in terminating compensation.<sup>11</sup>

The July 28, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
July 9, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>11</sup> *David Alan Patrick*, 46 ECAB 1020, 1023 (1995) (impartial medical examiner's opinion was based on a complete review of the medical record and a thorough examination and was sufficiently rationalized to establish that appellant had no work-related residuals of his diagnosed cervical condition, thus meeting the Office's burden of proof in terminating compensation).