

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETE P. CARREON and DEPARTMENT OF THE AIR FORCE,
BROOKS AIR FORCE BASE, San Antonio, TX

*Docket No. 02-322; Submitted on the Record;
Issued July 11, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective October 6, 2000.

This case is on appeal to the Board for the second time.¹ In the first appeal, the Board reviewed the Office's July 31 and December 8, 1997 decisions in which the Office relied on the opinion of the impartial medical specialist, Dr. Gene R. Smith, a Board-certified orthopedic surgeon, that appellant had completely recovered from the October 26, 1994 employment injury to terminate appellant's compensation effective July 31, 1997. The Board found that the Office improperly relied on Dr. Smith's opinion in terminating appellant's compensation benefits because his opinion was not well rationalized and, therefore, reversed the Office's decisions.

The Office subsequently referred appellant to an impartial medical specialist, Dr. John S. Toohey, a Board-certified orthopedic surgeon. In a report dated June 12, 2000, he considered appellant's history of injury, performed a physical examination and reviewed magnetic resonance imaging (MRI) scans, nerve studies and shoulder, lumbar and cervical x-rays. Dr. Toohey diagnosed cervical spondylolysis, degenerative disc disease of the lumbar spine and right subacromial bursitis/impingement. He opined that the diagnosed conditions preexisted the October 26, 1994 employment injury and that the employment injury temporarily aggravated them as the strains would have resolved within a matter of weeks or months. Dr. Toohey stated that appellant's underlying degenerative conditions had not resolved. He stated that appellant could return to work with restrictions based on his nonwork-related back, neck and shoulder conditions.

By decision dated October 6, 2000, the Office terminated appellant's compensation benefits, effective October 6, 2000, stating that the medical evidence of record established that he no longer had a work-related condition as a result of the October 26, 1994 employment injury.

¹ Docket No. 98-1028 (issued April 14, 2000).

By letter dated October 27, 2000, appellant requested reconsideration of the Office's decision and submitted additional medical evidence consisting of medical reports from Dr. Fernando T. Avila, a Board-certified anesthesiologist, dated September 27 and October 6, 2000, from Dr. Daniel C. Valdez, a Board-certified orthopedic surgeon, dated August 28 and November 1, 2000 and from Dr. Dennis R. Gutzman, a Board-certified orthopedic surgeon, dated February 21 and March 23, 2001. In his September 27, 2000 report, Dr. Avila considered appellant's history of injury, performed a physical examination, reviewed MRI scans. He diagnosed chronic pain syndrome, cervical and lumbar disc disease and impingement of the right shoulder. Dr. Avila noted that appellant had no symptoms prior to the October 26, 1994 employment injury. In the October 6, 2000 report, Dr. Avila stated that his primary diagnosis was chronic pain syndrome and appellant had this pain after the soft tissue injury had healed. He also diagnosed cervical and lumbar disc disease based on an MRI scan but stated that the condition was not work related. Dr. Avila stated that appellant's cervical and lumbar disc disease was a preexisting condition but that appellant had no symptoms and no chronic pain condition prior to the October 26, 1994 employment injury. He stated that "[t]he injury was the mechanism for his continued pain" and his current condition was related to the injury. Dr. Avila stated that if appellant had not been injured in 1994, "its very likely" appellant would still be performing his preinjury job.

In his August 28, 2000 report, Dr. Valdez stated that he agreed with Dr. Toohey that appellant could not return to work and prescribed medication for his chronic pain. In his November 1, 2000 report, Dr. Valdez stated that he treated appellant since January 4, 1995 for his October 26, 1994 employment injury and diagnosed herniated discs at C4-5, C5-6, C6-7 and L5-S1 and impingement with a component of a rotator cuff injury to the right shoulder. He stated that "[s]pecifically due to the injury of October 26, 1994, [appellant] has not been able to return to work and now has an additional diagnosis of a chronic pain syndrome." Dr. Valdez stated that appellant was currently being followed by a pain management clinic.

In his February 21, 2001 report, Dr. Gutzman considered appellant's history of injury, performed a physical examination and reviewed diagnostic tests including an MRI scan. He stated:

"[Appellant] in all medical probability prior to his accident of October 26, 1994 did have expected degenerative findings on his cervical and lumbosacral spine. It is, however, medically most probable that a result of this accident he has suffered significant disc injury and continues to have significant pain in his neck, back and also the impingement found in his right shoulder. The vast majority of his present symptoms are related to this accident and not to a pain free [*sic*] at least 15 years prior to the time of his accident."

Dr. Gutzman recommended further testing to ascertain appellant's present condition, prescribed medication and opined that appellant was unable to work. In his March 23, 2001 report, Dr. Gutzman addressed appellant's medical condition of multilevel disc herniations on the cervical spine and disc herniation in the lumbar spine and stated that if appellant underwent surgery, he would have permanent physical restrictions as in bending, stooping and lifting.

By decision dated October 23, 2001, the Office denied appellant's request for modification.

The Board finds that the Office properly terminated appellant's compensation benefits effective October 6, 2000.

Once the Office has accepted 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 disability has ceased or that it is no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.³

In this case, none of the medical evidence appellant submitted is sufficient to counter the opinion of Dr. Toohey which is complete and well rationalized. Dr. Avila's opinion in his September 27, 2000 report that appellant's condition of chronic pain syndrome resulted from his October 26, 1994 employment injury because appellant did not have symptoms of pain prior to the injury. The Board has held, however, that a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relation.⁴ Therefore, Dr. Avila's opinion is of diminished probative value.

In his August 28, 2000 report, Dr. Valdez did not address the cause of appellant's medical condition. In his November 1, 2000 report, he stated that appellant's conditions of multilevel herniated cervical discs and a herniated disc at L5-S1 and right shoulder impingement with a rotator cuff injury, were due to the October 26, 1994 employment injury. He, however, did not provide any rationalized medical opinion explaining how appellant's medical condition was related to the work injury. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.⁵

In his February 21, 2001 report, Dr. Gutzman stated that it was "medically most probable" that appellant's disc injury and shoulder impingement resulted from the October 26, 1994 employment injury. He also noted that appellant had been symptom free prior to the injury. Dr. Gutzman's March 23, 2001 report did not address causation. Because his opinion was speculative, however, in stating that it was "probable" appellant's condition was work related and that appellant had been symptom free prior to the injury, his opinion also of diminished probative value.⁶

² *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

³ *Larry Warner*, 43 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ *Cleopatra McDougal-Saddler*, 47 ECAB 480, 489 (1996).

⁵ *Annie L. Billingsley*, 50 ECAB 210, 213 (1998).

⁶ *See William S. Wright*, 45 ECAB 498, 504 (1994).

In his June 12, 2000 report, the impartial medical specialist, Dr. Toohey, considered appellant's history of injury, performed diagnostic tests and performed a physical examination. He diagnosed cervical spondylolysis, degenerative disc disease of the lumbar spine and right subacromial bursitis/impingement which preexisted the October 26, 1994 employment injury. Dr. Toohey opined that appellant's soft tissue injuries of lumbar strain and right shoulder and right hip contusions which were the accepted conditions would have resolved within a matter of weeks or months. He opined that the October 26, 1994 employment injury temporarily aggravated appellant's preexisting conditions but appellant no longer had any residuals from that injury. As the impartial medical specialist, Dr. Toohey's opinion is entitled to special weight.⁷ His opinion that appellant recovered from the October 26, 1994 employment injury justifies the Office's termination of benefits.

The October 23, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 11, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).