

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RONALD P. HIMMEL and U.S. POSTAL SERVICE,  
POST OFFICE, Richmond, CA

*Docket No. 01-328; Submitted on the Record;  
Issued June 6, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits effective April 30, 1998.

On June 9, 1976 appellant, then a 44-year-old distribution clerk, filed a notice of traumatic injury alleging that he hurt his back lifting a 40-pound box in the performance of duty. Appellant was tentatively diagnosed at the Kaiser Hospital with a herniated disc L4-5 on the left. An electromyogram (EMG) on August 24, 1976 confirmed the presence of some denervation of the L4-5 nerve roots. The Office accepted the claim for a lumbar sprain with L4-5 radiculitis. Appellant was off work for the periods June 9 to December 16, 1976 and March 26 to September 15, 1977, for which he received appropriate compensation. He stopped work on January 12, 1978 and received compensation on the periodic rolls.

In a September 30, 1976 report, Dr James K. Smith, a neurologist, noted that appellant complained of numbness and weakness of the left foot beginning approximately four months ago. He also noted that appellant was having trouble picking up his left foot when walking but that there was no back pain involved. Based on the EMG findings, Dr. Smith diagnosed L4-5 radiculitis.

In a December 15, 1976 report, Dr. Smith advised that he had been treating appellant since September 30, 1976 for numbness and weakness of the left lower extremity "presumably secondary to a herniated lumbar disc." Dr. Smith indicated that the latest EMG on November 29, 1976 was normal and that appellant could return to light duty with no heavy lifting in the future.

Medical records from Kaiser Permanente document appellant's treatment over the next several years for continuing back pain. He was seen by several physicians including Dr. C.R. Clem, a Board-certified physician in occupational medicine, who maintained appellant's disability status through March 1989 based on a diagnosis of chronic lumbar strain and early degenerative disc disease of the lumbar spine.

Appellant's most recent treating physician has been Dr. Yeo Youn, a family practitioner, who has submitted numerous attending physician reports (Form CA-20), indicating that appellant is totally disabled for work due to back pain causally related to his work injury.

During 1993 and 1994, appellant was diagnosed with noninsulin dependent diabetes and prostate cancer, for which he underwent chemotherapy. Pertinent medical records indicated that there were new complaints of decreased ambulatory tolerance in the left leg.

On February 2, 1994 the Office referred appellant for a second opinion evaluation with Dr. Sumner S. Seibert, a Board-certified orthopedic surgeon. In a March 14, 1994 report, he discussed appellant's work injury with symptoms of low back pain and radiating pain in the extremities. Dr. Seibert recommended that appellant have a vascular consultation to rule out vascular insufficiency as the cause of his continuing leg pain. He also ordered a magnetic resonance imaging (MRI) and an EMG to ascertain the presence or absence of a herniated disc. Dr. Seibert suggested that if the MRI showed a herniated disc, appellant's documented lower back pain at L4-5 since 1976 would suggest that the herniation was due to his work injury.

An EMG conducted on April 14, 1994 showed no evidence of left lumbar radiculopathy. A May 10, 1994 MRI scan showed degenerative disc disease and a disc herniation at L5-S1. A Doppler study was taken of the lower extremity on May 9, 1994 and showed evidence of vascular insufficiency in both extremities consistent with left iliac and probable superficial femoral artery (SFA) occlusive disease.

In a May 27, 1994 report, Dr. Seibert discussed the results of the objective studies described above. He noted that he had been asked by the Office to address whether appellant's herniated disc was due to the work injury. Dr. Seibert stated, "This is difficult to say conclusively based upon the limited evaluation done way back in the 70's, however, at that time the EMG tests were felt to be positive and had an [MRI] scan been available it may well have shown an abnormality at L5-S1." He opined that the June 9, 1976 work injury was most likely responsible for appellant's continuing back complaints. Dr. Seibert attributed appellant's lower extremity symptoms to the evidence of peripheral vascular compromise. With respect to appellant's work capacity, he stated that appellant was precluded from heavy lifting, repeated bending and stooping.

On April 27, 1995 the Office referred appellant for a second opinion evaluation with Dr. Ronald Levin, a Board-certified orthopedic surgeon. In his report of June 9, 1995, he reviewed a statement of accepted facts and a copy of the medical record. Dr. Levin reported appellant's symptoms, present complaints and physical findings, including normal range of motion for the lumbar spine. He diagnosed chronic lumbosacral strain and stated that appellant's back symptoms were directly due to the work injury of June 9, 1976. Dr. Levin stated, "[appellant] has no objective factors of disability related to the lumbosacral strain as far as I can determine, other than mild degenerative disc disease." He also opined that appellant's left leg symptoms were due to SFA occlusive disease.

In a June 9, 1995 report, Dr. Manmohan Nayyar, a neurologist and Office referral physician, opined that appellant had no physical limitations and no injury-related factors of disability or subjective complaints, from a neurologic standpoint, resulting from the June 1976

lumbosacral strain injury. He also opined that appellant's left leg symptoms were not a residual of the accepted work injury and possibly due to SFA occlusive disease.

In a work evaluation form (OWCP-5) dated June 6, 1995, Dr. Levin indicated that appellant could work 8 hours a day with no pushing or pulling and no lifting over 75 pounds.

In an attending physician's report dated August 2, 1995, Dr. Youn indicated that appellant was permanently and totally disabled by chronic pain due to a back injury he sustained at work on June 9, 1976.

In a report dated August 30, 1995, Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, noted that appellant had been seen by him on August 2 and 30, 1995. He reviewed medical records, performed a physical examination, reviewed x-ray findings and a copy of appellant's last job description as a distribution clerk. Dr. Tauber diagnosed spinal stenosis and opined that appellant could not return to his date-of-injury job because he could only perform sedentary work with no heavy lifting due to his condition of spinal stenosis. He recommended that these physical restrictions be followed in order to prevent further spinal injury.

In a September 19, 1995 report, Dr. Levin addressed questions posed by the Office. He noted that the accepted condition was radiculitis at L4-5 but that there was no current evidence of an L4-5 radiculitis. Dr. Levin stated, "I offered a diagnosis of chronic lumbosacral strain based on his subjective symptoms and suggested a restriction from heavy lifting in excess of 75 pounds due to his subjective complaints." He concluded that there was no objective residuals of the June 9, 1976 work injury that would result in disability, the need for restrictions or the need for future medical treatment. Dr. Levin also noted that "there were suggestions of possible external leg trauma leading to bilateral peroneal neuropathy, or a possible vascular origin for his leg symptoms, but these would not be associated with the [June 9, 1976] injury as described."

On April 8, 1996 the Office issued a notice of proposed termination of compensation. The Office noted that the weight of the evidence established that appellant was no longer disabled for work and that he had no residuals to the June 9, 1976 work injury. Appellant was given 30 days to submit additional evidence or argument if he disagreed with the proposed action.

In response, appellant submitted copies of pages out of a medical reference guide indicating that surgery might be required for a herniated disc and describing the symptoms and pain associated with that condition. He argued that while he no longer had radiculitis, he was entitled to continuing compensation benefits as his herniated disc was causally related to his work injury.

In a March 30, 1998 decision, the Office terminated appellant's compensation and medical benefits effective April 30, 1998.

Appellant subsequently requested a hearing and submitted additional evidence.

An MRI of the lumbar spine was performed on May 4, 1998 and revealed degenerative disc disease at the lower three lumbar levels and small disc bulges at L3-4, L4-5 and L5-S1.

In a report dated 1998, Dr. Marvin Hayami, a member of the ambulatory care staff at the Veterans Administration Hospital, opined that the disc bulges demonstrated on the May 4, 1998 MRI were due to appellant's work injury.

In an August 20, 1999 decision, an Office hearing representative vacated the Office's March 30, 1998 decision and remanded the case for referral of appellant to an impartial medical specialist to resolve a conflict in the medical opinion evidence between appellant's attending physician and the Office referral physician.

On remand, the Office referred appellant along with a statement of accepted facts and a copy of the medical record to Dr. Dean S. Ricketts, a Board-certified orthopedic surgeon, for an impartial medical evaluation on October 18, 1999. In his examination report of October 18, 1999, Dr. Ricketts discussed appellant's medical history and described his complaints of back pain and pain that radiates to lower extremities. On physical examination he recorded range of motion findings for the thoracic, cervical and lumbar spine. Dr. Ricketts also conducted a neurological evaluation. Under diagnosis, he listed: (1) status post lumbosacral strain with L4-5 disc injury and left L5 radiculopathy secondary to the June 9, 1996, industrial injury, resolved; (2) degenerative disc disease of the lumbar spine secondary to the natural progression of aging changes in the spine and not work related; (3) chronic low back pain, secondary to 1 and 2 above; (4) spinal stenosis at L3-4 secondary to degenerative process and not work related; and (5) nonwork-related diabetes mellitus. Dr. Ricketts stated as follows: "It is my opinion that [appellant] has recovered from the specific effects of the disc injury to a great extent based upon recent MRI and nerve conduction studies, which reveal no evidence of residual disc herniation to the left and no evidence of EMG abnormalities." Having referenced an August 11, 1995 CT scan and a May 4, 1998 MRI of the lumbar spine, the physician further stated that there was "no objective abnormalities to document residuals of the [work] injury of 1976, other than a mild degenerative change disc bulge with degenerative change and subjective complaints, both of which represent mild residual." Dr. Ricketts opined that appellant required no further active medical treatment. He also opined that it was possible that appellant's bilateral leg complaints were secondary to spinal stenosis at L3-4, unrelated to the work injury. Dr. Ricketts concluded that appellant could return to work with restrictions, including no lifting over 30 to 40 pounds and no repetitive lifting, bending or twisting.

On November 5, 1999 the Office wrote to Dr. Ricketts requesting clarification as to whether the disc herniations at L3-4, L4-5 and L5-S1 were residual conditions of the accepted work injury or the result of the natural progression of appellant's degenerative condition. The Office also asked whether appellant's work restrictions were required because he could not physically perform his job duties or to prevent further injury.

In a report dated November 9, 1999, Dr. Ricketts indicated that the mild spinal stenosis at L3-4 with multi-level disc bulging was "primarily the result of the progression of nonindustrial conditions." He also reported that the work restrictions were based upon appellant's degenerative changes and spinal stenosis, along with a long-standing history of low back pain and leg pain following his work injury in 1976. Dr. Ricketts noted that appellant was likely to sustain either a reinjury or an aggravation of his degenerative condition if he did not adhere to the 40-pound lifting restriction.

In a supplement report dated December 29, 1999, Dr. Ricketts stated, “The disc bulges at all three levels are not industrially related on a more probable than not basis.” He noted that there were [clinical] and radiographic findings of small disc herniations prior to appellant’s work injury and that the bulges seen on the most recent MRI was consistent with men of appellant’s age without injury.

In a decision dated February 17, 2000, the Office terminated appellant’s compensation and medical benefits effective April 30, 1998 based on the report of the impartial medical specialist, finding that appellant no longer had any residuals or disability causally related to the June 9, 1976 work injury.

Appellant requested reconsideration on February 17, 2000 and submitted additional evidence.

In a report dated July 7, 2000, Dr. Hayami opined that appellant continued to have residuals of the work injury by way of low back pain and radicular pain. He further opined that appellant’s disc bulges were related in part to his work injury. Dr. Hayami noted that appellant’s pain symptoms had been consistent over the years and that the disc bulging “may or may not” be related to appellant’s pain symptoms. He also noted that he no longer had access to appellant’s medical records, as he no longer works at the employing establishment.

In a decision dated October 10, 2000, the Office denied appellant’s request for reconsideration finding the evidence insufficient to warrant a merit review.

The Board finds that the Office met its burden of proof in terminating appellant’s compensation and medical benefits effective April 30, 1998.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>1</sup> 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.<sup>2</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that requires further medical treatment.<sup>3</sup>

The Office accepted that appellant sustained a lumbar sprain with L4-5 radiculitis as a result of lifting a 40-pound box on June 9, 1976 in the performance of duty. In order to resolve a conflict in the medical record as to whether appellant had any continuing medical disability or residuals due to his work injury, the Office referred appellant for an evaluation with Dr. Ricketts, an impartial medical specialist. In reports dated December 29, November 19 and

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

<sup>3</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

October 18, 1999. Dr. Ricketts specifically opined that appellant's lumbosacral strain with radiculopathy had resolved based on the objective medical tests. He indicated that appellant suffered from preexisting spinal stenosis which accounted for his continuing back symptoms. Dr. Ricketts advised that appellant's work restrictions were preventative in nature to avoid further aggravation of his degenerative condition. He found that appellant had no further disability or residuals due to the accepted work injury.

Where there exists a conflict of medical opinion and the case is referred to an impartial medical examiner for the purpose of resolving the conflict, the opinion on such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>4</sup>

The Board finds the opinion of Dr. Ricketts is sufficiently reasoned to establish that appellant is no longer disabled for work due to residuals of the June 9, 1976 work injury. Because Dr. Rickett's opinion is well rationalized and based on a proper medical and factual background, the Board concludes that his opinion is entitled to special weight as the impartial medical specialist. Consequently, the Office properly terminated appellant's compensation and medical benefits based on the opinion of Dr. Ricketts.

The decision of the Office of Workers' Compensation Programs dated October 10 and February 17, 2000 is hereby affirmed.

Dated, Washington, DC  
June 6, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>4</sup> *Aubrey Belnavis*, 37 ECAB 206 (1985).