

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN F. GLYNN and U.S. POSTAL SERVICE,
POST OFFICE, Kissimmee, FL

*Docket No. 01-1184; Submitted on the Record;
Issued June 4, 2002*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective May 20, 2000; and (2) whether appellant has met his burden of proof to establish that he is entitled to continuing compensation benefits on or after May 20, 2000.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective May 20, 2000.

On June 2, 1997 appellant, then a 53-year-old rural carrier, filed a claim alleging that on May 31, 1997 he injured his back while lifting a tub of mail in the performance of duty. He stopped work on May 31, 1997. On June 19, 1997 the Office accepted appellant's claim for acute lumbosacral strain. In a report dated July 7, 1997, Dr. Marc Gerber, a physiatrist and treating physician, stated that appellant had no significant improvement of his low back strain despite three sessions of physical therapy and therefore a magnetic resonance imaging (MRI) scan would be scheduled. On July 10, 1997 an MRI scan of appellant's lumbar spine revealed an arachnoid cyst from L5-S1 to S1 which caused marked compression on the thecal sac and markedly compressed the right S1 nerve root, as well as degenerative discs at L1-2, L2-3 and L3-4, with osteophytes at L2-3 and L3-4 but no significant canal stenosis, neural foramina encroachment or disc protrusion at these levels. Dr. Gerber was unable to say for certain whether the cyst was an old or new finding, but stated that it was unlikely to be new.

Appellant was released to return to light duty, four hours a day, on July 29, 1997. On December 2, 1998 the Office noted that appellant had been successfully performing the duties of a modified rural carrier, four hours a day and adjusted appellant's compensation to reflect his wage-earning capacity as a modified rural carrier.

The Office issued a notice of proposed termination of compensation on February 3, 1999 on the grounds that appellant's accepted lumbar strain had resolved. By decision dated March 8, 1999, the Office terminated appellant's benefits. Appellant requested an oral hearing, but prior

to holding a hearing, in a decision dated August 30, 1999, an Office hearing representative reversed the March 8, 1999 decision on the grounds that the record contained an unresolved conflict in medical opinion. On remand, after a period of additional medical development, the Office issued a notice of proposed termination of compensation on March 28, 2000. By decision dated May 11, 2000, the Office terminated appellant's benefits. By letter dated May 24, 2000, appellant requested an oral hearing before an Office hearing representative, which was held on September 25, 2000. After the hearing, appellant submitted additional medical evidence in support of his claim for continuing compensation benefits. In a decision dated December 22, 2000, an Office hearing representative affirmed the Office's prior decision.

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.¹ After it has determined that an employee has disability causally related to his 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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ 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.⁴

Appellant's treating physicians supported appellant's partial disability status and need for medical treatment due to his accepted condition. In a report dated January 28, 1998, Dr. Thomas P. Ryan, an osteopath, diagnosed an arachnoid cyst, degenerative disc disease and spondylosis, and indicated by check mark that appellant's current condition was causally related to his May 31, 1997 employment injury. By way of explanation, Dr. Ryan stated that, while the cyst preexisted the injury, as appellant had no history of back pain prior to the injury, the injury may have increased the size of the cyst causing his back to become symptomatic. In a report dated May 19, 1998, Dr. Richard G. Fessler, a Board-certified neurological surgeon, confirmed that appellant had a spinal arachnoid cyst which had likely been present for quite a long time, but stated that he was somewhat skeptical that this was the source of appellant's pain. Rather, he felt that appellant's back pain was more likely attributed to the lumbar strain and prescribed vigorous physical therapy. Dr. Fessler stated that if therapy did not improve appellant's pain, then the cyst would have to be readdressed. In a report dated August 4, 1998, Dr. Ryan reiterated that appellant could perform light duty at least four hours a day, more if his pain levels allowed. He stated that, while appellant had a lumbar strain and a large cyst located within the lumbar spine which was pushing on the S1 nerve root, he was not sure the cyst was causing appellant's back pain and felt that the lumbar strain had not resolved. Dr. Ryan also stated that he felt appellant was capable of working an eight-hour day and that over the next three to six months he should gradually increase his work hours until he was working full time.

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

In a report dated January 19, 1999, Dr. Robert S. Roberts, a Board-certified orthopedic surgeon and Office referral physician, noted appellant's history of injury, reviewed the medical evidence of record and performed a physical examination. Dr. Roberts noted that appellant had sustained an acute lumbar strain on May 31, 1997 and also had a preexisting L5-S1, S2 arachnoid cyst and stated that he believed appellant's work-related lumbar strain has resolved and that he had received appropriate treatment for this condition. He further stated that appellant's complaints are largely due to the arachnoid cyst and associated degenerative condition of the lumbar spine. Dr. Roberts concluded that, while appellant could not return to his job as a rural carrier, he could perform sedentary duties, with restrictions, eight hours a day.

Section 8123(a) of the Federal Employees' Compensation Act⁵ provides, "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." In accordance with the Act, the Office referred appellant for an impartial medical evaluation by Dr. Samuel E. Murrell, III, a Board-certified orthopedic surgeon. In a report dated November 22, 1999, Dr. Murrell reviewed appellant's history of injury, the statement of accepted facts and the medical evidence of record and performed a physical examination. He stated his impression as one of lumbar strain due to the May 31, 1997 work injury, cystic lesion with thecal sac and nerve root deviation and chronic low back pain. Dr. Murrell stated:

"I am of the opinion that the patient did sustain an acute lumbar strain in June 1997. This is based upon review of the medical records as well as the patient's history. I am of the opinion that the patient's examination today indicates chronic low back pain. I think that his chronic low back pain is not the result of an ongoing injury from the lumbar strain in 1997. I do feel that a lumbar strain sustained in May 1997 would have resolved at this point. I believe that his current complaints or ongoing low back pain are the result of his underlying degenerative changes of the lumbar spine. I am also of the opinion that his cystic lesion at the L5-S1 level extending to S2 has contributed to his ongoing complaints of low back pain. Furthermore I do not feel that that cystic lesion is the result of his May 31, 1997 injury.

"I am of the opinion that [appellant] does not have objective findings which would link his ongoing complaints of pain to his work-related injury of May 31, 1997.... I am of the opinion that the patient could work a full eight-hour day. I have no objective evidence that would prevent him from returning to his regular work duties. However, he has been on work restrictions for over two years. Additionally, he states that he feels he is not capable of returning to his work activities. I would therefore recommend that a functional capacity evaluation be performed to provide objective data concerning his physical capabilities.... Finally, it should be noted that should he not be able to return to his regular job, I would feel that his limitations would be based upon a personal condition of underlying degenerative disc disease and sacral cystic lesion as opposed to limitations being the result of a lumbar strain of May 1997."

⁵ 5 U.S.C. §§ 8101-8193, § 8123(a).

Upon receipt of Dr. Murrell's report, appellant submitted reports dated October 7, 1999 and March 2, 2000 from Dr. Mike Arsov, a Board-certified internist, who opined that appellant had severe back pain due to multiple conditions and was totally disabled. On March 28, 2000 the Office issued a notice of proposed termination of benefits and allowed appellant time to submit additional medical evidence but appellant did not respond.

In situations where there are 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 on a proper factual background, must be given special weight.⁶ As Dr. Murrell's report was based on a proper factual background and based on objective physical findings in support of his conclusion that appellant had no residuals of his accepted employment injury and no objective evidence that would prevent him from returning to his regular work duties, his report is entitled to the weight of the medical evidence and the Office properly relied on this report in determining that appellant was no longer entitled to compensation, effective May 20, 2000. The additional reports submitted from Dr. Arsov are not sufficient to overcome the weight accorded Dr. Murrell's medical opinion as an impartial medical specialist, as Dr. Arsov did not address the specific cause of appellant's disability, but simply stated that it was due to multiple conditions.⁷

The Board, therefore, finds that Dr. Murrell's report established, at that time, that appellant ceased to have any disability or condition causally related to employment, thereby justifying the Office's May 20, 2000 termination of benefits.⁸

Following the termination of his compensation benefits, the burden of proof shifted back to appellant to support his claim of employment-related continuing disability with probative medical evidence.⁹ The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

Appellant submitted an August 14, 2000 report and October 18, 2000 deposition from Dr. Jonathan Greenberg, a Board-certified neurological surgeon, who stated that, while appellant's arachnoid cyst preexisted his May 31, 1997 injury, it was asymptomatic until then, and that appellant's symptoms appeared to have been brought out by his May 31, 1997 injury.

⁶ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

⁷ *See Dorothy Sidwell*, 41 ECAB 857 (1990).

⁸ *See Joe Bowers*, 44 ECAB 423 (1993).

⁹ *See Talmadge Miller*, 47 ECAB 673 (1996).

¹⁰ *Joe L. Wilkerson*, 47 ECAB 604 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996).

Dr. Greenberg explained that mechanically, this process was the equivalent of people whose asymptomatic disc herniations are rendered symptomatic when they go through some sort of motion that produces mechanical stress at the level of the disc, which pushes the disc out a little bit more and causes nerve root irritation, thus converting an asymptomatic disc into a symptomatic one. He concluded that appellant's arachnoid cyst was a preexisting condition and as a result of the mechanical stress of the May 31, 1997 employment accident, the arachnoid cyst increased pressure on the lumbosacral nerve roots resulting in a painful lumbar radiculopathy syndrome with documented muscle weakness and gait problems.

The Board finds that the report of Dr. Greenberg is not well rationalized and insufficient to overcome the weight of medical opinion accorded to Dr. Murrell as the impartial medical specialist. Dr. Greenberg largely based his opinion on the fact that appellant's preexisting arachnoid cyst was asymptomatic prior to his 1997 employment injury. The Board has held that an 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 relationship.¹¹ Dr. Greenberg did not provide sufficient rationale in support of his stated conclusion to give rise to a conflict of medical opinion with the opinion of Dr. Murrell.

The decisions of the Office of Workers' Compensation Programs dated December 22 and May 11, 2000 are affirmed.

Dated, Washington, DC
June 4, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹¹ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996); *Thomas D. Petrylak*, 39 ECAB 276 (1987).