

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID L. COLLINS and U.S. POSTAL SERVICE,
PROCESSING & DELIVERY CENTER, West Sacramento, CA

*Docket No. 01-1871; Submitted on the Record;
Issued June 11, 2002*

DECISION and ORDER

Before DAVID S. GERSON, 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.

Appellant, a 44-year-old clerk, filed a notice of traumatic injury on August 5, 1998 alleging that he developed a low back injury on July 29, 1998 in the performance of duty. The Office accepted appellant's claim for lumbosacral strain.

In a letter dated March 2, 2000, the Office proposed to terminate appellant's compensation benefits. By decision dated April 27, 2000, the Office terminated appellant's compensation benefits. Appellant requested an oral hearing on May 15, 2000 and by decision dated June 4, 2001, the hearing representative affirmed the Office's April 27, 2000 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

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 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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To

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

² *Id.*

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

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 attending physician, Dr. Randall W. Armstrong, a Board-certified family practitioner, diagnosed internal disc disruption with recurrent flare-ups of that disc pathology aggravated by industrial exposure.

The Office referred appellant for a second opinion evaluation with Dr. John Lavorgna, a Board-certified orthopedic surgeon, on July 9, 1999. In a report dated July 19, 1999, Dr. Lavorgna noted appellant's history of injury and performed a physical examination. He diagnosed congenital deformity of the L4 vertebral body with expected degeneration, degenerative disc disease of the lumbar spine at L2-3, L3-4 and L4-5. Dr. Lavorgna stated that appellant's history was consistent with a lumbar sprain or an aggravation of his preexisting condition which would have resolved in four months. He stated that appellant was currently experiencing the normal progression of his preexisting condition. Dr. Lavorgna stated that following the employment injury appellant was totally disabled for six weeks and partially disabled for another six weeks. He stated appellant had no work restrictions due to his accepted condition. Dr. Lavorgna concluded that appellant had no objective findings due to his employment injury.

Dr. Armstrong submitted a report on August 19, 1999 discussing Dr. Lavorgna's findings. He stated that Dr. Lavorgna failed to discuss the discograms. Dr. Armstrong stated that appellant had an annular disc injury rather than a strain. He stated that appellant sustained a permanent aggravation of his degenerative disc disease as a result of the employment injury. Dr. Armstrong concluded that Lavorgna's findings were not well supported by appellant's initial symptoms or diagnostic studies.

Appellant also submitted a report dated June 8, 1999 from Dr. Gary A. Schneiderman, a Board-certified orthopedic surgeon. Dr. Schneiderman noted appellant's history of injury and performed a physical examination. He noted that appellant's magnetic resonance imaging, (MRI) scan revealed multilevel changes at L3-4 and L4-5. Dr. Schneiderman diagnosed degenerative disc disease as a result of the employment injury.

Section 8123(a) of the Federal Employees' Compensation Act,⁵ 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." Appellant's attending physicians, Drs. Armstrong and Schneiderman continued to support appellant's employment-related condition. The Office's second opinion physician, Dr. Lavorgna, found that appellant had no continuing employment-related condition. Therefore, the Office properly found a conflict of medical opinion evidence and referred appellant to an impartial medical examiner.

⁴ *Id.*

⁵ 5 U.S.C. §§ 8101-8193, 8123(a).

In a report dated October 28, 1999, Dr. Ernest B. Miller, a Board-certified orthopedic surgeon, completed a report noting appellant's history of injury, diagnostic studies and medical history. Dr. Miller stated that appellant's lumbar MRI was normal and that the discogram findings of degenerative disc disease was also normal given appellant's age. He performed a physical examination and found that appellant had stocking dysesthesia. Dr. Miller also found that appellant had a rectangular shaped area of pain which was nonphysiologic, and inconsistent with musculoskeletal injury. He noted that appellant had a positive straight leg raising in the supine position with facial grimacing and voluntary muscle contracture of the hamstrings. Dr. Miller found that appellant's straight-leg raising was negative in the sitting position and concluded that the variation was inconsistent with musculoskeletal injury and consistent with a willful attempt on the part of the patient to confuse the examiner. He noted that appellant's flex thigh test was markedly positive bilaterally and that this was indicative of no musculoskeletal problem. Dr. Miller found that appellant's symptoms and complaints were exaggerated, nonphysiologic and nonanatomic. He stated that appellant's symptoms and complaints when taken in conjunction with normal laboratory studies and physical examination with numerous objective findings of inconsistencies and prolonged temporary total disability clearly justify diagnosis of somatoform disorder and malingering. Dr. Miller also diagnosed mild lumbosacral strain resolved. He stated that appellant had no aggravation of a preexisting condition, no disability and no residuals as a result of his employment injury. Dr. Miller further stated that his review of the medical record, MRI, x-rays and discogram indicated age, weight and sex appropriate degenerative changes consistent with a 45-year-old healthy male. He stated that surgery was completely inappropriate.

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 In this case, the weight of the medical opinion evidence rests with the detailed report from Dr. Miller, who provided an accurate history of injury, reviewed appellant's diagnostic studies, performed a physical examination and listed the physical findings in support of his conclusion that appellant had no residuals or disability as a result of his accepted employment injury.

Following the March 2, 2000 notice of proposed termination of compensation, appellant submitted a report dated March 28, 2000 from Dr. Elvert F. Nelson, a Board-certified orthopedic surgeon, who noted appellant's history of injury and reviewed his November 14, 1998 MRI. He diagnosed degeneration at L3-4 and L4-5 with right L3-4 and L4-5 lumbar stenosis. Dr. Nelson stated that the discogram reproduced pain unequivocally at L3-4 and L4-5. He opined that the July 29, 1998 employment injury contributed to a permanent aggravation of appellant's underlying asymptomatic, age-related degenerative condition at L3-4 and L4-5. This report does not provide any medical reasoning supporting the conclusion that appellant's employment injury aggravated his preexisting degenerative disc disease. Without the medical rationale explaining how and why Dr. Schneiderman believed that appellant's current condition was employment related, this report is not sufficient to overcome the weight accorded Dr. Miller's well-reasoned report or to create a conflict with it.

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

Following the oral hearing, appellant submitted an additional report dated March 8, 2000 from Dr. Armstrong who reviewed Dr. Miller's report and strongly disagreed with his findings and conclusions. He noted that both he and the radiologist found appellant's MRI to be abnormal, and that appellant's discogram findings were indicative of internal disc disruption. Dr. Armstrong disagreed with the diagnosis of somatoform disorder and malingering and stated that diagnostic studies clearly showed two-level disc pathology requiring surgery. He again recommended two level fusion and stated that he did not find any exaggerated symptoms on physical examination.

The Board finds that this report is not sufficient to meet appellant's burden of proof in establishing continuing disability due to his employment injury. Dr. Armstrong does not address the specific findings mentioned by Dr. Miller and does not explain why appellant would demonstrate stocking distribution numbness, variation in straight-leg raising or a rectangular area of pain to palpitation. He does not offer any further testing, physical findings or reasoning in support of his conclusion that appellant's current condition is the result of his employment injury. Furthermore, as Dr. Armstrong was on one side of the conflict that Dr. Miller resolved, the additional report from Dr. Armstrong is insufficient to overcome the weight accorded Dr. Miller's report as the impartial medical specialist or to create a new conflict with it.⁷

As the weight of the medical evidence establishes that appellant has no employment-related condition or residuals, the Office met its burden of proof to terminate appellant's compensation benefits.

The June 4, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 11, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).