

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERTO CASTILLO and DEPARTMENT OF VETERANS AFFAIRS,
JERRY L. PETTIS MEMORIAL HOSPITAL, Loma Linda, CA

*Docket No. 00-2322; Submitted on the Record;
Issued March 1, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective July 13, 1998.

On August 29, 1978 appellant, then a 49-year-old admissions clerk, filed a claim alleging that a patient of the employing establishment collided into him causing him to fall and injure his back. He continued to work; however, he stopped on August 26, 1979 and did not return. The Office accepted the claim for aggravation of chronic low back strain.¹ Appellant was paid appropriate compensation.

Appellant submitted a cervical x-ray dated September 26, 1978; and Veterans Administration Medical Center (VAMC) records dated January 22 to October 26, 1979; a medical report from Dr. Joseph Hohl, a Board-certified orthopedist, dated February 27, 1980; and a medical report from Dr. Thomas Zinkle, a psychologist dated February 27, 1980. The cervical x-ray revealed no abnormalities. The VAMC records dated January 22 to October 26, 1979 documented a history of appellant's back injury and his intermittent treatment. The medical report from Dr. Hohl dated February 27, 1980 noted that appellant sustained a back injury when a patient attacked him from behind. His physical examination revealed no abnormalities. Dr. Hohl indicated that appellant was permanently and totally disabled. He noted that the incident in August 1978 aggravated appellant's condition. Dr. Zinkle, in his medical report dated February 27, 1980, diagnosed appellant with neurosis, paranoid tendencies and borderline features. He did not mention a work-related injury nor did he indicate appellant's psychiatric condition was work related.

¹ The record indicates that appellant retired from the military in 1964 with a 40 percent disability based on injuries to his back, neck and head which were sustained in an automobile accident.

Appellant continued submitting treatment notes from Dr. Hohl indicating that he remained disabled and under treatment for aggravation of chronic low back strain.² In his report dated January 9, 1997, Dr. Hohl diagnosed appellant with chronic degenerative arthritis of the lumbar spine. He noted appellant's history of injury was compatible with appellant's subjective complaints. Dr. Hohl's March 10, 1997 note indicated that appellant continued to have persistent back pain with additional pain in the shoulders, neck and upper extremities. Upon examination he noted muscle spasms and diagnosed appellant with degenerative arthritis of the low back and cervical radiculitis.

Appellant was referred to a second opinion physician, Dr. Ibrahim Yashruti, a Board-certified orthopedic surgeon. In a medical report dated November 27, 1997, Dr. Yashruti indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury. Upon physical examination Dr. Yashruti noted mild tenderness in the lumbar region; there was no evidence of back spasm; flexion was 15 degrees; extension was 0 degrees; straight leg raises were 60 degrees bilaterally; Lasegue's and Fabere maneuvers were negative; the neurological examination was negative; sensory examination was negative; and motor examination revealed no weakness. He diagnosed appellant with mild musculoligamentous sprain/strain of the lumbosacral spine by history in 1978 and 1979. Dr. Yashruti indicated that appellant sustained a minor soft tissue injury in 1978 which was aggravated in 1979 superimposed over a preexisting condition from the 1960s. He noted that this condition should have resolved within a few weeks to a few months and indicated inconsistencies in his findings. Dr. Yashruti concluded that appellant did not suffer residuals of the August 24, 1978 injury. He noted no further treatment was necessary and appellant could return to his employment position.

On December 16, 1997 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Yashruti's report dated November 27, 1997 established no continuing disability as a result of the August 24, 1978 employment injury.

In a letter dated January 8, 1998, appellant, through his attorney, indicated that appellant's treating physician, Dr. Hohl has consistently indicated that appellant was totally disabled. He indicated that he also has a psychological condition which had not been addressed.

The Office determined that a conflict of medical opinion had been established between Dr. Hohl, appellant's treating physician and Dr. Yashruti, the Office referral physician.

Appellant was referred to a referee physician, Dr. Mark W. Brown, a Board-certified orthopedic surgeon, who indicated that he reviewed the records and performed a physical examination. Dr. Brown noted a history of appellant's work-related injury. Upon physical examination he noted tenderness over the sacroiliac areas bilaterally; tenderness over the L5-S1 bilaterally, tenderness over the bilateral sciatic notch, slight tenderness over the L3-4 level, no evidence of paravertebral spasm, range of motion of the lumbar spine revealed flexion of 15 degrees, extension of 10 degrees, lateral bending of 10 degrees bilaterally and Lasegue's and Fabere maneuvers were positive bilaterally. Dr. Brown took x-rays of the lumbar spine which

² The record indicates that appellant sustained a recurrence of injury of July 11, 1979, which was apparently accepted by the Office.

revealed decreased intervertebral disc space at L5-S1, marginal osteophyte formation, subchondral sclerosis and the x-rays of the thoracic spine revealed mild anterior wedging of the T12 and T11 vertebral bodies. He diagnosed appellant with degenerative disc disease at L5-S1 and probable diffuse idiopathic skeletal hyperostosis. Dr. Brown indicated that appellant was not suffering from any residuals of his work-related injury of August 24, 1978. He determined that appellant sustained a temporary exacerbation of the preexisting and ongoing problem affecting his lumbar area on August 24, 1978; however, this aggravation would have resolved after a period of four months. Dr. Brown further noted that appellant's present problems were not related to the industrial injury that occurred on August 24, 1978. Rather, appellant's orthopedic difficulties stem from the motor vehicle accident in 1964. He noted that appellant was now suffering from the natural progression due to the damage that occurred in 1964. Dr. Brown concluded that appellant's current level of symptoms affecting the lumbar area are not in any way connected to the industrial injury he sustained on August 24, 1978. He noted the injury of August 24, 1978 caused a temporary exacerbation of a preexisting and ongoing condition. Dr. Brown further indicated that appellant could perform the light duties of an admit clerk.

Subsequently, appellant submitted a magnetic resonance imaging (MRI) scan dated March 26, 1998. The MRI scan of the lumbar spine revealed severe degenerative disc disease at L5-S1 with large disc/osteophyte complex, causing bilateral neural foraminal encroachment with nerve root compression and a broad-based disc protrusion at L4-5.

By decision dated July 13, 1998, the Office terminated appellant's benefits effective the same date on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from his August 24, 1978 employment injury.

By letter dated August 4, 1998, appellant requested an oral hearing before a hearing representative. The hearing was held on February 25, 1999. Appellant testified that he continued to have back and side pain and was still under the care of Dr. Hohl. He submitted a number of medical records, many of which were duplicatives and a March 10, 1999 report from Dr. Hohl, whose report indicated that appellant experienced two incidences in which his lumbar spine was strained while working. He diagnosed appellant with degenerative arthritis at L5-S1 interspace and degenerative changes in the L4-5 disc space. Dr. Hohl opined that appellant's entire current status was due to the initial injuries appellant suffered years ago. He further noted that he did not believe appellant's condition was stationary, rather that it was getting progressively worse.

In a decision dated May 12, 1999, the hearing representative affirmed the Office's dated July 13, 1998 decision.

In a letter dated March 29, 2000, appellant requested reconsideration and submitted a report from Dr. Zinkle dated February 15, 1980, a medical report from Dr. Hohl dated June 9, 1999, an intake sheet dated June 28, 1999 prepared by a social worker and treatment notes dated June 28 to October 7, 1999 also prepared by a social worker. Dr. Zinkle's medical report dated February 15, 1980 was virtually identical to his report of February 27, 1980 which was previously considered by the Office. He diagnosed appellant with phobic neurosis and paranoid tendencies, however, did not identify the factors which may have caused or contributed to this condition. Dr. Hohl's medical report dated June 9, 1999 indicated that appellant sustained

physical as well as psychological injuries as a result of the two traumatic work incidences. He further noted that it would be impossible for appellant to return to gainful employment because of his overall disability. The intake sheet dated June 28, 1999 noted appellant's complaints of anxiety and chronic back discomfort. The treatment notes dated June 28 to October 7, 1999 noted appellant's symptoms of depression and anger because his employment benefits were terminated.

In a decision dated April 17, 2000, the Office denied modification of the prior decision.

The Board finds that the Office has met its burden of proof to terminate benefits effective July 13, 1998.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ 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.⁴

In this case, the Office accepted appellant's claim for aggravation of chronic low back strain and paid appropriate compensation. The Office reviewed the medical evidence and determined that a conflict existed in the medical evidence between appellant's attending physician, Dr. Hohl, who disagreed with Dr. Yashruti concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Brown to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁵

The Board finds that, under the circumstances of this case, the opinion of Dr. Brown is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition has ceased.

Dr. Brown reviewed appellant's history, reported findings and diagnosed appellant with degenerative disc disease at L5-S1 and probable diffuse idiopathic skeletal hyperostosis. He indicated that appellant was not suffering from any residuals of his work-related injury of August 24, 1978. Dr. Brown indicated that appellant sustained a temporary exacerbation of the preexisting and ongoing problem affecting his lumbar area on August 24, 1978. He noted that this aggravation would have resolved after a period of four months. Dr. Brown further noted that appellant's present problems were "not related to the industrial injury that occurred on August 24, 1978. Rather, his orthopedic difficulties stem from the motor vehicle accident in

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ *Aubrey Belnavis*, 37 ECAB 206 (1985).

1964, with the patient noting ongoing problems since that time and he is now suffering from the natural progression due to the damage that occurred back in 1964.” Dr. Brown concluded that appellant’s current level of symptoms affecting the lumbar area are not in any way connected to the industrial injury he sustained on August 24, 1978. He noted that the injury of August 24, 1978 caused a temporary exacerbation of a preexisting and ongoing condition. Dr. Brown further noted that appellant could perform the light duties of an admit clerk.

Appellant submitted several additional reports from Dr. Hohl, who continued to support appellant’s total disability due to the employment-related injury of August 24, 1978. In his reports dated January 9 and March 10, 1997, he diagnosed appellant with chronic degenerative arthritis of the lumbar spine and noted appellant’s history of injury was compatible with appellant’s subjective complaints. However, these reports are similar to Dr. Hohl’s previous reports and provide no new medical reasoning or rationale in support of his position. Additionally, a second opinion physician, Dr. Yashruti and an impartial medical examiner, Dr. Brown, all indicated that appellant had no residuals from his accepted employment injury and noted the aggravation of the chronic low back strain had resolved.

The Board finds that, under the circumstances of this case, the opinion of Dr. Brown is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and established that appellant’s work-related condition has ceased. Dr. Brown indicated that appellant did not suffer residuals from the condition of aggravation of chronic low back strain. He noted that the condition was resolved.

After the Office properly terminated appellant’s benefits the burden of proof shifted to appellant.⁶ However, medical evidence submitted by appellant after termination of benefits either did not specifically address how any continuing condition was due to the August 24, 1978 work injury or other incidents or was duplicated evidence previously considered by the Office. Appellant submitted several reports from Dr. Hohl. In his March 10, 1999 report, Dr. Hohl diagnosed appellant with degenerative arthritis at L5-S1 interspace and degenerative changes in the L4-5 disc space. He opined that the injuries which occurred while appellant was employed caused the initial injury to his back which ultimately lead to the progressive degeneration of the area. Dr. Hohl’s report failed to mention appellant’s 1964 automobile accident in which he sustained severe back injuries, rather he attributed appellant’s entire present status to his employment injuries. The Board has found that a medical opinion based on an incomplete history is insufficient to establish causal relationship.⁷ Dr. Hohl’s medical report dated June 9, 1999 indicated that appellant sustained physical as well as psychological injuries as a result of the two traumatic work incidences. He provides conclusory statements in support of causal relationship, however, he provided no medical reasoning or rationale to support such statements. The Board has found that vague and unrationalized medical opinions on causal relationship have

⁶ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits; *see Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

⁷ *See Cowan Mullins*, 8 ECAB 155, 158 (1955).

little probative value.⁸ Therefore, Dr. Hohl's report's are insufficient to overcome that of Dr. Brown or to create a new medical conflict as Dr. Hohl was on one side of the conflict that Dr. Brown was the referee physician.⁹

Other medical records submitted by appellant did not specifically address how any continuing condition was causally related to the August 24, 1978 employment injury.¹⁰

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated April 17, 2000 and May 12, 1999 are hereby affirmed.

Dated, Washington, DC
March 1, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See *Theron J. Barham*, 34 ECAB 1070 (1983).

⁹ See *Howard Y. Miyashiro*, *supra* note 6; *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Hohl's report does not contain new findings or rationale upon which a new conflict might be based.

¹⁰ Appellant submitted treatment notes from a social worker; however, the Board has held that a medical opinion, in general, can only be given by a qualified physician; see 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary); see also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).