

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD W. DANIELS and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 01-307; Submitted on the Record;
Issued March 19, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issue is whether appellant's disability and need for medical treatment causally related to his April 11, 1988 employment injury ended by December 5, 1999.

The Office of Workers' Compensation Programs accepted that on April 11, 1988 appellant, then a 41-year-old mailhandler, sustained a lumbosacral strain and sprain and a herniated disc at L5-S1. Appellant stopped work on April 11, 1988 and has not returned to work. After a period of continuation of pay, the Office began payment of compensation for temporary total disability.

On September 29, 1999 the Office issued a notice of proposed termination of compensation on the basis that appellant no longer had residuals of his April 11, 1988 employment injury. Appellant submitted additional reports from his attending physicians.

By decision dated November 17, 1999, the Office terminated appellant's compensation effective December 5, 1999 on the grounds that the weight of the medical evidence established that he had no continuing disability or condition as a result of his April 11, 1988 employment injury.

Appellant requested a hearing, which was held on April 11, 2000.

By decision dated July 14, 2000, an Office hearing representative found that the weight of the medical evidence, as represented by the report of an impartial medical specialist resolving a conflict of medical opinion, establishes that appellant had no continuing disability or condition as a result of his April 11, 1988 employment injury.

The Board finds that appellant's disability and need for medical treatment causally related to his April 11, 1988 employment injury ended by December 5, 1999.

Once the Office accepts 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.¹

There was a conflict of medical opinion as to whether appellant continued to have residuals of his April 11, 1988 employment injury. Appellant's attending physicians, Dr. Corey K. Ruth, an orthopedic surgeon and Dr. Stephen Reznak, a Board-certified neurologist, supported continuing injury-related total disability. Dr. Steven Valentino, an osteopath to whom the Office referred appellant for a second opinion evaluation, concluded in a report dated June 15, 1999, that appellant had "recovered from his work-related lumbar strain and L5-S1 disc herniation causally related to the April 11, 1988 incident. He no longer has any residuals or effects of the work-related injury and has recovered to a full and complete degree." Dr. Valentino's conclusion was based on his examination of appellant on April 29, 1999 and on a May 22, 1999 magnetic resonance imaging (MRI) scan that showed no evidence for any disc herniation.

To resolve this conflict of medical opinion, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,² referred appellant, the case record and a statement of accepted facts to Dr. Herbert Stein, a Board-certified orthopedic surgeon. In a report dated September 1, 1999, Dr. Stein set forth appellant's history, complaints and findings on examination. He diagnosed "[a]cute lumbosacral spine sprain (from history) superimposed on mild disc degenerative disease of the lumbar spine." Dr. Stein stated:

"There appears to be a significant degree of overreaction by the patient and now eleven (11) years post injury the only finding on his most recent MRI [scan] is the mild degenerative disc disease which was previously reported. Therefore, any restrictions of his activities at this point are related to the disc degenerative disease in the lumbar spine and not to his injury of April 11, 1988. The disc degenerative disease is relatively mild, in my opinion. His sensory pattern in the right lower extremity does not appear to follow any root distribution and, therefore, is not radicular. It would either be part of symptom magnification or related to his diabetes.

"His extreme restriction of motion in the lumbar spine and his reaction to that restriction of motion, along with the significant root test, as well as straight leg raising, in my opinion, are all symptomatic magnification in view of the significant absence of objective findings.

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

² 5 U.S.C. § 8123(a) states in pertinent part "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."

“Because of the absence of any significant objective findings I do not feel that there are any residuals related to the injury of 1988. Although one might expect some back discomfort, secondary to the degenerative disc that he has, these changes are mild and my only recommendation, based on his symptomatology would be restriction of repetitive bending and heavy lifting, that is no lifting repetitively of over 35 pounds.

“In summary, the objective findings, including the various MRIs and x-ray studies could not explain the degree of symptomatology that this patient has.

“I believe any aggravation of his underlying condition would have been resolved by now.

“My only recommendation for treatment would be a good exercise program for the lumbar spine; and this is secondary to the disc degenerative disease.”

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.³

The September 1, 1999 report of Dr. Stein satisfies these criteria, constitutes the weight of the medical opinion evidence and is sufficient to establish that appellant’s disability and need for medical treatment causally related to his April 11, 1988 employment injury ended by December 5, 1999. Additional reports from attending physicians who had been on one side of a conflict, which was resolved by an impartial medical specialist, are generally insufficient to overcome the weight accorded the impartial medical specialist’s report or to create a new conflict.⁴ The reports appellant submitted from his attending physicians in response to the Office’s September 29, 1999 notice of proposed termination of compensation are essentially similar to these physicians’ prior reports and in addition do not address the implications of the May 22, 1999 MRI scan showing no herniated disc. Dr. Stein’s September 1, 1999 report constitutes the weight of the medical evidence and meets the Office’s burden of proof to terminate appellant’s compensation.

³ *James P. Roberts*, 31 ECAB 1010 (1980).

⁴ *See Virginia Davis-Banks*, 44 ECAB 389 (1993).

The July 14, 2000 and November 17, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 19, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member