

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 01-1491; Submitted on the Record;
Issued March 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of appellant's compensation benefits effective July 11, 2000; and (2) whether appellant met his burden of proof in establishing that he had an employment-related disability which continued after termination of benefits.

On December 29, 1998 appellant, then a 48-year-old mailhandler, filed a claim alleging that a GPC machine stuck him and he sustained an injury to his back. Appellant did not stop work but returned to a limited-duty position. In May 1999, he stopped work and returned one year later in May 2000. On July 17, 2000 the employing establishment notified appellant that they could not provide work in compliance with his medical restrictions and he did not return to work after this time.¹ The Office accepted the claim for low back contusion and subluxation. Appellant was paid appropriate compensation.

Subsequently appellant submitted employing establishment treatment notes dated December 29, 1998. The treatment notes indicated appellant sustained a contusion of the lumbar spine and a lumbar strain.

By letter dated January 26, 1999, the Office requested additional information from appellant including factual and medical evidence in support of his claim. Among other things, appellant was specifically requested to describe in detail the circumstances surrounding his injury.

¹ On July 17, 2000 appellant requested to be placed in a light-duty position which was in compliance with the restrictions set forth by Dr. Merritt, appellant's chiropractor. The employing establishment indicated in letters dated August 4, August 18 and September 6, 2000 that they did not have a suitable position for appellant which complied with the restrictions set forth by his treating physician and notified appellant that he would be placed on enforced leave.

In response to the Office's request, appellant submitted a magnetic resonance imaging (MRI) scan dated January 5, 1999 and report from Dr. John Amann, a Board-certified neurologist, dated February 5, 1999. The MRI scan of the lumbar spine revealed no abnormalities. Dr. Amann noted appellant was injured at work when he was hit in the back with a metal bar attached to a mail machine. He diagnosed appellant with a lumbar sprain or strain superimposed on very mild lumbar degenerative disc disease.

On May 3, 1999 appellant filed a Form CA-2, notice of recurrence of disability. He indicated a recurrence of back pain radiating to his legs on May 3, 1999 which occurred since the employment-related injury of December 29, 1998. Appellant stopped work at this time and returned in May 2000.

Appellant submitted treatment notes from Dr. Richard Merritt, a chiropractor from May 3 to June 17, 1999. Dr. Merritt, in his note dated May 3, 1999, indicated appellant sustained a work-related back injury. He diagnosed appellant with chronic spinal pain and dysfunction of mechanical origin and chronic spinal motion injury. Dr. Merritt indicated that appellant was temporarily totally disabled. His attending physicians notes indicated appellant was being treated for vertebral subluxations resulting from a work-related injury.

On May 26, 1999 appellant was referred to a second opinion physician, Dr. Howard Sharf, a Board-certified orthopedic surgeon. In a medical report dated June 14, 1999, Dr. Sharf indicated that he reviewed the records provided to him and performed a physical examination of the appellant. He noted a history of appellant's work-related injury. Upon physical examination Dr. Sharf noted mild tenderness in the lumbar region and left sacroiliac joint; moderate paralumbar spasm; flexion was 30 degrees; extension was 10 degrees with pain; there was no evidence of muscle atrophy; straight leg raises are negative when seated and positive when supine; Fabre's test caused hip and thigh pain bilaterally; and Waddell's signs were positive for tenderness. Dr. Sharf diagnosed appellant with mechanical back pain and left lower extremity radiculities based on subjective findings of decreased sensation, weakness and pain. He noted that appellant did not have an objective disability with regard to the December 29, 1998 injury. Dr. Sharf recommended a functional capacity evaluation (FCE) and a psychiatric evaluation to determine if stress was a significant factor in appellant's condition.

In a supplemental report dated August 2, 1999, Dr. Sharf reviewed the FCE which revealed that appellant was capable of performing light-duty work, with lifting and carrying up to 25 pounds; working overhead up to 20 pounds; and limited squatting, stooping and crawling.

On August 19, 1999 appellant was referred to a second opinion physician, Dr. Kirti Pandya, a Board-certified psychiatrist. In a medical report dated September 17, 1999, Dr. Pandya indicated that he reviewed the records provided to him and performed a psychological examination of the appellant. He noted a history of appellant's work-related injury and diagnosed appellant with chronic low back pain and leg pain as a result of the work-related injury. He determined appellant did not have a valid psychiatric illness. Dr. Pandya concluded no further psychiatric intervention was required.

On October 4, 1999 the Office issued a notice of proposed termination of compensation benefits on the grounds that Drs. Sharf and Pandya's reports dated June 14, August 2 and

September 17, 1999 established no continuing disability as a result of the December 29, 1998 employment injury.

Subsequently, appellant submitted treatment notes from Dr. Merritt dated October 8 to November 17, 1999; and a narrative statement dated October 11, 1999. Dr. Merritt diagnosed appellant with subluxation of the lumbar vertebra and subluxation of the cervical vertebra. He indicated appellant was still totally disabled. Appellant's narrative statement indicated that he was still totally disabled as a result of the work-related injury of December 29, 1998 and was seeking back therapy from Dr. Merritt.

The Office determined that a conflict of medical opinion had been established between Dr. Merritt, appellant's treating physician, who indicated appellant was disabled and experiencing residuals of his work-related injury and Dr.'s Sharf and Pandya, Office referral physicians, who determined that there were no objective findings to support that appellant continued to suffer residuals from the work-related injury of December 29, 1998.

To resolve the conflict appellant was referred to a impartial physician, Dr. Robert Maddalon, a Board-certified orthopedic surgeon. In a report dated March 23, 2000, Dr. Maddalon 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. Maddalon noted decreased range of motion of appellant's back in all directions; no spasm was noted; there was no evidence of scoliosis; there was point tenderness at the L1-L5 lumbar paravertebral area; bilateral straight leg raises were positive at 20 degrees; negative Patrick's sign bilaterally; negative bowstring test; muscle strength was intact in the lower extremities; and sensation was intact in the lower extremities. Dr. Maddalon noted that x-rays were taken of the lumbar spine which revealed no abnormalities. He diagnosed appellant with subjective complaints of pain with limited objective findings; lumbosacral strain and sprain; 15 months status post lumbar contusion; and no evidence of herniated disc or other significant abnormality. Dr. Maddalon indicted that there was no objective evidence of appellant's back injury other than his decreased range of motion which was limited to appellant's ability to move his back because of subjective complaints of pain. He diagnosed appellant with a contusion of his back and lumbosacral sprain and strain but noted appellant's condition should have resolved after fifteen months. Dr. Maddalon further noted that he could not provide a reason why appellant had continued pain in his lower back that radiates down his legs fifteen months after the work-related injury. He noted appellant was able to do light-duty work, full time as recommended by the FCE.

Subsequently, appellant submitted several reports from Dr. Merritt dated May 1 to May 19, 2000. He continued to support appellant's total disability due to the employment-related injury of December 29, 1998. In his report dated May 18, 2000, Dr. Merritt indicated that appellant reached the maximum level of chiropractic improvement as of April 3, 2000. He noted that because appellant had permanent soft tissue injuries he would continue to experience back problems and need further chiropractic care.

By decision dated July 11, 2000, the Office terminated appellant's benefits effective the same date on the grounds the weight of the medical evidence established that appellant had no continuing disability resulting from his December 29, 1998 employment injury.

By letter dated July 17, 2000, appellant requested an oral hearing before a hearing representative. The hearing was held on January 4, 2001. Appellant testified that he continued to experience back problems, migraine headaches and depression. He submitted a number of medical records, many of which were duplicative and a December 21, 2000 report from Dr. Edward Feldman, a specialist in orthopedics, who indicated a history of appellant's injury on December 29, 1998. He noted that upon physical examination flexion, extension, rotation produced pain; reflexes were depressed bilaterally; there was no sensory loss; muscle strength was intact; and tenderness of the sacroiliac joint bilaterally. Dr. Feldman diagnosed appellant with disc protrusion at L4-5; facet hypertrophy L4-5 and L5-S1 bilaterally; lumbar spondylosis; and chronic lumbosacral sprain. He indicated that the objective findings and subjective complaints were causally related and aggravated by appellant's activities on the job. Dr. Feldman noted that appellant had a predisposition to back pain based on his symptoms and the MRI scan of January 5, 1999 which revealed early degenerative changes of the facet joints at L4-5 and L5-S1; with a disc protrusion at L4-5. He noted that appellant's condition would not tolerate the duties of a mail processor.

In a decision dated March 14, 2001, the hearing representative affirmed the decision of the Office dated July 11, 2000 on the grounds the weight of the medical evidence established that appellant had no continuing disability resulting from his work-related condition.

The Board finds that the Office has met its burden of proof to terminate benefits effective July 11, 2000.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² 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.³

In this case, the Office accepted appellant's claim for low back contusion and subluxation 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. Merritt, who disagreed with Drs. Sharf and Pandya concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Maddalon 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.⁴

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivian L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *Aubrey Belnavis*, 37 ECAB 206 (1985).

The Board finds that, under the circumstances of this case, the opinion of Dr. Maddalon 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. Madallon reviewed appellant's history, reported findings and diagnosed appellant with subjective complaints of pain with limited objective findings; lumbosacral strain and sprain; 15 months status post lumbar contusion; and no evidence of herniated disc or other significant abnormality. He indicated that there was no objective evidence of appellant's back injury other than his decreased range of motion which was limited to appellant's ability to move his back because of his subjective complaints of pain. Dr. Madallon diagnosed appellant with a contusion of his back and lumbosacral sprain and strain and noted "these things should have resolved now fifteen months after his injury. I cannot give a good reason why [appellant] has continued pain in his lower back that radiates down his legs fifteen months after being struck by a metal bar..." Dr. Maddalon further noted "I am unable to give any medical reason why [appellant] is unable to resume full[-]duty work..."

Subsequently, appellant submitted several reports from Dr. Merritt dated May 1 to May 19, 2000. He continued to support appellant's total disability due to the employment-related injury of December 29, 1998. In his report dated May 18, 2000, Dr. Merritt indicated that appellant reached the maximum level of chiropractic improvement as of April 3, 2000. Dr. Merritt noted that because appellant has permanent soft tissue injuries he would continue to have problems and need further chiropractic care. However, a second opinion physician, Dr. Sharf and an impartial medical examiner, Dr. Maddalon, all indicated that appellant had no residuals from his accepted employment injury and noted the low back contusion and subluxation had resolved.

The Board finds that, under the circumstances of this case, the opinion of Dr. Maddalon 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. Maddalon indicated that appellant did not suffer residuals from the condition of low back contusion and subluxation. He noted that the condition was resolved.

After the Office properly terminated appellant's benefits the burden of proof shifted to appellant.⁵ Appellant submitted a report from Dr. Feldman dated December 21, 2000, who diagnosed appellant with disc protrusion at L4-5; facet hypertrophy L4-5 and L5-S1 bilaterally; lumbar spondylosis; and chronic lumbosacral sprain. He indicated that the "objective findings and subjective complaints are causally related and aggravated by his activities on the job." Dr. Feldman provides a conclusory statement which somewhat supports causal relationship, however, he provided no medical reasoning or rationale to support that appellant's current condition was causally related to his work injury of December 29, 1998. Rather, he related appellant's condition to his "activities on the job." The Board has found that vague and

⁵ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. 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).

unrationalized medical opinions on causal relationship have little probative value.⁶ Without any further explanation or rationale, such a report is insufficient to establish appellant had a continuing disability causally related to his employment.⁷ Therefore, this report is insufficient to meet appellant's burden of proof.

The Board finds that there is no medical evidence which supports that appellant's disability was causally related to his accepted work-related condition. Dr. Maddalon had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time benefits were terminated he clearly opined that appellant had no work-related reason for disability. His opinion is found to be probative and reliable evidence. The Board finds that Dr. Maddalon's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

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

The decision of the Office of Workers' Compensation Programs dated March 14, 2001 is hereby affirmed.

Dated, Washington, DC
March 18, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ See *Theron J. Barham*, 34 ECAB 1070 (1983).

⁷ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).