U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCIS A. TACEY and DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND, Philadelphia, PA

Docket No. 01-448; Submitted on the Record;
Issued May 10, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective January 30, 2000 on the grounds that his work-related disability had ceased on or before that date; and (2) whether appellant has established continuing disability after January 30, 2000.

On February 2, 1995 appellant, then a 38-year-old engineering technician, filed a traumatic injury claim alleging that he sustained an injury to his lower back and legs on January 24, 1995, when he lifted a computer monitor from an employee's desk to the top of a file cabinet. Appellant stopped work on January 26, 1995.

The Office accepted appellant's claim for aggravation of degenerative joint disease with bulging disc in the lumbosacral spine. He was placed on the periodic rolls and received appropriate compensation.

Appellant's treating physician, Dr. Gary W. Muller, a general surgeon, provided numerous reports dating from February 1, 1995 to November 24, 1998. In an initial report, Dr. Muller discussed appellant's history of injury, including an August 1989 back injury in an elevator accident that involved the back as well as the knee. He stated that an arthroscopy and meniscectomy was performed with slow improvement. In 1992, appellant was treated for low back pain, had a magnetic resonance image (MRI) that was negative and received physical therapy. Dr. Muller noted that appellant returned to work in 1993 with some limits. He stated that an MRI was performed on April 1, 1993 that showed an L2-3 central disc and L5-S1 small disc with protrusion, but with no impingement. Dr. Muller stated that appellant's most recent injury occurred on January 24, 1995, when he moved a computer off of a counter top and felt sudden pain in his low back. He stated that he wanted to rule out disc herniation and lumbar radiculopathy. In subsequent reports, Dr. Muller determined that appellant had degenerative disc disease at L5-S1 and his right knee was also a disabling condition. He also continued to state that appellant could not return to work.

In a February 3, 1995 MRI scan, Dr. Phillip Yussen, a radiologist, diagnosed multilevel disc bulging and degenerative changes at the L3-4 and L4-5 levels. He stated minimal central herniated nuclear material was questioned at L5-S1. Dr. Yussen found moderate central canal narrowing at L2-3 with canal narrowing to a lesser extent at L1-2 and facet degenerative changes at the L5-S1 level on the right. He examined the previous study April 1, 1993 and determined that there had not been a significant change in the above findings. Dr. Yussen noted that the previous report showed the findings at L2-3 as disc herniation. He determined that upon review of both studies, the appearance was more typical for chronic broad based disc bulging/protrusion rather than frank herniated nuclear material.

In a June 6, 1995 report, Dr. Leonard A. Bruno, a Board-certified neurological surgeon, examined appellant and the MRI of February 3, 1995 and determined that appellant had chronic arthritic degeneration and some far lateral protrusion of the L5-S1 disc on the left side. His impression was nerve root irritation on the basis of lumbar degenerative disc disease, resulting from multiple injuries at work, but without any evidence of new disc herniation. Dr. Bruno suggested that appellant undergo epidural steroid injections and perhaps facet block injections to try and relieve his pain. He stated that appellant was not a candidate for lumbar decompressive surgery. Dr. Bruno indicated that if the injections failed to relieve appellant's symptoms substantially, then it would be worthwhile to have a myelogram for further diagnostic evaluation.

By letters dated July 17, 1995, the Office referred appellant along with a statement of accepted facts and copy of the case record for a second opinion examination with Dr. Kevin Mansmann, a Board-certified orthopedic surgeon.

In an August 17, 1995 report, Dr. Mansmann noted appellant's history of injury and treatment. He diagnosed L5-S1 herniated disc with right sciatica, by MRI scan and opined that the positive objective findings revealed an absent right extensor hallicus longus, positive straight leg raising and a positive MRI scan. Dr. Mansmann determined that the objective findings substantiated appellant's subjective complaints and that his injuries were causally related to the accident on January 24, 1995. He released appellant to return to work in a sedentary position with no lifting over 15 pounds and the ability to change positions as necessary. Dr. Mansmann recommended that appellant commence with a four-hour workday light-duty position and estimated a three-month period to determine the duration of his restrictions.

In a November 6, 1995 report, Dr. Mansmann stated that appellant continued to be disabled and recommended that appellant undergo a second epidural steroid injection, followed by a third, if the symptoms did not abate with the second injection. He further recommended a computerized tomography (CT) myelogram to further evaluate the size and location of the disc that is herniated and recommended an electromyogram (EMG) and nerve conduction study (NCS) to further delineate his complaints, if there is any question as to the level of the herniation and the next step of treatment. He repeated his August 17, 1995 work restrictions.

In a February 21, 1996 report, Dr. Marc J. Medway, Board-certified in internal medicine and rehabilitation, examined appellant for an electrodiagnostic impression. He found that appellant had an abnormal examination with findings most consistent with an acute right L5 radiculopathy. Dr. Medway stated that evidence was seen for acute nerve root injury in an L5

distribution in the right lower extremity and these finding were indicative of significant ongoing nerve root injury.

In a March 6, 1996 supplemental report, Dr. Mansmann, opined that appellant had ongoing pathology but because the disc herniation was small upon the CT myelogram findings, the prognosis for full recovery following surgery was less promising than that of a large disc. He stated that he would discuss the options with appellant. Dr. Mansmann further stated that if appellant determined he did not wish to have surgery, then a functional capacity evaluation was recommended.

On April 9, 1996 appellant began treatment with Dr. Steven M. Rosen, a Board-certified anesthesiologist with a subspecialty certification in pain management. Dr. Rosen noted appellant's history of injury and treatment. He determined that appellant had mixed discogenic and facet joint syndrome. Dr. Rosen offered to perform right sided facet rhizotomies to decrease the component of his overall pain syndrome. He determined that he would also inject epidural steroids through a fluoroscopically guided catheter in order to decrease his pain so that appellant could advance to a rehabilitation program and eventually return to productive employment. Dr. Rosen stated that if there was no relief from the facet denervations and the epidural injections, he would perform a discography to determine the symptomatic disc level, which is likely at L5-S1. He stated that at that point, appellant would be a candidate for a percutaneous discectomy, with a procedure that had a 60 percent chance of decreasing his radicular and axial pain. He provided additional reports through December 4, 1998.

In a May 6, 1996 addendum, Dr. Mansmann opined that, Dr. Rosen's April 9, 1996 recommendations for discogenic and facet syndrome were realistic and quite possible. He stated that consideration of a percutaneous discectomy prior to an open discectomy, although having less success than an open procedure was reasonable and this might decompress the disc adequately to relieve any compression that the individual was having at the L5-S1 disc herniation. Dr. Mansmann agreed that Dr. Rosen was proposing a reasonable approach to appellant's medical management.

The record reflects that appellant underwent right sided facet denervations on September 8, 1997, from L3 to S1 on six levels and a July 13, 1998 surgery regarding right S1 transforaminal injection.

By letter dated August 11, 1998, the Office referred appellant for a second opinion examination with Dr. Steven J. Valentino, an osteopath.

In a September 3, 1998 report, Dr. Valentino noted appellant's history of injury and treatment. He diagnosed resolved aggravation of lumbar degenerative joint disease, resolved lumbar strain. Dr. Valentino opined that, there was no evidence that the work accepted aggravation of the lumbar degenerative disc disease was ongoing or required additional care. He stated that, there were no positive objective findings in his evaluation. Dr. Valentino noted that the February 3, 1995 MRI revealed no worsening when compared to the April 1, 1993 MRI and stated that appellant sustained only a temporary aggravation as his previous condition was worsened or made severe for a time with no residual or underlying condition and without leaving any continued impairment beyond a certain time. He stated further that there was no basis for

any continued or irreversible change in the underlying condition as the MRI of 1995 revealed no structural change when compared to that of 1993. Dr. Valentino asserted that appellant was not disabled from the position he was holding on the date of injury, as it was clear that the aggravation of his lumbar degenerative disc changes related to his January 24, 1995 injury had resolved such that he was capable of returning to the gainful employment he was performing immediately prior to January 24, 1995. He further stated that the work capacity evaluation was compiled based on residuals from the left cubital tunnel syndrome, which was not work related as well as the history of right knee symptoms. Dr. Valentino stated that appellant was not in need of ongoing treatment in reference to the aggravation of lumbar degenerative disc disease caused by the January 24, 1995 date, but he may need ongoing treatment in reference to the diagnosis of arthritis of the right knee.

In a December 28, 1998 MRI, Dr. Yussen found small left knee joint effusion/synovitis. He stated that a Baker's cyst was not currently seen. Dr. Yussen found no evidence of acute cruciate or collateral ligament disruption. Additionally, he found a medial patellar retinacular strain and possibly subtle partial tear without complete disruption. Dr. Yussen also determined that there were degenerative signal changes within the substance of both menisci with findings suspicious for small tears of the body, posterior horn regions of the medial meniscus and no large meniscal tears were seen.

In a March 5, 1999 report, Dr. Rosen, filled out a treatment status report indicating that appellant had facet syndrome with chronic pain and radiculopathy. He stated that appellant could not return to his preinjury job without restriction and they were awaiting approval to perform a discography to see if he was a candidate for any further pain relieving interventions. Dr. Rosen further stated that appellant was severely depressed and referred him to a psychologist. He also advised that knee replacement was a consideration.[1]

Appellant began treatment on March 21, 1999 with Dr. Ira H. Soloman, a clinical psychologist, who treated appellant from March 21 to December 2, 1999 and opined that his psychological condition was causally related to the January 23, 1995 injury and that appellant was disabled from work. Dr. Soloman did not provide any rationale for his opinion.

By letter dated January 6, 1999, the Office referred appellant to Dr. John T. Williams, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion.

In an April 6, 1999 report, Dr. Williams, noted appellant's history of injury and treatment and stated that he incurred soft tissue injuries and sprains/strains, which may have been aggravated by the incident, but the aggravation would be of a temporary and transitory nature. He further opined that, appellant had advanced degenerative joint disease involving his right knee and advised that appellant should modify his lifestyle and his job, not on the basis of the accident but due to his advanced preexisting changes in his lumbar spine and the lower part of his thoracic spine as well as his right knee. Dr. Williams diagnosed acute lumbosacral sprain/strain, which was resolved and that it was superimposed upon preexisting pathology. He also stated that appellant incurred an acute sprain/strain of the left knee, by history, resolved.

[1] Dr. Rosen also stated that appellant could not return to his preinjury position in is his August 4, 1998 report.

Additionally, Dr. Williams noted that the incident of January 1995 aggravated the preexisting condition but it was his opinion that the aggravation would be of a temporary and transitory nature, resolving anywhere from a few days to a couple of months and leaving appellant with his preexisting pathology. He indicated that appellant had recovered from his January 24, 1995 incident. Dr. Williams further stated that the prognosis for his degenerative process, deterioration of his lumbar spine and lower thoracic spine, at his age, was dependent upon his future activities. He recommended that appellant modify his lifestyle and change his job to allay and maybe delay the natural course of the deterioration of the lumbar and thoracic spine. Dr. Williams stated that there were no physical limitations related to his January 24, 1995 incident and opined that there were no residuals from the incident and that appellant would be able to perform his preinjury job, however, he continued to recommend modification of appellant's lifestyle and job. Dr. Williams opined that appellant had degenerative joint disease, advanced for his age of 51 years and stated further that "[t]here is no way that lifting a computer would cause appellant to have degenerative changes in his thoracic and lumbar spine."

By letter dated May 18, 1999, the Office referred appellant for a second opinion examination with Dr. Maurie D. Pressman, Board-certified in psychiatry and neurology.

In a June 2, 1999 report, Dr. Pressman noted appellant's history of injury and treatment and stated that he suffered from Axis I -- psychological factors affecting physical condition. He stated that appellant's psychological feelings were contributing to his pain in both his low back and knees. Dr. Pressman offered that it was his impression that appellant was enlarging his complaints. He stated that the diagnosis of psychological factors affecting physical condition, indicates an expression of underlying and emotional tension as it joins in with a physical area of injury to produce prolonged enlarged pain. Dr. Pressman advised that appellant undertake psychological testing. He stated further that his condition did not disable him (from a psychiatric perspective) for full-time employment in his usual occupation.

In a June 30, 1999 addendum, Dr. Pressman, reported on the results of the psychological testing given to appellant, that the tests showed significant psychological disturbance in the way of anxiety and depression. He noted numerous references, which were described as: "[Appellant] tends to manipulate others by developing physical symptoms." This would coordinate with the diagnosis of psychological factors affecting physical condition (DSM IV 316.00), but does not necessarily relate to work-related injuries or disturbance." Dr. Pressman also observed that the testing stated that appellant's marital distress scale suggested his marital situation was problematic at this time and that appellant had reported a number of problems with his marriage that were possibly important in understanding his current psychological symptoms. He stated that appellant with psychological factors affecting his physical condition was not coming from the work-related situation and that a conversion of emotional tensions into physical and somatic complaints. He explained that the psychological record showed that appellant tended to convert his complaints into somatic difficulties and that he tended to manipulate others in order to satisfy his needs. Dr. Pressman opined that he did not believe that appellant's causation of the somatic complaints were on the basis of work-related difficulties and, in fact, appellant was willing to undertake the same work, but at another location. He stated that it was likely that the marital differences were causing a great deal of appellant's stress. Dr. Pressman stated that appellant was able to work eight hours a day from a psychological perspective.

To resolve a conflict in the medical evidence the Office referred appellant to Dr. Richard Schwartzman, a Board-certified psychiatrist.

In an October 18, 1999 report, Dr. Schwartzman noted appellant's history of injury and treatment and opined that he was suffering from psychological factors affecting his medical condition and that these factors strongly contributed to the pain, discomfort and disability he described in his knees and lower back. It was further his opinion that appellant was malingering. Dr. Schwartzman stated that appellant's general appearance was one of pain and suffering and throughout the interview, he tended to complain about his pain and limited functioning. He stated that appellant initially provided guarded and indirect responses to his questions, but as the interview proceeded, he discussed how difficult it would be if his compensation benefits were terminated as well as his concerns about future medical treatment. Dr. Schwartzman noted that appellant discussed difficulties he was having with his wife and how his life was centered on his many therapy sessions each week. He stated that it appeared that appellant did not have the motivation to improve his domestic situation or to seek employment. Dr. Schwartzman indicated that he did not believe that appellant's present condition and inability to work was related to the January 24, 1995 injury, or that he was suffering any residuals from that incident and that appellant could work eight hours a day and perform his usual position.

On November 26, 1999 the Office issued a proposed notice of termination of compensation. The Office advised appellant that his compensation for wage loss and medical benefits was being terminated because he no longer had any continuing injury-related disability and that he did not have any work-related psychiatric/psychological condition. The Office indicated that the weight of the medical evidence, as represented by the opinions of Drs. Williams and Schwartzman, demonstrated that appellant's work injury had resolved. He was given 30 days to submit additional evidence or argument.

The Office received two reports from Dr. Soloman on December 2 and 16, 1999. He discussed anxiety and self-efficacy. Dr. Soloman stated that appellant explored how he responded to physical and emotional sensations caused by his injury and they discussed how pain beliefs could lead to maladaptive coping, exacerbation of symptoms and increased suffering at times. None of these reports stated that appellant continued to be disabled or contained any discussion of how his condition was related to the accepted employment injury as opposed to his chronic preexisting conditions.

By decision dated January 10, 2000, the Office finalized its proposed termination of benefits. The Office indicated that, on the orthopedic issue, Dr. Williams' opinion constituted the weight of the medical evidence. On the psychiatric issue, Dr. Schwartzman's opinion constituted the weight of the medical evidence. The Office denied appellant's entitlement to compensation for any psychiatric condition and compensation for any ongoing physical condition on or after January 30, 2000, as the weight of the medical evidence was deemed not to support such as being any way causally related to the accepted employment injury sustained on January 24, 1995.

By letter dated January 12, 2000, appellant, through his attorney, requested an oral hearing, which was held on June 27, 2000.

By letter dated March 24, 2000, appellant's representative provided a copy of appellant's medical file regarding treatment by Dr. Soloman for a psychological condition.[2] In the reports dating from March 21 to December 2, 1999, he opined that appellant had an adjustment disorder with depressed mood and chronic pain syndrome. Dr. Soloman stated that this was a direct result of the January 24, 1995 work-related injury. He did not provide any discussion of how appellant's condition was related to the injury.

A March 27, 2000 report from Dr. Frank A. Mattei, a Board-certified orthopedic surgeon, was submitted at the hearing. In his report, he noted appellant's history of injury and treatment. In Dr. Mattei's description of appellant's history he discussed the August 8, 1989 elevator incident involving appellant's right knee, subsequent arthroscopic surgery, physiotherapy and return to work. He also discussed an injury to appellant's low back at a health spa on April 22, 1992 and subsequent therapy for his right knee joint and low back. Dr. Mattei stated that appellant was seen at the hospital in 1993 when his back gave out on him while working and appellant was moving a monitor at that time. He stated that appellant also had EMG and MRI studies in 1995. Dr. Mattei noted that appellant informed him that he had a herniated disc affecting L5-S1. He stated that in 1995 appellant underwent trigger point injections of his knee joints, facet blocks, epidural injections of his back and biofeedback. Dr. Mattei reported that appellant had arthroscopic surgery in June 1997 and was referred for physiotherapy. He noted that appellant fell down on November 22, 1998 when he stepped back and had to be treated, including additional arthroscopic surgery of the right knee joint in April 1999. Dr. Mattei stated that appellant also injured his left knee joint in the fall. He stated that appellant was also informed that he would have to undergo an osteotomy of his right knee joint, which may result in a possible total knee joint replacement. Dr. Mattei diagnosed degenerative arthritis of the lumbosacral spine with possible disc degeneration. He opined that appellant had degenerative changes of the knee joints, greater on the right, resulting in post arthroscopic surgery, beginning in April 1998 and November 1989, accepted for a strain of the right knee joint. Dr. Matteri stated that it was his medical opinion that this was a preexisting condition that predated the August 8, 1989 accident and faltered after the first arthroscopic surgery in April 1989. He opined that with respect to appellant's low back condition, one must state whether this was accepted as a condition after treatment of his knee joint, after the second arthroscopic surgery and it may well be accepted as compensation for this condition. Dr. Mattei stated further that all of the MRI studies revealed that appellant had a herniated disc at L5-S1, which had an increased lordosis of the spinal column and he could not elicit a true radiculopathy of the lower extremities at this time. He opined that the herniated disc, which is asymptomatic, may have been the result of the August 8, 1989 accident, but at what time he was unable to determine. Dr. Mattei further stated that it was his impression that appellant was able to return to work in a more limited and sedate activity and filled out the work capacity evaluation. In the evaluation, dated March 8, 2000, Dr. Mattei stated that there was no reason appellant could not return to work for eight hours a day in a limited capacity.

In a March 28, 2000 report, Dr. Muller, noted appellant's history of injury and treatment. He stated that appellant suffered a work-related injury to the right knee on August 8, 1989, with arthroscopic surgery on four occasions, including removal of the buffering meniscus cartilage of

[2] These reports were previously of record.

the medial joint, which was directly responsible for halting the progression of degenerative joint disease and arthritis in the right knee. Dr. Muller stated that this would result in increased and more rapid development of degenerative arthritis in the right knee. He stated further that the more stressful his activities, the quicker the progression would occur. Dr. Muller stated that appellant still suffered from residuals of his traumatic induced injuries, including right knee pain and stiffness, which is daily and continual weakness in the right knee, low back pain and stiffness, which is daily and constant. He further declared that coughing and sneezing, as well as changes in the weather, would exacerbate his pain. Dr. Muller determined that appellant was not at maximum medical improvement. He opined that appellant was totally permanently disabled from the position he held at the time of his injury. Dr. Muller released appellant to work in a sedentary position, with no lifting over 15 pounds, no climbing, kneeling, squatting, pulling, pushing, twisting, sitting limited to one hour, reaching limited to half an hour, reaching above the shoulders limited to half an hour and driving a motor vehicle one to two hours. Dr. Muller stated that appellant should initially return for four hours a day, progress to six hours and then to eight hours, reaching an eight-hour day in approximately six to eight months. He stated that appellant was permanently disabled and continued to be symptomatic.

In a decision dated August 24, 2000, an Office hearing representative found that the weight of the medical evidence failed to support appellant having any psychiatric condition and any ongoing orthopedic condition on or after January 30, 2000 causally related to the accepted January 24, 1995 injury. The hearing representative affirmed the Office's January 10, 2000 decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective January 30, 2000 on the grounds that his work-related disability had ceased by that date.

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.[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] The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

In this case, the Office accepted appellant's claim for aggravation of degenerative joint disease with bulging disc in the lumbosacral spine and paid appropriate benefits.

Appellant's orthopedic physicians, Drs. Muller and Rosen reported that appellant had continuing total disability, while Dr. Valentino, the physician to whom appellant was referred for a second opinion, indicated that his aggravation of lumbar degenerative joint disease and lumbar

[3] *Lawrence D. Price*, 47 ECAB 120 (1995).

[4] *Id; see Patricia A. Keller*, 45 ECAB 278 (1993).

[5] *Raymond W. Behrens*, 50 ECAB 221 (1999).

spine had resolved and that he was able to return to his date-of-injury employment. Based on this conflict in medical opinion, as to whether appellant continued to have residuals of his accepted employment injuries and remained disabled for work, the Office referred appellant to Dr. Williams, for an impartial examination.[6]

With regard to whether appellant had a psychological condition, his psychiatrist, Dr. Soloman stated that he was disabled due to his January 24, 1995 injury, while Dr. Pressman opined that he was not. Based on this conflict in medical opinion, the Office referred appellant to Dr. Schwartzman for an impartial examination.[7]

The Board finds that at the time the Office terminated medical benefits, the weight of the medical evidence rested with Drs. Williams and Schwartzman, who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. They performed complete examinations, reviewed the record and advised that appellant had no continued disability from his accepted employment injury, was capable of performing his date-of-injury employment and that further medical treatment was unnecessary.

Dr. Williams reviewed appellant's history of injury and treatment and explained in his April 6, 1999 report, that the soft tissue injuries and strains that appellant incurred may have been aggravated by the incident but they would be temporary and transitory and should have been resolved anywhere from a few days to a couple of months, leaving appellant with his preexisting pathology. He noted that appellant also had degenerative joint disease in his right knee and advised a lifestyle modification based upon the advanced preexisting changes in his lumbar and thoracic spine and right knee. Dr. Williams stated that appellant's lumbosacral sprain/strain was resolved and superimposed upon preexisting pathology. He also stated that appellant incurred an acute lumbosacral sprain/strain of the knee, which was resolved. Dr. Williams explained that appellant's degenerative condition of deterioration of his lumbar spine and lower spine was dependent upon his activities. He recommended a change in lifestyle and suggested that a change in his job would delay the natural course of deterioration of the lumbar and thoracic spine. Dr. Williams explained that there were no physical limitations due to the January 24, 1995 accident, no residuals and appellant would be able to perform his preinjury job, but repeated his recommendation that he change his position due to the degenerative condition. He also stated that it was not possible that the process of lifting the computer would cause appellant to have degenerative changes in the thoracic and lumbar spine.

Dr. Schwartzman, in his October 18, 1999 report, noted appellant's history of injury and treatment and stated that he was suffering from psychological factors affecting his medical condition and that these factors strongly contributed to the pain he was describing. He stated that a secondary diagnosis was that appellant was suffering from Malingering (a condition not attributable to a mental disorder). Dr. Schwartzman noted that appellant's demeanor upon entering the office was of limping and using a cane. He stated that appellant's general

[6] 5 U.S.C. § 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third person shall be appointed to make an examination to resolve the conflict. *Henry P. Eanes,* 43 ECAB 510 (1992).

[7] *Id.*

appearance was of suffering throughout the interview as he complained of pain and limited functioning. Dr. Schwartzman noted that appellant was mostly guarded and indirect in his response to his questions but as the interview proceeded, appellant explained how difficult it would be if he were to lose his compensation payments. He noted that appellant dreaded the thought of having to work at base pay and stated that it did not "financially pay to get a job." Dr. Schwartzman stated that appellant was mainly concerned about losing his benefits and future medical treatment. Dr. Schwartzman also discussed appellant's marital difficulties and appellant's lack of motivation to improve the situation. He stated that it was his feeling that appellant was focused on his many therapy sessions but did not have the motivation to improve his domestic situation or to seek employment. Dr. Schwartzman stated that overall, appellant was rational and without evidence of psychosis and free of auditory or visual hallucinations, with no indication of delusional thinking. He indicated that appellant's affect was appropriate to his mood and his sensorium was clear. Dr. Schwartzman opined that appellant was not suffering from any residuals of his work-related injury on January 24, 1995 and it was his opinion that he was largely concerned about the loss of his compensation payments.

When there exist 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 upon a proper factual background, must be given special weight.[8] The Board finds that the reports of Drs. Williams and Schwartzman represent the weight of medical opinion in this case and contain well-rationalized opinions negating any continuing residuals due to the accepted employment injuries. As the weight of the medical opinion evidence, Drs. Williams and Schwartzman's reports support the Office's termination of appellant's compensation benefits effective January 30, 2000.

The Board further finds that appellant failed to meet his burden of proof in establishing continuing disability causally related to his accepted employment injury.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had disability causally related to his accepted employment injury.[9]

Following the Office's January 10, 2000 decision, appellant submitted several reports, which included a December 2 and 16, 1999 report from his psychologist, a March 27, 2000 report from Dr. Mattei and a March 28, 2000 report from Dr. Muller.

The reports from Dr. Soloman are of diminished probative value to the pertinent issue of the case, whether appellant had any continuing disability on or after January 10, 2000 due to his accepted employment injury as they do not address any disability subsequent to the Office's January 10, 2000 decision terminating appellant's compensation benefits and they are insufficient to overcome the weight accorded the impartial medical specialist's report or to create a new conflict.

[8] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

[9] *George Servetas*, 43 ECAB 424, 430 (1992).

In his March 27, 2000 report, Dr. Mattei noted appellant's history of injury and treatment. He noted degenerative changes of the knee joints and a preexisting condition predating the August 8, 1989 accident. Dr. Mattei offered that appellant could return to work in a limited capacity. However, he did not provide any explanation or rationale and thus his opinion is of limited probative value.[10] Without the necessary medical rationale explaining why and how Dr. Matt believes that appellant's current condition and disability are related to the accepted employment injury rather than to any of appellant's preexisting conditions, this report is not sufficient to create a conflict with the well-reasoned report from Dr. Williams or to establish appellant's continuing disability.

In his March 28, 2000 report, Dr. Muller noted appellant's history of injury and treatment and stated that he still suffered residuals from his injuries and that he was permanently disabled. Dr. Muller released appellant to a sedentary position with restrictions starting four hours a day and progressing to an eight-hour day in six to eight months. However, he did not explain why appellant continued to be disabled or provide any explanation in support of his findings and thus his report was of little probative value and insufficient to overcome the weight accorded the impartial medical specialist's report or to create a new conflict.

[10] *See Jacqueline L. Oliver*, 48 ECAB 232 (1996).

The August 24 and January 10, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 10, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member