

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRED B. MURPHY, JR. and DEPARTMENT OF THE NAVY,
NAVY PUBLICATIONS & PRINTING SERVICE OFFICE, Long Beach, CA

*Docket No. 01-1063; Submitted on the Record;
Issued May 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss and medical compensation benefits effective June 18, 2000 on the grounds that appellant no longer had any disability causally related to his accepted employment injuries.

On October 16, 1980 appellant, then a 50-year-old printer leader, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back sprain on October 15, 1980 while covering a vent in the microfilm department.¹ The Office accepted the claim for acute low back strain. Appellant returned briefly to work on January 26, 1981 and the Office accepted a recurrence of disability for the period January 30 through November 14, 1981. The Office accepted that appellant sustained a low back strain due to an injury sustained on February 25, 1982.² Appellant sustained an injury on July 22, 1983 while lifting a 20-pound box of microfilm, which the Office accepted as lumbar strain.³ Appellant sustained a recurrence of disability on June 12 and 20, 1985 due to his October 15, 1980 employment injury. He stopped work on June 20, 1980 and the Office placed appellant on the periodic rolls for temporary total disability effective September 28, 1986.

On January 18, 1995 the Office requested appellant to submit an updated medical report as the last report on file was by Dr. Shelby T. White, a second opinion orthopedic surgeon, dated January 18, 1989.⁴ In a January 31, 1995 report, Dr. White noted that he saw appellant at the request of the Office for an updated medical report.⁵ In this report, Dr. White diagnosed a

¹ This was assigned claim number A13-630193.

² This was assigned claim number A13-674054.

³ This was assigned claim number A13-736663.

⁴ In this report, Dr. White concluded that appellant was capable of working four to six hours per day.

⁵ The Board notes that, in a compensation case review dated January 31, 1995, the Office notes Dr. White as an attending physician.

chronic lumbosacral strain, which he concluded was “probably a permanent condition.” Dr. White noted that appellant was in good health except for appellant’s pain and discomfort from the back injury.

On March 11, 1999 the Office requested Dr. Chris Stephens, appellant’s attending physician,⁶ to provide a medical report addressing appellant’s current condition and the status of his accepted employment-related injury.

On April 30, 1999 the Office advised appellant that Dr. Stephens informed the Office that he had cancelled his appointment because he had not received copies of his medical records on March 11, 1999. The Office requested appellant to reschedule his appointment now that he had the records and advised him that he was to provide a current medical report by no later than May 30, 1999. Appellant did not respond to the Office’s request for medical reports.

In a July 30, 1999 report, Dr. Garnett J. Sweeney, Jr., a second opinion Board-certified orthopedic surgeon, diagnosed lumbar strain or lumbar disc protrusion without any herniation. Dr. Sweeney concluded that appellant was incapable of performing his usual employment duties and noted that, “[o]nce the back is injured, it is often permanently injured, thereby limiting one’s abilities to do certain things.” Regarding objective findings, the physician found none for a lumbar strain, which he indicated was often based on subjective complaints. Dr. Sweeney further concluded that appellant had a permanent injury due to his lumbar disc injuries, which caused a permanent disability. Lastly, the physician stated that “all of his history and findings stem back to his original episodes, that he now has superimposed aging changes undoubtedly.” By letter dated November 3, 1999, the Office requested clarification from Dr. Sweeney, specifically whether appellant was capable of performing sedentary work and whether he continued to have any residual disability from his accepted lumbar strain. He declined to provide any clarification in a December 8, 1999 letter.

On January 21, 2000 the Office referred appellant to Dr. Robert L. Keisler, a Board-certified orthopedic surgeon, for a second opinion on the extent of appellant’s current disability and whether appellant continued to have any residual disability due to his accepted employment injury. In a February 9, 2000 report, Dr. Keisler diagnosed multiple level degenerative and facet disease of the lumbar spine, probable chronic pain syndrome and history of recurrent strains and possible periods of radiculopathy with normal neurologic work-ups. He stated that appellant’s current “progression has been fairly typical of that expected with degenerative dis[c] disease” with a possible chronic pain syndrome component. Dr. Keisler noted that appellant had experienced periods of temporary exacerbation of his underlying degenerative disc disease by his employment injuries. In addition, he concluded that any “symptoms prior to that time and thereafter would be expected to be due to the underlying process and the expected recurrences of symptoms with the condition.” In concluding, he opined that there are no objective findings to support that appellant’s current disability or impairment is related to his accepted employment injuries. Any symptoms would be a result of his underlying degenerative disc disease. Lastly, Dr. Keisler indicated that appellant had no physical restrictions related to his accepted

⁶ The Office issued a letter on February 23, 1999 authorizing Dr. Stevens to perform a physical examination at appellant’s request. Appellant’s previous treating physician was Dr. Norman H. Ellingsen, a Board-certified orthopedic surgeon, whose most recent report was dated March 7, 1988.

employment injury which precluded him from returning to work. In an attached February 9, 2000 work evaluation form (Form OWCP-5c), he noted no limitations or restrictions and no impairment from appellant's accepted condition.

On March 20, 2000 the Office issued a notice of proposed termination of benefits based upon Dr. Keisler's report. The Office finalized the termination of benefits by decision dated June 1, 2000.

Appellant requested an oral hearing, which was held on November 30, 2000. In a decision dated February 21, 2001, the hearing representative affirmed the decision terminating appellant's compensation.

The Board finds that the Office properly terminated appellant's compensation effective June 18, 2000 on the grounds that appellant no longer had any disability causally related to his accepted employment injuries.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.⁷ 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.⁸

In this case, the February 9, 2000 opinion of Dr. Keisler, a second opinion physician, constitutes the weight of the evidence. He considered appellant's history of injury, performed a physical examination and reviewed the medical evidence of record including x-ray reports. Dr. Keisler diagnosed multiple level degenerative and facet disease of the lumbar spine, probable chronic pain syndrome and history of recurrent strains and possible periods of radiculopathy with normal neurologic work-ups. He reported that appellant had sustained a lumbar strain as a result of the 1983 employment injury and subsequently sustained temporary aggravations of his underlying degenerative disc disease. Dr. Keisler concluded there were no objective findings to support that appellant's current back condition is related to his July 1983 employment injury. In addition, he found that appellant had no restrictions related to the accepted condition of lumbar strain and that his continuing symptoms were due to his underlying degenerative condition. In his report dated July 30, 1999, Dr. Sweeney, the initial second opinion physician, noted a lack of objective findings but opined that appellant continued to be disabled due to his multiple lumbar disc injuries but he provided little medical rationale as to whether appellant's current disability was employment related.⁹ In fact, it appears that Dr. Sweeney generally attributed appellant's continuing symptoms to a disc condition; however, the Office only accepted lumbar strains and never accepted a specific disc condition.¹⁰ The Office requested clarification from the physician,

⁷ *James Smith*, 53 ECAB ____ (Docket No. 00-1103, issued October 25, 2001).

⁸ *Regina T. Pellecchia*, 53 ECAB ____ (Docket No. 00-658, issued October 11, 2001).

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁰ See *Vernon R. Stewart*, 5 ECAB 276, 280 (1953) (where the Board held that medical opinions based on histories that do not adequately reflect the basic facts are of little probative value in establishing a claim).

which he declined to provide.¹¹ Consequently, in view of Dr. Sweeney's failure to clarify his opinion, the lack of rationale to support his opinion and his attribution of symptoms to a condition not accepted by the Office, the Office properly relied on the reasoned and responsive report from Dr. Keisler in terminating benefits. The record contains no evidence from appellant's treating physician supporting a continuing employment-related disability. Inasmuch as Dr. Keisler's opinion is well rationalized and establishes that appellant is no longer disabled or has residuals attributable to his lumbar strain, the Office met its burden of proof in terminating benefits.

The February 21, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 15, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

¹¹ The Office properly referred appellant to Dr. Keisler for a second opinion evaluation as Dr. Sweeney failed to provide the clarification requested by the Office. *Cf. Walter A. Fundinger, Jr.*, 37 ECAB 200, 205 (1985) (Office referral physician's reports were insufficient to dispose of the issue to be resolved; therefore, the Office had an obligation to go further in developing the medical evidence).