

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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

*Docket No. 01-1201; Submitted on the Record;
Issued May 2, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation benefits effective on January 22, 2001.

The Office accepted that appellant sustained thoracic, cervical and lumbar strains while in the performance of duty on October 18, 1995 and paid appropriate compensation benefits. Appellant did not return to work after October 23, 1995.

By letter dated September 9, 1996, the Office proposed to terminate compensation and medical care on the grounds that appellant no longer had medical residuals of his work-related injuries. By decision dated September 9, 1997, the Office terminated appellant's compensation and medical benefits.

On October 10, 1997 appellant, through counsel, requested an oral hearing and also requested that the Office issue a subpoena for the appearance of the impartial medical examiner, Dr. Samuel Broudo, at the Office's oral hearing, and, additionally, that the Office make available to appellant all medical reports prepared by Dr. Broudo in his capacity as the Office's impartial medical examiner in this case.¹

In reports dated August 17 and September 22, 1998, Dr. Michael Martin Cohen, Board-certified in psychiatry and neurology, stated that electromyography (EMG) tests and nerve conduction studies (NCS) conducted on those dates confirmed that appellant had clear progression in the lumbosacral radiculopathy as well as active and chronic cervical radiculopathy and that such conditions are "as a result of his work-related injury of October 18, 1995.

In a decision dated August 31, 1998, an Office hearing representative affirmed the Office's decision denying appellant's benefits, but, upon receipt of conflicting evidence not

¹ Dr. Broudo, in reports dated April 21 and August 25, 1997, found that appellant had fully recovered from his work-related injury. The Office relied on these reports in its decision to terminate appellant.

previously reviewed by the Office, remanded the claim to the Office for resolution of the conflict.

In a report dated March 9, 1999, Dr. Edward J. Resnick, a Board-certified orthopedic surgeon, serving as the referee, examined appellant on that day and reported findings. Dr. Resnick noted that appellant's magnetic resonance imaging (MRI) scans revealed minor to moderate degenerative-type changes in the lower cervical spine "probably of long-standing. There does not appear to be any significant changes occurring from July 14, 1997 through August 14, 1998." He noted that, during that time, all of appellant's diagnostic tests including MRI scans of the hips, lumbar spine and simple x-rays of cervical and lumbar spine were essentially the same and appeared similar to earlier studies. Dr. Resnick further noted that all his spinal range of motion findings were essentially normal with the added note that appellant complained of pain frequently. The upper and lower extremity examinations were normal. He noted that he had reviewed all the medical records as required and noted that Dr. Cohen's reports listed subjective complaints of pain but no objective findings to support such complaints. Dr. Resnick could not establish a relationship between the objective results of multiple studies and appellant's long-standing complaints. He stated that the recent MRI scan findings of the C4-5 protrusion was indicative of a degenerative change and not traumatic injury in 1995, and that appellant could return to full duty and, in fact, to return to heavy duty without restrictions.

In a decision dated January 22, 2001, the Office denied appellant further entitlement to compensation for wage-loss and medical benefits on the grounds that appellant had recovered from his October 18, 1995 work-related injury.

By letter dated January 23, 2001, appellant, through counsel, requested review of the written record.

By decision dated March 26, 2000, the hearing representative affirmed the Office's January 22, 2001 decision terminating appellant's benefits.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office has accepted 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.² The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.³

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

² *Wallace B. Page*, 46 ECAB 227 (1994).

³ *Larry Warner*, 43 ECAB 1027 (1992).

the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁴

In this case, Dr. Resnick, the impartial medical examiner, provided a thorough review of appellant's records and diagnostic tests. In addition he provided a detailed physical examination of appellant, noted range of motion results and supported his conclusion with a rationalized medical opinion. Dr. Resnick found that appellant had the following range of motion: cervical flexion 45 degrees; cervical extension 45 degrees; rotations were 60 and 60 with neck pain; lateral flexions were 20 and 20 degrees; and subjective complaints of tenderness on various levels. Thoracic rotations were 45 and 45, lumbar flexion 90, extension 20 and lateral flexions were 25 and 25. "All were carried out smoothly and with normal segmental movement." The lower and upper extremity examinations were negative, with full range of motion of all joints. He noted Dr. Cohen's recent January 16, 1999 report, stating that the test results revealed "rather minor and relatively insignificant findings, primarily of minor radiculopathy" but that these findings were of long-standing and not causally related to the employment injury.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Resnick, the impartial medical specialist selected to resolve the conflict in the medical opinion. The March 9, 1999 report of Dr. Resnick establishes that appellant had no residuals due to his October 18, 1995 work-related injury after January 22, 2001.

The decisions of the Office of Workers' Compensation Programs dated March 26 and January 22, 2001 are affirmed.

Dated, Washington, DC
May 2, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁴ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).