

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALD M. McFADDEN and DEPARTMENT OF THE ARMY,  
TOBYHANNA ARMY DEPOT, Tobyhanna, PA

*Docket No. 02-1970; Submitted on the Record;  
Issued April 7, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective September 14, 2000; and (2) whether appellant has any continuing disability causally related to his accepted employment injury of cerebral concussion.

Appellant, a 48-year-old management analyst, filed a notice of traumatic injury alleging that he injured his head, back and knee when he slipped in the performance of duty on July 6, 1999. The Office initially accepted appellant's claim for right knee contusion, lumbosacral strain and lumbar radiculopathy. The Office authorized compensation benefits from August 30, 1999.

By decision dated September 23, 1999, the Office denied appellant's claim for a head injury as a result of his July 6, 1999 employment injury. Appellant requested a review of the written record and by decision dated March 8, 2000, the hearing representative remanded the case for additional development of the medical evidence. By decision dated May 17, 2000, the Office denied appellant's claim for a head injury finding that he failed to submit the requested medical records.

In a letter dated September 9, 2000, the Office proposed to terminate appellant's compensation benefits on the grounds that he was no longer disabled for work. By decision dated September 12, 2000, the Office finalized the termination on the grounds that the weight of the medical evidence as represented by the impartial report of Dr. Michael. C. Raklewicz, a Board-certified orthopedic surgeon, established that appellant could return to his date-of-injury position. Appellant requested a review of the written record and, by decision dated October 5, 2001, the hearing representative affirmed the Office's September 12, 2000 decision. However, the hearing representative also noted that the Office had not yet undertaken development of appellant's head injury.

On November 29, 2001 the Office referred appellant for a second opinion regarding his head injury. By decision dated July 11, 2002, the Office expanded appellant's claim to include a cerebral concussion as a result of his July 1999 employment injury, but found that appellant had no continuing disability on or after September 14, 2000 as a result of this condition.<sup>1</sup>

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

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.<sup>2</sup> 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.<sup>3</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>4</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>5</sup>

Appellant's attending physician, Dr. Monica L. Cozzone, an osteopath, supported appellant's total disability for work due to his lumbar radiculopathy. The Office referred appellant to Dr. Sanford B. Sternlieb, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his May 30, 2000 report, Dr. Sternlieb noted appellant's history of injury and performed a physical examination finding that appellant performed all movements of his spine extremely slowly, but that he was capable of sitting and arising from a chair and getting on and off the examining table without evidence of restriction. He found no specific area of tenderness in appellant's back nor evidence of paravertebral muscle spasm. Dr. Sternlieb noted that there were positive Waddell signs present with regard to examination of appellant's back. He found that appellant's gait was normal, but that examination for individual manual muscle evaluation in the lower extremities was not satisfactory due to lack of effort. Dr. Sternlieb did not find any atrophy in appellant's calves. He noted that straight leg raising was normal with markedly positive Waddell signs. Dr. Sternlieb found that appellant had no residuals of his accepted employment injury and that his current symptoms were due to preexisting degenerative joint disease of the lumbar spine and spondylolysis of L5. He concluded that appellant's radiculopathy was due to these conditions rather than to his employment injuries. Dr. Sternlieb stated that appellant could perform the duties of his date-of-injury position.

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<sup>1</sup> Following the July 11, 2002 decision, appellant submitted additional new evidence to the Office. As the Office did not review this evidence in reaching a final decision, the Board will not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Id.*

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>5</sup> *Id.*

Section 8123(a) of the Federal Employees' Compensation Act,<sup>6</sup> provides, "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." Due to the disagreement between appellant's attending physician, Dr. Cozzone, who found that appellant was totally disabled due to his accepted condition of lumbar radiculopathy and Dr. Sternlieb, the Office second opinion physician, who found that appellant had no work-related disability, the Office referred appellant for an impartial medical examination with Dr. Raklewicz, a Board-certified orthopedic surgeon.

In his June 12, 2000 report, Dr. Raklewicz, noted appellant's history of injury including a prior back condition, for which appellant was hospitalized. He described the employment injury noting that appellant's head, neck and right knee conditions "gradually cleared but that his low back remains painful." Dr. Raklewicz found no visible muscle atrophy in the left thigh or the left calf, that appellant could flex forward 70 degrees, left bend 30 degrees and that there was no paravertebral spasm. He noted that appellant could heel and toe walk and that his right straight leg raising was essentially negative while appellant complained of pain in the front and back of his left leg on raising, which Dr. Raklewicz felt was inappropriate. He diagnosed degenerative disc disease as demonstrated on magnetic resonance imaging (MRI) scan. He concluded that appellant had preexisting degenerative disc disease at L5-S1 prior to his work injury. Dr. Raklewicz stated that appellant's physical examination and MRI scan did not correspond with total disability and concluded, "I feel that the work injury was clearly exacerbation of a previous injury. At most he suffered a muscular ligamentous sprain, possibly an exacerbation of his degenerative disc disease. I feel that at the most he should have had treatment for six weeks. After six weeks certainly I do not feel that any of his back disorders are related to his work injury." He opined that appellant could return to work in his date-of-injury position.

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.<sup>7</sup> Dr. Raklewicz provided a detailed well-rationalized report based on a proper factual background. He reviewed appellant's diagnostic studies and performed a physical examination noting that appellant had no spasm and no visible muscle atrophy. He noted that appellant had previously sought treatment for a back condition and that the MRI scan demonstrated degenerative disc disease. He concluded based on appellant's history and physical findings that appellant's employment injury had not resulted in any aggravation of his underlying degenerative disc disease and that this condition was responsible for appellant's current symptoms. Dr. Raklewicz further found that appellant was capable of returning to his date-of-injury position which was sedentary. The Board finds that this report is entitled to the special weight accorded an impartial medical examiner.

Following the Office's termination of appellant's compensation benefits, Dr. Cozzone submitted a report dated October 13, 2000. She noted appellant's history of a fall and the resulting medical treatment. She stated that appellant's MRI scan demonstrated a disc protrusion

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<sup>6</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

<sup>7</sup> *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

at L5-S1 onto the left nerve root; anterolithesis of L5 over S1 and a disc bulge at L4-5. She stated that anterolithesis indicates that there is a sliding motion of vertebrae, which demonstrates instability in the area involved. Dr. Cozzone stated that this instability is frequently aggravated by an injury such as a fall causing increasing lower back pain as well as nerve root irritation. She stated, "Combining this with the disc bulge at a level of L4-5 with a subsequent position EMG/NCV [electromyogram/ nerve conduction velocity] on September 16, 1999 demonstrates that the severity of the patient's injury sustained on July 6, 1999 was significant." She also found muscle atrophy involving the left lower extremity as a result of significant nerve root irritation and nerve damage. Dr. Cozzone opined that appellant could not perform his date-of-injury position due the level of concentration required and the medications he was taking.

Although Dr. Cozzone provided an opinion that appellant's accepted employment injury caused a significant injury to his back, she failed to address the contrary findings provided in Dr. Raklewicz's well-rationalized report. Dr. Cozzone did not explain why appellant did not have visible atrophy when examined by Drs. Raklewicz and Sternlieb and did not address any preexisting back condition. As her report is not based on an accurate factual background it is not of sufficient weight to create an additional conflict with that of Dr. Raklewicz. Furthermore, as Dr. Cozzone was on one side of the conflict that Dr. Raklewicz resolved, the additional report from Dr. Cozzone is insufficient to overcome the weight accorded Dr. Raklewicz's report as the impartial medical specialist or to create a new conflict with it.<sup>8</sup>

The weight of the medical opinion establishes that appellant was capable of returning to his date-of-injury position no later than September 14, 2000 the date that the Office terminated his compensation benefits.

The Board further finds that appellant has not met his burden of proof in establishing any continuing disability due to his accepted condition of cerebral contusion on or after September 14, 2000.

To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

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<sup>8</sup> *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

<sup>9</sup> *James Mack*, 43 ECAB 321 (1991).

In this case, the Office accepted that appellant sustained the additional condition of cerebral concussion after terminating his compensation benefits due to his other accepted employment injuries. Although the Office accepted that appellant had an additional condition as a result of his July 6, 1999 employment injury, appellant bears the burden of proof of establishing any continuing disability as a result of this condition.

The Office referred appellant for a second opinion evaluation with Dr. D. Gary Kolva, a Board-certified neurologist. In his February 20, 2002 report, Dr. Kolva reviewed the statement of accepted facts and noted appellant's assertion that he had experienced headaches since his July 6, 1999 employment injury. Appellant described headaches of several hours duration up to entire days at a time and stated that he had headaches 20 out of 30 days each month. Dr. Kolva stated that appellant's physical examination was devoid of focal neurological signs which would support injury to the cranial nerves. He diagnosed chronic post-traumatic headache with minor head trauma and no confirmatory signs.

The Office requested a supplemental report on March 25, 2000 and asked that Dr. Kolva address the causal relationship between appellant's employment injury and his headaches as well as any disability as a result of the headaches. In a report dated May 2, 2002, Dr. Kolva stated that it was possible for appellant to suffer a head injury as a result of his fall and that appellant's diagnosis of a chronic post-traumatic headache with minor head trauma and no confirmatory signs was based on the history and appellant's subjective complaints. In regard to any disability resulting from headaches, Dr. Kolva stated "Since he is having a headache 20 out of 30 days of the month, probably this would impact on his ability to perform his tasks in a given job. Partial disability would be reasonable, but only after he has failed to respond to medications prescribed by a headache specialist." He also noted that appellant's current headache condition could be propagated or exacerbated by chronic analgesic use.

The Office relied on Dr. Kolva's reports to establish appellant's additional condition of cerebral concussion. However, Dr. Kolva did not clearly opine that appellant's current headaches were due to his accepted employment injury and in fact suggested that appellant was experiencing rebound headaches due to analgesic use. As these reports do not establish disability due to the accepted condition, appellant has not met his burden of proof in establishing any continuing disability due to the accepted employment injury.<sup>10</sup>

Following the September 14, 2000 termination of appellant's compensation benefits, Dr. Cozzone has not submitted a rationalized medical report addressing any disability due to appellant's cerebral concussion or headaches. In a note dated March 22, 2002, she diagnosed lumbar radiculopathy and chronic headache syndrome. She did not provide any opinion regarding appellant's disability due to this accepted condition.

As there is no rationalized medical opinion evidence establishing that appellant is unable to work due to his accepted employment injury of cerebral concussion, the Office properly denied further compensation benefits.

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<sup>10</sup> However, the Board notes that as appellant's cerebral contusion has been accepted by the Office, appellant is entitled to further medical treatment for this condition, which could include the treatment by a headache specialist as recommended by Dr. Kolva.

The July 11, 2002 and October 5, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
April 7, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member