

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEITH SHARP and DEPARTMENT OF DEFENSE,
DEFENSE CONTRACT AUDIT AGENCY, La Mirada, CA

*Docket No. 03-213; Submitted on the Record;
Issued April 16, 2003*

DECISION and ORDER

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

The issue is whether appellant had any continuing disability or residuals after May 21, 1999, the date the Office of Workers' Compensation Programs terminated his compensation benefits, causally related to his March 17, 1997 accepted lumbar strain.

This case has previously been before the Board on appeal. By decision dated May 2, 2002, the Board affirmed the Office hearing representative's March 6, 2000 decision affirming the termination of appellant's compensation benefits effective May 21, 1999 finding that the weight of the medical evidence at the time of termination demonstrated that appellant's employment-related residuals from the March 1997 injury had ceased.¹ The Board, however, set aside the Office's July 19, 2000 nonmerit decision denying appellant merit review, finding that he submitted new and relevant medical evidence from Dr. Jerald P. Waldman, a Board-certified orthopedic surgeon, in the form of a March 20, 2000 report. The facts of the case as set forth in that decision are incorporated herein by reference. The case was remanded to the Office for a merit review to include the evidence from Dr. Waldman.

In a merit decision dated June 14, 2002, the Office denied appellant's request for modification of the March 6, 2000 decision terminating his compensation benefits, finding that the new evidence was not sufficient to warrant modification of the previous decision. The Office found that the weight of the medical evidence rested with the independent medical examiner, Dr. Jerry L. Morris, a Board-certified orthopedic surgeon, who found that appellant only experienced a temporary increase of back pain on March 17, 1997 requiring him to seek and receive medical treatment and that the temporary aggravation had resolved by April 1998.

The Board finds that appellant has failed to establish that he has continuing disability causally related to his accepted employment injury.

¹ Appellant also filed a nonoccupational disease claim in 1992, which was accepted for a temporary aggravation of preexisting degenerative disc disease. *Keith Sharp*, Docket No. 00-2459 (issued May 2, 2002).

Under the Federal Employees' Compensation Act,² once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to his employment.⁴ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.⁵ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.⁶

In support of his request for reconsideration after the May 21, 1999 termination, appellant submitted the March 30, 2000 report from Dr. Waldman, who stated:

“[Appellant] returns for a reevaluation. It has been two and one-half months since I last saw him. In the interim, he had an assessment by the workers' compensation board denying further treatment based on the fact that they felt he was no longer suffering from residuals of his injuries of 1992 or 1997.

“Firstly, I do not have access to the report of Dr. Morris which was the basis of this. [Appellant] has long-standing discogenic back disease beginning in May 1992, exacerbated in March of 1997 and leaving him with chronic back pain that is still quite significant. [His] back problem is the result of the original injury in 1992, exacerbation of 1997 and the progressive degeneration process as a result of those injuries. It is felt to be the result of the nature of his job and the prolonged sitting that is necessary in the course of [appellant's] employment as an accountant. [He] should be covered for current treatment on the basis of this. If there is some dispute regarding this, I would like to see the report from Dr. Morris, whose report is being used as the basis for no further treatment.”

The Board notes that the 1992 injury that Dr. Waldman referred to in his report is the occupational disease claim filed by appellant, which was accepted by the Office for a temporary aggravation of preexisting degenerative disc disease. The issue on this appeal, however, is only the March 17, 1997 traumatic injury, which was accepted for lumbar strain. Appellant has the burden of providing rationalized medical opinion evidence showing that he continues to suffer residuals of the 1997 accepted lumbar strain.

The Board finds that Dr. Waldman's opinion is insufficient to establish that appellant has any continuing disability related to the 1997 lumbar strain. In his report he stated that appellant's current condition of chronic back pain was both the result of his longstanding

² 5 U.S.C. §§ 8101-8193.

³ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

⁴ *Id.*

⁵ *Virginia Davis-Banks*, 44 ECAB 389 (1993).

⁶ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

degenerative back disease as well as the exacerbation in 1997. He also opined that the progression of the degeneration process was due to both injuries in 1992 and 1997. Dr. Waldman, however, failed to differentiate between the two accepted conditions, one an occupational disease claim in 1992 and the other a traumatic injury in 1997, and failed to provide a rationalized medical opinion finding that appellant's current condition was specifically due to the 1997 lumbar strain.

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.⁷

In his report, Dr. Waldman did not explain the specific relationship between appellant's current condition and the 1997 accepted lumbar strain. He stated, in a general fashion, that "[appellant's] back problem" was the result of "both the original injury in 1992 and of the exacerbation in 1997," but he did not differentiate between the two conditions or provide medical rationale to support the notion of continuing residuals of the lumbar strain. Dr. Waldman's report does not contain an affirmative medical opinion that appellant continues to be disabled as a result of the March 1997 lumbar strain. The Board also notes that Dr. Waldman's opinion was not supported by objective findings indicating that any residuals of the lumbar strain were still present. In addition, he acknowledged that he did not have access to Dr. Morris' independent medical examination reports upon which the termination of appellant's compensation benefits was based. This further reduces the value of Dr. Waldman's opinion of causal relationship, since it was not based on all the medical evidence of record and he did not have the opportunity to contradict Dr. Morris' findings.

The Board finds that the weight of the medical evidence continues to rest with the independent medical examiner, Dr. Morris. In his March 10 and May 3, 1999 reports, Dr. Morris opined that appellant's current low back condition was not due to the March 1997 accepted lumbar strain. He opined that the injury in 1997 only caused a temporary increase in appellant's symptoms, which had resolved by April 1998. Dr. Morris noted that there were no objective findings on physical examination that would support or deny appellant's complaints of pain as related to the March 1997 injury. He found that appellant's condition was the same as it was just prior to the March 17, 1997 injury. Dr. Morris also noted that appellant's current condition was related to the degenerative back condition from 1992. As Dr. Morris' opinion was based on a complete and accurate factual and medical history and a review of all the medical evidence of record, the Board finds that his opinion, finding that the effects of the March 17, 1997 injury, had ceased continues to bear the weight of the medical evidence.

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

As appellant failed to submit rationalized medical evidence establishing that his current condition is causally related to the March 17, 1997 accepted lumbar strain, he did not meet his burden of proof in establishing further entitlement to compensation.

The June 14, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 16, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member