U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL F. O'DONNELL, JR. and DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

Docket No. 02-1468; Submitted on the Record;
Issued February 28, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective March 26, 2000 finding that he had no further employment-related disability; (2) whether the Office properly terminated appellant's authorization for medical treatment; and (3) whether appellant has established that he had any continuing disability after March 26, 2000 due to his accepted employment injury.

This case is before the Board for the third time. In the first appeal, the Board affirmed a September 23, 1987 Office decision suspending appellant's compensation for failure to attend a scheduled medical appointment.[1] On appeal for the second time, the Board affirmed the Office's June 25, 1992 and October 8, 1991 decisions denying appellant's request for a lump-sum payment.[2] The findings of fact and the conclusions of law from the prior decisions are hereby incorporated by reference.

In a letter dated March 15, 1998, the employing establishment noted that appellant had received compensation due to his accepted conditions of a cervical strain and pain disorder for more than 28 years and that the last submitted medical report from Dr. Carl Sipowicz, a Board-certified orthopedic surgeon and appellant's attending physician, dated August 19, 1996, concerned an ankle injury.

By letter dated May 27, 1998, the Office referred appellant, together with the case record and a statement of accepted facts to Dr. Thomas A. Ward, a Board-certified orthopedic surgeon, and Dr. Raymond P. Seckinger, a Board-certified psychiatrist, for second opinion evaluations.

[1] *Daniel F. O'Donnell*, Docket No. 88-638 (issued August 24, 1988). On April 18, 1989 the Office vacated its September 23, 1987 decision suspending appellant's compensation.

[2] *Daniel F. O'Donnell*, Docket No. 93-206 (issued March 11, 1994).

In a report dated June 15, 1998, Dr. Ward discussed appellant's medical history and listed normal findings on examination. He stated:

> "At this time, I can find nothing orthopedically wrong with [appellant]. In 1970, while working for the [employing establishment] he sustained a sprain/strain of the cervical spine. At this office visit his examination is entirely within normal limits. He has no objective findings whatsoever. There is no reason why he could not be actively employed in any type of occupation with no restrictions. No further treatment need be entertained at this time. [Appellant] has made a complete and total recovery from the sprain/strain and back injury sustained in 1970."

In an accompanying work restriction evaluation, Dr. Ward opined that appellant could work eight hours per day with no restrictions.

In a report dated August 3, 1998, Dr. Seckinger discussed appellant's history of injury, mental status, and social history, including his incarceration for five years in the 1980's for selling PCP [phencyclidine]. He diagnosed, based on his examination of appellant, a review of the records, and the results of psychological testing, a chronic pain disorder with psychological factors and paranoid and schizoid personality disorders. He stated:

> "Based upon the psychiatric evaluation of [appellant] on August 3, 1998, his current impairment is neither residual to nor caused by the work[-]related injury sustained in 1970.
>
> "The preexisting psychiatric disability was in process at the time of the injury. The injury was not and is not the cause of his inability to function. In my professional opinion, the injury was not the cause, nor precipitated, nor aggravated nor accelerated the condition that had been present for years."

Dr. Seckinger opined that appellant was currently disabled from employment due to "his misinterpretation of reality."

In an office visit note dated September 14, 1998, Dr. Sipowicz found appellant permanently disabled from employment due to his 1970 employment injury.

By letter dated January 7, 1999, the Office referred appellant to Dr. Michael C. Raklewicz, a Board-certified orthopedic surgeon, to resolve a conflict in medical opinion between Dr. Sipowicz and Dr. Ward.

In a report dated November 15, 1999, Dr. Raklewicz discussed appellant's history of injury and listed findings on examination. Dr. Raklewicz noted that appellant's lumbar and cervical x-rays were essentially normal. He related:

> "In short, [appellant] states that he has been on disability for a neck and back injury since 1970. I find this claim to be 'ridiculous.' Certainly if he had suffered a significant injury he most certainly would have had some form of residual show-up on x-rays 29 years later on either the cervical or lumbar spine x-rays. I

> find that his exam[ination] is normal, that his motions are exaggerated and his complaints of pain are exaggerated. I find this to be a completely spurious claim of injury. Certainly, if [appellant] did suffer lumbar strain or cervical strain, he would have been recovered within six weeks and certainly I do not feel that [appellant] should be on disability for his neck or his lumbar spine, especially because [he] has normal x-rays 29 years later."

On December 17, 1999 the Office informed appellant that it proposed to terminate his compensation on the grounds that he had no further disability due to his accepted employment injuries.

In response to the Office's proposed termination of benefits, appellant submitted a medical report dated April 24, 1991.

By decision dated March 2, 2000, the Office terminated appellant's compensation effective March 26, 2000.

In a letter received by the Office on December 6, 2000, appellant requested reconsideration of his claim. In support of his request for reconsideration, appellant submitted office visit notes dated September 14, 1998 to March 20, 2000 from Dr. Sipowicz. In the only newly submitted treatment note, dated March 20, 2000, Dr. Sipowicz diagnosed "[l]umbosacral strain syndrome with bilateral sciatica, pain stopping above the knees. This is an aggravation of his previously existing condition." Dr. Sipowicz opined that appellant was totally disabled.

In a decision dated January 25, 2001, the Office denied modification of its prior merit decision.

Appellant again requested reconsideration on August 1, 2001. He submitted a report dated May 21, 2001 from Dr. Sipowicz, who indicated that he disagreed with the Office's denial of appellant's claim for benefits. Appellant further submitted an office visit note from Dr. Sipowicz dated July 9, 2001, in which he listed findings on examination and concluded: "It is my professional opinion that [appellant] is permanently disabled from this on[-]the[-]job injury which occurred in 1970. In other words, he has been out of work now for 31 years based upon these symptoms."

By decision dated November 1, 2001, the Office denied modification of its January 25, 2001 decision.

On January 5, 2001 appellant requested reconsideration of his claim. In support of his request, appellant submitted office visit notes from Dr. Sipowicz dated July to September 2001. In his August 6, 2001 note, Dr. Sipowicz opined that appellant remained disabled due to his January 19, 1970 employment injury. Appellant further submitted a medical report dated December 10, 2001 from Dr. Clancy D. McKenzie, a Board-certified psychiatrist. Dr. McKenzie disagreed with Dr. Seckinger's use of the MMPI (Minnesota Multiphasic Personality Inventory) on the grounds that its results could be questionable given that appellant had a physical injury.

Dr. McKenzie further found that appellant did not have a psychiatric problem preexisting his employment injury because he was employed prior to the injury. Dr. McKenzie stated:

> "It is my opinion to within a reasonable degree of medical certainty that [appellant's] condition does indeed relate to the work injury of 1970. I base this on the fact that he has physical evidence of the injury, including dermatomal hair loss, especially in the L5-S1 dermatomal distribution -- which is objective evidence beyond the symptoms that he exhibits with the back injury.
>
> "It is understandable that even an average person with no trace of emotional disorder prior to such an injury, would become disturbed by having his pay taken away inappropriately for 1[½] years, by having chronic pain for 31 years, by not being able to provide for himself and his family, by not being able to move ahead in life, by having no sex life since being a fairly young man, etc [etceteras]."

Dr. McKenzie concluded that appellant was depressed.

In a decision dated April 23, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant modification of its prior merit decision.

The Board finds that the Office properly terminated appellant's compensation effective March 26, 2000 on the grounds that the weight of the medical evidence established that he had no further employment-related disability.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.[3] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

Where there exists a conflict in medical opinion 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, is entitled to special weight.[5] The Board finds that Dr. Raklewicz's opinion, which is based on a proper factual and medical history, is well rationalized and supports that appellant's cervical strain ceased by March 26, 2000, the date the Office terminated his compensation. Dr. Raklewicz accurately summarized the relevant medical evidence, provided findings on examination, and reached conclusions regarding appellant's condition which comported with his findings.[6] Dr. Raklewicz provided medical rationale for his opinion that appellant had no further employment-related

[3] *David W. Green*, 43 ECAB 883 (1992).

[4] *See Del K. Rykert*, 40 ECAB 284 (1988).

[5] *Leanne E. Maynard*, 43 ECAB 482 (1992).

[6] *See Melvina Jackson*, 38 ECAB 443 (1987).

disability by explaining that x-rays would have revealed any significant injury in the past and by noting that appellant's range of motion and pain complaints were "exaggerated." Accordingly, the Board finds that the Office discharged its burden of proof to justify termination of appellant's compensation on the grounds that he had no further orthopedic condition due to his accepted employment injury after March 26, 2000.

The Board further finds that the Office met its burden to show that appellant had no further disability due to his accepted pain disorder after March 26, 2000 based on the report of Dr. Seckinger, a Board-certified psychiatrist who provided a second opinion evaluation. In a report dated August 3, 1998, Dr. Seckinger found that appellant had no current psychiatric disability due to his employment injury. The Board has carefully reviewed the opinion of Dr. Seckinger and finds that it has reliability, probative value and convincing quality with respect to the conclusion reached regarding whether appellant has any residual condition or disability due to his accepted pain disorder. Dr. Seckinger provided a thorough review of the factual and medical background of appellant's claim, and accurately summarized the relevant medical evidence. Moreover, Dr. Seckinger provided a proper analysis of the factual and medical history and findings on examination, including the results of psychological testing, and reached conclusions regarding appellant's condition which comported with this analysis.[7]

The remaining evidence submitted prior to the Office's termination is insufficient to establish that appellant remained disabled due to his employment injury. Appellant submitted a medical report dated April 24, 1991; however, this evidence is not relevant to the issue of whether he had any employment-related disability on or after March 26, 2000.

The Board further finds that the Office properly terminated appellant's authorization for medical treatment.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[8] 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.[9] The Office met this burden through the reports of Drs. Raklewicz and Seckinger, who found that appellant had no residual condition caused by his employment injury.

The Board finds that appellant has failed to establish that he had any continuing disability after March 26, 2000 due to his accepted employment injury.

Given that the Board has found that the Office properly relied upon the opinion of the impartial medical specialist, Dr. Raklewicz, and the Office referral physician, Dr. Seckinger, in terminating compensation, the burden of proof shifts to appellant to establish that he remains entitled to compensation after that date.[10] To establish causal relationship between the claimed

[7] *See id.*

[8] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[9] *Id*.

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

disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.[11]

In support of his claim for continuing compensation, appellant submitted office visit notes dated September 1998 through July 2001 from Dr. Sipowicz, who opined that appellant remained totally disabled due to his employment injury. However, as Dr. Sipowicz was on one side of the conflict resolved by the impartial medical specialist, his additional reports are insufficient to overcome the weight accorded to Dr. Raklewicz's report as the impartial medical specialist or to create a new conflict.[12] Additionally, Dr. Sipowicz failed to explain how, with reference to the specific facts of this case, appellant remained disabled due to his accepted condition of cervical strain approximately 30 years following the injury.

Appellant further submitted a report dated December 10, 2001 from Dr. McKenzie, a Board-certified psychiatrist. Dr. McKenzie diagnosed depression and found that appellant's condition was due to his 1970 employment injury. However, Dr. McKenzie based his opinion on his finding that appellant had continuing "physical evidence of injury, including dermatomal hair loss, especially in the L5-S1 dermatomal distribution…." The weight of the evidence, however, as represented by the opinion of Dr. Raklewicz, the impartial medical specialist and Board-certified orthopedic surgeon, establishes that appellant had no further residual condition or disability due to his accepted orthopedic condition, which was a cervical strain. Dr. McKenzie also did not demonstrate knowledge of the specifics of appellant's 1970 employment injury. To be of probative value, medical evidence must be in the form of a reasoned opinion by a qualified physician and based upon a complete and accurate factual and medical history.[13]

Appellant, consequently, has not met his burden of proof to establish any continuing employment-related disability.

[11] *John M. Tornello*, 35 ECAB 234 (1983).

[12] *Dorothy Sidwell*, 41 ECAB 857 (1990).

[13] *Robert J. Krstyen*, 44 ECAB 227 (1992).

The decisions of the Office of Workers' Compensation Programs dated April 23, 2002 and November 1, 2001 are affirmed.

Dated, Washington, DC
February 28, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member