

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BUD M. BEARD and DEPARTMENT OF THE INTERIOR, FISH &
WILDLIFE SERVICE, WESTERN OREGON REFUGES, Corvallis, OR

*Docket No. 02-1595; Submitted on the Record;
Issued February 3, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate medical benefits for appellant's employment-related back condition.

On March 4, 1986 appellant,¹ then a 46-year-old maintenance worker, sustained an employment-related low back strain. He stopped work on March 7, 1986 and returned on a trial, part-time basis in August 1987. Appellant again stopped work on October 26, 1987 and has not returned. The Office accepted that appellant sustained employment-related depression.

By letter dated December 31, 2001, the Office proposed to terminate appellant's medical benefits for his back condition on the grounds that there was no objective evidence that his current back condition was causally related to the March 4, 1986 employment injury. By letter dated January 12, 2002, appellant disagreed with the proposed termination and submitted additional medical evidence. In a decision dated March 11, 2002, the Office terminated medical benefits for appellant's back condition. Wage-loss compensation and medical benefits for appellant's depression continued.

The Board finds that the Office did not meet its burden of proof to terminate medical benefits for appellant's back condition.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her 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 To terminate authorization for medical treatment, the Office must establish that the employee no

¹ Appellant was formerly known as Richard M. Beard. By order of the Circuit Court of Benton County, Oregon, on November 19, 1997 his name was legally changed to Bud Milton Beard.

² See Patricia A. Keller, 45 ECAB 278 (1993).

longer has residuals of an employment-related condition which require further medical treatment.³

The relevant medical evidence includes a report dated April 17, 2001 in which Dr. James Dinneen, an orthopedic surgeon who provided a second opinion evaluation for the Office, noted appellant's history of injury and complaints, his review of the medical record and examination findings. Dr. Dinneen's impression was low back pain superimposed on preexisting degenerative and postoperative changes. He concluded that appellant's "principal problem is degenerative/post surgical changes and not medically probably due to the March 4, 1986 incident." In an attached work capacity evaluation, Dr. Dinneen provided restrictions to appellant's physical activity and advised that he could work in a sedentary capacity with changes of position. In a supplementary report dated June 4, 2001, he advised that "within medical probability [appellant] did not have a medical condition related to the March 4, 1986 incident."

Appellant submitted a number of reports from Dr. Richard A. Lafrance, his treating Board-certified neurologist, and Dr. Laura S. Rung, his treating Board-certified physiatrist. By report dated February 18, 2002, Dr. Lafrance advised that appellant's condition was essentially unchanged since 1986. On examination, he noted that appellant appeared to be in pain and had difficulty walking with sensory paresthesias present on the right and straight leg raising test positive on the right. Dr. Lafrance diagnosed chronic back pain, status post surgery times two with persistent dysfunction. He concluded:

"This is all certainly due to his industrial accident in the 1986 range. There is waxing and waning which reflects the activities that he might do during the course of any individual day, but these have not served to change the underlying disease process. This disease is not visible on the MRI [magnetic resonance imaging], CT [computerized tomography] or other studies that have been done in the past. It undoubtedly reflects intraneural damage which has been unremitting and unchanged, despite two surgeries and multiple medication attempts. It would not be expected to resolve in the future."

In a report dated January 24, 2002, Dr. Rung advised that she had reviewed Dr. Dinneen's reports and noted appellant's history of injury and surgeries with degenerative disc disease involving L1-5, which would preclude appellant's returning to heavy manual labor. He further diagnosed chronic pain syndrome caused by the degenerative changes with evidence of sclerosis of both sacroiliac joints. Dr. Rung concluded that MRI findings of degenerative disease in 1987 continued to progress over time and did not "in any way negate the authenticity of his original work-related injury, chronic pain and disability."

In a report dated March 1, 2002, an Office medical adviser advised that a review of the medical record supported the opinion of Dr. Dinneen that there were no objective findings to support that appellant continued have a back condition causally related to the employment injury.

³ *Arthur Sims*, 46 ECAB 880 (1995).

He further opined that appellant's degenerative disease was the result of aging and not the work injury. The Office medical adviser concluded:

“So no matter whether initial mechanical or subsequent [degenerative disc disease] causes of low lumbar back pain causes the current chronic pain disorder, the latter is accepted as work related, *i.e.*, the chronic pain disorder. What is not accepted is that mechanical low lumbar muscle or ligamentous damage related to [date of injury] is ongoing.”

When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a) of the Federal Employees' Compensation Act,⁴ to resolve the conflict in the medical opinion.⁵ In this case, although Dr. Dinneen, the Office referral physician, offered an opinion that appellant's back condition was no longer employment related, Drs. Lafrance and Rung, appellant's treating physicians, advised that appellant continued to have residuals of an employment-related back condition. The Office terminated appellant's medical benefits for his back condition on the grounds that the employment-related back condition had ceased. The Board finds that, in light of the question of whether appellant's chronic pain disorder is an accepted condition, the reports of Drs. Dinneen and Lafrance, as supported by the opinion of Dr. Rung, are of approximately equal value, and are in conflict on the issue of whether appellant continues to have a back condition causally related to the March 4, 1986 employment injury. Consequently, the Office did not meet its burden of proof in terminating appellant's medical benefits for his back condition.⁶

The decision of the Office of Workers' Compensation Programs dated March 11, 2002 is hereby reversed.

Dated, Washington, DC
February 3, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ 5 U.S.C. § 8123(a).

⁵ *Charles E. Burke*, 47 ECAB 185 (1995).

⁶ *See Gail D. Painton*, 41 ECAB 492 (1990). To resolve this conflict, the Office should have referred the case record, including all test results and a statement of accepted facts to a Board-certified specialist for resolution of the conflict.