

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT C. O'HARVEY and DEPARTMENT OF THE TREASURY,
Seattle, WA

*Docket No. 02-1817; Submitted on the Record;
Issued February 26, 2003*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that he no longer had any disability causally related to his December 29, 1988 employment injury; and (2) whether appellant established that he had continuing disability after December 15, 1994, causally related to his December 29, 1988 employment injury.

This case was previously on appeal before the Board. In its November 26, 2001 decision, the Board set aside the Office's July 20, 1999 decision and remanded the case to the Office for further consideration of the merits of appellant's claim. The Board found that the June 21, 1995 report of Dr. Jonathan L. Ritson, a Board-certified physiatrist, constituted relevant and pertinent new evidence not previously considered by the Office, thus, warranting a review of the merits of appellant's claim to determine whether he had any continuing disability causally related to his December 29, 1988 employment injury. The relevant facts are set forth in the November 26, 2001 decision.¹

On remand, the Office reviewed the case on the merits and in a decision dated March 4, 2002 denied modification of its decision dated May 22, 1998, denying modification of the hearing representative's decision dated March 17, 1995. The March 17, 1995 decision affirmed the Office's December 14, 1994 decision terminating appellant's compensation on the grounds that he no longer had any disability causally related to his December 29, 1988 employment injury.

The Board finds that the Office properly terminated appellant's compensation on the grounds that he no longer had any disability causally related to his December 29, 1988 employment injury.

¹ Docket No. 00-617 (issued November 26, 2001).

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² 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.³

A conflict arose in this case on whether appellant had any disability due to his December 29, 1988 employment-related cervical, thoracic and lumbar subluxations and somatoform pain disorder. Section 8123(a) of the Federal Employees' Compensation Act states in pertinent part: "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."⁴

Dr. Warren J. Adams, the Board-certified orthopedic surgeon, selected to resolve a conflict as to whether appellant had any continuing employment-related disability, opined that appellant no longer had any disability due to his December 29, 1988 employment injury. His opinion was based on an accurate factual and medical background and sufficiently rationalized to be afforded special weight. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's presently diagnosed condition and the implicated employment injury. Such an 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 appellant.⁵

In his September 26, 1990 report, Dr. Adams stated that there were no periods of total disability for work from an objective standpoint and that appellant was capable of performing any job. In his September 11, 1992 report, Dr. Adams addressed the proposed neck surgery for appellant's cervical condition and stated that he did not require surgery at the C5-6 level, specifically stating that there were no findings of myelopathy, no objective findings of the December 29, 1988 employment injury to support appellant's subjective pain complaints. Dr. Adams' reports constitute the weight of the medical evidence and are sufficient to meet the Office's burden of proof to terminate appellant's entitlement to compensation. The Board finds that the Office properly relied on Dr. Adams' reports when it terminated appellant's compensation effective December 15, 1994.

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ 5 U.S.C. § 8123(a); see *Talmadge Miller*, 47 ECAB 673, 680 (1996); *Gertrude T. Zakrajsek (Frank S. Zakrajsek)*, 47 ECAB 770, 773 (1996); *Shirley L. Steib*, 46 ECAB 309 (1994).

⁵ *Supra* note 3.

The Board also finds that appellant has not established that he had any continuing disability causally related to his December 29, 1988 employment injury after December 15, 1994.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability that continued after termination of compensation benefits.⁶

In support of his continuing employment-related disability, appellant submitted the June 21, 1995 report of Dr. Ritson, a Board-certified psychiatrist. Much of his report has been redacted.⁷ Dr. Ritson opined that appellant's somatoform pain disorder was related to his December 29, 1998 employment injury with components of slight paranoia, narcissistic behaviors, family troubles and highly somatically focused and vocational disruption. He concluded that given the severity of appellant's somatoform pain disorder he was clearly unable to carry out the tasks of his previous employment. Dr. Ritson did not describe appellant's December 29, 1998 employment injury in any detail or explain how such an injury could continue to cause disability after the date of injury. His report is insufficient to overcome the special weight accorded the impartial medical examiner. Appellant has not met his burden in this case.

⁶ *Talmadge Miller, supra* note 4; *see also George Servetas*, 43 ECAB 424 (1992).

⁷ In a January 23, 2002 letter, the Office advised appellant that his claim had been remanded pursuant to the Board's November 26, 2001 decision finding that Dr. Ritson's June 21, 1995 report constituted new and relevant evidence not previously considered. The Office further noted that Dr. Ritson's report had been sanitized and permitted appellant to submit a copy of the full report for review within 15 days. The Office advised appellant that at that time a review of Dr. Ritson's report, whether sanitized or complete, would be reviewed. On appeal appellant contends that contrary to the Office's finding in its March 4, 2002 decision that he did not submit a complete copy of Dr. Ritson's report, he submitted a copy of the report, which was received by the Office on February 6, 2002. Appellant indicated that a copy of the report, as well as, confirmation of the mail delivery of the report accompanied his appeal to the Board in the form of attachments. However, the record does not contain these documents.

The March 4, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 26, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member