

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT C. YOUNGS and DEPARTMENT OF THE ARMY,
DUGWAY PROVING GROUND, Dugway, UT

*Docket No. 02-2058; Submitted on the Record;
Issued March 13, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of total disability on or after July 26, 1995.

This case has been before the Board previously.¹ The facts and the findings of that decision are hereby incorporated.

In the previous decision, the Board remanded the case for further development after finding the opinion of Dr. Glen Bair, a Board-certified orthopedic surgeon, serving as an independent medical examiner lacked sufficient medical reasoning on the issue of appellant's disability for work. The Board noted the independent medical examiner did not support his opinion with clinical findings from the period in question to demonstrate that appellant was capable of performing his job, nor did the independent medical examiner address the nonwork status imposed by Dr. Horne on July 26, 1995 after conservative modalities and injections proved ineffective.

In a May 9, 2002 letter, the Office of Workers' Compensation Programs requested further clarification from Dr. Bair. Specifically, it requested he discuss thoroughly, and provide medical rationale based on clinical findings, his reasons for concluding appellant was not disabled for work on or after July 26, 1995 as a result of the April 13, 1995 accepted injury.

In a May 14, 2002 letter, Dr. Bair wrote:

"I believe my position is clearly stated in these two reports, however, just to be clear, I do not believe that [appellant] was ever fully disabled from what I consider a light or sedentary job at any time during the treatment for his clinically proven disc rupture. [Appellant] is clearly not disabled from the type of work of a

¹ Docket No. 00-2701 (issued April 15, 2002).

job at the present time. This is based on the clinical course of disc ruptures and the fact that people who [have] sciatic pain can do light work, and he clearly had resolution of his sciatic pain by the time I saw him.”

In a June 25, 2002 decision, the Office denied appellant’s recurrence claim finding the weight of the medical evidence rested with the reports of Dr. Bair, as the referee examiner.

The Board finds that this case is not in posture for decision.

In a situation where the Office secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.²

The Office asked Dr. Bair to provide clinical findings to support his medical opinion that appellant was not disabled on or after July 26, 1995. Dr. Bair did not do so. In his May 14, 2002 report, Dr. Bair wrote generally of the course of treatment and recovery of individuals with sciatic pain. He did not specifically address and support with clinical findings in the record of appellant’s medical history. The opinion of Dr. Bair is therefore vague, unrationalized and insufficient to accord special weight to resolve the conflict in medical opinions between Dr. Young, appellant’s treating physician, and Dr. Stojic, the second opinion physician.

The conflict in medical opinion must be resolved by the Office selecting a new impartial medical specialist,³ composing a new statement of accepted facts and specific questions to be answered and referring appellant together with the case record for a complete evaluation. The new impartial specialist should be requested to submit a rationalized medical report addressing the issue of whether appellant sustained a recurrence of total disability on or after July 26, 1995.

² *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988).

³ *See Harold Travis*, 30 ECAB 1071, 1078-79 (1979).

The June 28, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office for further development consistent with this decision.

Dated, Washington, DC
March 13, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member