

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOUGLAS McGHEE, SR. and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

*Docket No. 02-2219; Submitted on the Record;
Issued October 14, 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 appellant's compensation benefits effective September 8, 2002.

On July 6, 2000 appellant, then a 50-year-old industrial equipment mechanic, filed a claim for traumatic injury alleging that on May 31, 2000 he sustained a back injury while lying on a cold floor repairing a motor in the performance of duty. Appellant stopped work on May 31, 2000 and returned to work on June 1, 2000. Appellant again stopped work on August 26, 2000 and did not return. The Office accepted appellant's claim for lumbar strain. Appellant has a prior accepted condition of right knee strain, which occurred on April 3, 1996. In connection with his right knee injury, the Office authorized arthroscopic surgery and total disability for the period April 4 through September 20, 1996, after which he returned to full-duty work.

In support of his claim, appellant submitted periodic reports from Dr. Charles M. Bosley, an attending orthopedic surgeon, who maintained that appellant was totally disabled due to a herniated disc and internal derangement of the right knee. In a report dated September 18, 2001, Dr. Bosley stated that he felt appellant required an electric wheelchair due to the fact that his knees periodically gave way, causing him to fall and injure himself. He stated that appellant could not use a manual wheelchair due to a shoulder injury he sustained when he last fell. In a report dated December 4, 2001, Dr. Bosley stated that he felt appellant needed a total knee replacement.

The Office referred appellant to Dr. Lawrence Meltzer, a Board-certified orthopedic surgeon, for a second opinion evaluation. In December 11, 2001 report, Dr. Meltzer diagnosed minimal degenerative arthritis with facet arthropathy of the lumbar spine, status post rotator cuff repair and minimal chondromalacia of the right patella. Dr. Meltzer stated that a magnetic resonance imaging (MRI) scan did not reveal any evidence of a herniated lumbar disc, that appellant had no hip injuries at the time of his evaluation, but that it was possible that appellant had injured his left shoulder as a consequence of his knees giving way. Dr. Meltzer further noted

that appellant's subjective complaints were far out of proportion to his diagnosed conditions, that appellant did not require a wheelchair or knee surgery, or any medical treatment for his knees, shoulder or back. He concluded that, with knee braces and a cane, appellant could return to limited duty, including standing for up to six hours.

Upon receipt of Dr. Meltzer's report, the Office found that a conflict in medical opinion existed between Dr. Bosley and Dr. Meltzer, regarding the nature and extent of appellant's employment-related injuries and any associated disability. On April 5, 2002 the Office submitted a statement of accepted facts, the medical records and a list of questions to be resolved to Dr. J. Yogaratnam, a Board-certified orthopedic surgeon selected as the impartial medical specialist. Based on Dr. Yogaratnam's June 17, 2002 report, in which the physician stated that the employment-related component of appellant's accepted conditions had long since resolved and that his current symptoms were due to nonemployment related degenerative changes of the spine and knee, on July 5, 2002 the Office notified appellant that it proposed to terminate his compensation benefits. Following a review of appellant's narrative response, in a decision dated August 16, 2002, the Office terminated appellant's compensation benefits effective September 8, 2002.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 8, 2002.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either, that the disability has ceased, or that it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. 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.³

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.⁴ The opinion of the impartial specialist properly chosen to resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.⁵

In this case, the Office properly determined that a conflict of medical opinion existed over whether appellant continued to suffer from disabling residuals of his accepted lumbar strain

¹ *Betty Regan*, 49 ECAB 496, 501 (1998).

² *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

³ *Martin T. Schwartz*, 48 ECAB 521, 522 (1997).

⁴ *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

⁵ *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

or right knee strain. Dr. Bosley, an orthopedic surgeon and appellant's treating physician, stated that appellant's accepted conditions were totally disabling, and in addition, had worsened to the point where appellant had a herniated disc and required an electric wheelchair and right knee replacement surgery. Dr. Meltzer, a Board-certified orthopedic surgeon, stated in a December 11, 2001 report that appellant did not have any evidence of a herniated disc, but rather had minimal arthritis in his lumbar spine. Dr. Meltzer also stated that appellant did not require a wheelchair or knee surgery and that he could return to light duty without further medical treatment.

Dr. Yogaratnam, a Board-certified orthopedic surgeon, resolved the conflict over whether appellant had residuals of his accepted work injuries that disabled him or required additional medical treatment. In his June 17, 2002 report, Dr. Yogaratnam reviewed the statement of accepted facts, including a description of appellant's prior injuries, appellant's work history, the opinions of other physicians, diagnostic testing results and the records of appellant's treatment. Dr. Yogaratnam diagnosed mechanical back pain secondary to degenerative disc disease, bilateral knee pain and degenerative arthritis of the right knee. Responding to specific questions from the Office, Dr. Yogaratnam elaborated on the diagnoses, stating:

"The only diagnosis established is that the patient probably has degenerative disc disease of the lumbar spine associated with probably a mechanical type of back pain of a mild degree, and this is based on the physical examination and the MRI report ... which indicates that the patient has facet arthropathy at the L4-L5 level and no disc protrusions. With regard to the knee the x-rays taken by me today reveal that the joint spaces are well preserved. There were not the characteristic findings that one would note in degenerative arthritis, but according to the MRI report and the arthroscopic report there was pathology consistent with degenerative disease. The menisci were intact. There was no evidence to suggest any traumatic factor that could have caused any changes that were different than that associated with degenerative disease."

With respect to the cause of appellant's diagnosed conditions, Dr. Yogaratnam stated:

"I would have difficulty in stating that the conditions described by the patient were medically connected to the factors of employment by direct cause but may be likely due to aggravation of a preexisting mechanical type of back pain which was asymptomatic and became symptomatic as a result of the incident described by the patient with regard to his knee and his back. The injury could also be described as probably causing a precipitation of symptoms described by the patient but not due to any acceleration."

Dr. Yogaratnam further stated that, in his opinion, the employment-related aggravation was temporary, lasting at the maximum two to three months, and explained that "the mechanics of the injury do not suggest ... a degree of severity that could have caused anything more than an aggravation." He emphasized that he did not "believe the injuries caused any permanent damage to [appellant's] back or to his knees given the MRI findings of the lumbar spine and the knee, including the arthroscopic findings." Regarding the necessity for additional medical treatment, Dr. Yogaratnam stated that he had no recommendation for medical treatment besides a home

exercise program to strengthen appellant's back and knees, in order to increase his mobility. Dr. Yogaratnam emphasized that he was "quite convinced" that appellant did not need a knee replacement now, or in the near future. With respect to appellant's ability to return to work, Dr. Yogaratnam stated:

"The patient's physical limitations at the present time, are mainly, in my opinion, subjective, as I can find no reason for this individual having restricted motion in his knees due to industrial causation, except that he has possibly become accustomed to wheelchair existence, believing that he has got a disability in his knee, or he did not bend his knee to the fullest extent in order to convey he has restricted motion.

"I can see no physical limitations that should be in his knee, of industrial causation but the patient will probably have to be actively rehabilitated to get him psychologically ready to accept that there is minimal, if any, disability in his knee due to a degenerative process and that he is not a candidate for total knee replacement and there is no evidence of any atrophy of the muscles of his lower extremities, no swelling of his knee joints as indicated by measurements to show an active degenerative process. There was also no increased warmth on the surface of the knee to show any active process going on. He may have temporary physical limitation in his knees due to adopting a wheelchair existence. This should be overcome by him getting active as soon as possible."

In an accompanying work capacity evaluation form, OWCP-5, Dr. Yogaratnam indicated that, after about one month, appellant would be able to resume full unrestricted duty, eight hours a day. He again emphasized that this restriction was only temporary and due to appellant's self-imposed wheelchair use.

Dr. Yogaratnam reviewed the case record and various reports on appellant's medical treatment since his injury. He examined appellant thoroughly, discussed diagnostic testing, explained his clinical findings and provided medical rationale for his conclusion that the employment-related aggravation of appellant's underlying degenerative lumbar and right knee conditions had resolved and that appellant needed no further medical treatment beyond a home exercise program. Dr. Yogaratnam provided an opinion that was sufficiently well rationalized to support his conclusion that appellant had no residuals of his work-related conditions. The Board finds that Dr. Yogaratnam's report represents the weight of the medical opinion evidence and establishes that appellant's accepted work injuries have resolved and do not require additional medical treatment.⁶

⁶ See *Jimmie H. Duckett*, 52 ECAB 332 (2001) (opinion that appellant's back condition was due to the natural progression of his spondylitis was sufficiently rationalized to establish that his work-related back condition had resolved and to meet the Office's burden of proof in terminating compensation).

The August 16, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 14, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member