

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD CAMERON and DEPARTMENT OF THE NAVY,
NAVAL SEA COMMAND, PUGET SOUND NAVAL SHIPYARD,
Bremerton, WA

*Docket No. 03-1739; Submitted on the Record;
Issued September 11, 2003*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had no disability for work due to his accepted employment injury on or after January 15, 1999.

This case was previously before the Board with respect to an occupational disease claim, filed by appellant on August 28, 1999, in which he alleged that he suffered from a neck condition causally related to his federal employment. He resigned from the employing establishment on January 1, 1999. In a decision dated October 28, 1999, the Office denied compensation. On appeal the Board vacated the Office's decision and remanded the case for further medical development. The Board directed the Office to obtain a supplemental report from the impartial medical specialist, Dr. James T. Fesenmeier, a Board-certified neurologist, as to whether appellant's alleged cervical condition was causally related to his employment. The Board's February 12, 2002 decision is incorporated herein.¹

On remand the Office prepared a revised statement of accepted facts and a list of questions for the impartial medical specialist to answer with respect to appellant's cervical condition. In a report dated March 19, 2002, Dr. Fesenmeier stated that appellant's cervical spondylosis was temporarily aggravated by his job as a welder. He noted that, since appellant did not have a well-defined injury, he could not say exactly when the aggravation started or stopped. On March 27, 2002 the Office requested that Dr. Fesenmeier provide his "best medical opinion as to when any temporary aggravation would have *reasonably* been expected to have ceased." In an April 8, 2002 report, Dr. Fesenmeier responded as follows:

"You asked me to provide my best medical opinion as to when the temporary aggravation would have reasonably been expected to have ceased. This is a

¹ Docket No. 01-1603 (issued February 12, 2002).

difficult question to answer. Significant head movements will always temporarily aggravate his condition, whether at work or otherwise. However, I would expect that the aggravation that his job would have reasonably been expected to have ceased [two] weeks after he stopped working, which would have been on [January 15, 1999].”

In a decision dated April 16, 2002, the Office advised appellant that his claim was accepted for temporary aggravation of preexisting cervical spondylosis. The Office, however, determined that appellant’s temporary aggravation ceased no later than January 15, 1999, following his resignation. The Office held that appellant had no disability on or after January 15, 1999, which would entitle him to compensation.² Appellant subsequently requested a hearing, which was held on October 29, 2002. In a decision dated January 27, 2003, an Office hearing representative affirmed the Office’s April 16, 2002 decision.

The Board finds that the Office properly determined that appellant had no disability for work due to his accepted employment injury on or after January 15, 1999.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.³ After it has determined that there is disability causally related to an employee’s federal employment, the Office may not terminate or modify compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.⁴ The fact that the Office accepted appellant’s claim for a specified period of disability does not shift the burden of proof to appellant. The burden of proof is on the Office with respect to the period subsequent to that date when compensation is terminated or modified.⁵

In this case, the Office properly relied on the opinion of the impartial medical specialist in finding that appellant sustained a temporary aggravation of preexisting cervical spondylosis due to work factors. The Board has held that an employee is entitled to compensation for the period of disability due to an employment-related aggravation of an underlying, preexisting condition. However, once the effects of the employment-related aggravation have ceased and the employee’s disability is due solely to the preexisting condition, he or she is no longer entitled to compensation.⁴ The weight of medical evidence addressing the extent of appellant’s disability due to the accepted neck condition consists of Dr. Fesenmeier April 8, 2002 report. He specifically explained that appellant’s temporary aggravation of preexisting spondylosis would have ceased within two weeks of appellant’s resignation from his job. Dr. Fesenmeier indicated that, within two weeks of stopping work, appellant could no longer reasonably be expected to suffer any neck pain attributable to “significant head movements” on the job that would have

² The Office noted that there was no evidence that appellant lost any time from work due to the temporary work-related aggravation of his neck condition prior to January 1, 1999. Therefore, appellant’s entitlement was limited to medical benefits.

³ *Bettye F. Wade*, 37 ECAB 556 (1986); *Ella M. Garner*, 36 ECAB 238 (1984).

⁴ *John Wilkes, Jr.*, 36 ECAB 451 (1985); *Betty J. Glover*, 34 ECAB 465 (1982); *Fred Foster*, 1 ECAB 21 (1947).

⁵ *Patrick P. Curran*, 47 ECAB 247 (1995); *George J. Hoffman*, 41 ECAB 135 (1989).

caused him any continued neck pain. He concluded, therefore, that appellant's employment-related aggravation of cervical spondylolisthesis would have ceased by January 15, 1999. The Board finds that Dr. Fesenmeier's opinion is well rationalized with respect to the extent and duration of appellant's work-related disability and that the Office met its burden of proof in establishing that appellant's employment-related disability ceased by January 15, 1999.⁶

The decision of the Office of Workers' Compensation Programs dated January 27, 2003 is hereby affirmed.

Dated, Washington, DC
September 11, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ In situations where there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Solomen Polen*, 51 ECAB 341 (2000).