

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAJA K. ASARAMO and DEPARTMENT OF ENERGY, ENVIRONMENTAL
MEASUREMENTS LABORATORY, New York, NY

*Docket No. 03-1327; Submitted on the Record;
Issued January 5, 2004*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective February 23, 2003 on the grounds that he had no further condition or disability causally related to his May 14, 1989 employment injury; (2) whether the Office properly terminated appellant's authorization for medical treatment; and (3) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

This case is before the Board for the second time. In the first appeal, the Board noted that the Office accepted appellant's claim for lumbosacral strain and paraspinal muscle spasm due to a traumatic injury on May 15, 1989 and placed him on the periodic rolls effective November 19, 1989. The Board affirmed the Office's January 8, 1997 decision denying reimbursement for travel expenses for the period 1989 to 1994.¹

By decision dated July 24, 2000, the Office terminated appellant's compensation benefits effective August 13, 2000 on the grounds that the weight of the evidence established that he had no further injury-related disability. In a decision dated April 24, 2001, a hearing representative set aside the Office's July 24, 2000 decision after finding a conflict in medical opinion between Dr. E. Neal Powell, Jr., a Board-certified orthopedic surgeon and Office referral physician, and Dr. Jerome Watson, a physiatrist and appellant's attending physician, on the issue of whether appellant had residuals of his accepted employment injury. The hearing representative directed the Office, on remand, to reinstate compensation benefits and to refer appellant for an impartial medical evaluation.

Based on the findings of Dr. Thomas C. Friedrich, a Board-certified orthopedic surgeon and impartial medical examiner, the Office terminated appellant's benefits in a decision dated September 27, 2001. In a decision dated April 12, 2002, a hearing representative set aside the

¹ *Jaja K. Asaramo*, Docket No. 97-1442 (issued June 15, 1999).

Office's September 27, 2001 decision on the grounds that the opinion of the impartial medical examiner was inconclusive on the issue of whether appellant continued to have residuals of his accepted employment injury. The hearing representative instructed the Office to refer appellant for a new impartial medical examination. The hearing representative noted that the impartial medical examiner should address whether appellant sustained an aggravation of a preexisting degenerative condition due to his employment injury.

By letter dated April 29, 2002, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Joseph John Estwanik, a Board-certified orthopedic surgeon, to resolve the conflict in opinion. In a report dated June 17, 2002, Dr. Estwanik discussed appellant's history of injury, reviewed the evidence of record and listed detailed findings on physical examination. He found that x-rays showed severe osteoarthritis of the left hip, moderate osteoarthritis of the right hip, and "significant lateral spurring and degenerative disc disease at all levels" of the lumbar spine. Dr. Estwanik found that appellant had "[n]o residuals of his work[-]related condition of lumbosacral strain and paraspinous muscle spasm caused by the work injury of May 15, 1989." He stated, "The soft tissue component has long dissipated and [appellant's] current findings of osteoarthritis in both hips and throughout the lumbar spine are not to be explained by a single fall and single transient mechanism of injury."

Dr. Estwanik further opined:

"Based on the mechanism of injury described in the statement of accepted facts, the condition of spasm has resolved and his current condition is due to chronic and unrelated osteoarthritis of the spine and hips. I, additionally, feel that [appellant] shows effort to be currently injur[ed] and disabled with many positive Waddell's signs, suggesting symptom magnification and malingering to an extent greater than the x-rays and current physical exam[ination] could physiologically explain...."

Dr. Estwanik concluded that appellant was "capable of performing his job duties as a research chemist as related to a resolved lumbar sprain." He found that appellant was disabled from all but light duty "based on his progressive osteoarthritis condition, unrelated to a single isolated fall of May 15, 1989."

In a letter dated August 9, 2002, the Office informed appellant that it proposed to terminate his compensation benefits on the grounds that the weight of the evidence established that he had no further employment-related disability or condition. On September 19, 2002 the Office sent appellant and his authorized representative a copy of the proposed termination of compensation and provided appellant an additional 30 days within which to respond.

On September 19, 2002 the Office requested that Dr. Estwanik address whether appellant's employment injury aggravated a preexisting degenerative condition. In a response dated September 20, 2002, Dr. Estwanik opined that appellant's 1989 employment injury did not aggravate the osteoarthritis of his hips. He further stated:

"[Appellant] has generalized osteoarthritis of multiple joints. There is the inherent tendency towards arthritis that would have developed unrelated to his

claimed trauma that was involved with a fall on the back. This would not specifically relate to [appellant's] hips and has no significance to the somewhat symmetric overall tendency of [appellant] for arthritis.”

By decision dated February 12, 2003, the Office finalized its proposed termination of compensation effective February 23, 2003.

On March 25, 2003 appellant, through his representative, requested reconsideration. In a decision dated April 9, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence was irrelevant and thus insufficient to warrant review of its February 12, 2003 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 23, 2003.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

Where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁵ The Board finds that Dr. Estwanik's opinion, which is based on a proper factual and medical history, is well rationalized and supports that appellant's lumbosacral strain and paraspinous muscle spasm ceased by February 23, 2003, the date the Office terminated his compensation. Dr. Estwanik accurately summarized the relevant medical evidence, provided findings on examination, and reached conclusions regarding appellant's condition which comported with his findings.⁶ Dr. Estwanik reviewed appellant's diagnostic studies and found that x-rays revealed osteoarthritis of the hips and degenerative disc disease of the spine which he found unrelated to appellant's employment injury. He opined that appellant's lumbosacral strain and paraspinous muscle spasm had resolved. Dr. Estwanik indicated that appellant could perform light-duty work due to limitations from his osteoarthritis not related “to a single isolated fall” on May 15, 1989. As Dr. Estwanik provided a detailed and well-rationalized report based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *Leanne E. Maynard*, 43 ECAB 482 (1992).

⁶ *See Melvina Jackson*, 38 ECAB 443 (1987).

The remaining evidence of record submitted by appellant subsequent to Dr. Estwanik's report and prior to the Office's termination of compensation is insufficient to outweigh the special weight accorded to Dr. Estwanik's opinion as the impartial medical examiner. Appellant submitted office visit notes dated June 18 through November 20, 2002 from his attending physician, Dr. Neal S. Taub, a Board-certified physiatrist, who indicated that he had performed acupuncture treatments on appellant due to his low back pain. Dr. Taub, however, did not address causation or appellant's ability to perform employment and thus his office visit notes are of little probative value.⁷

In a clinic note dated August 21, 2002, Dr. Taub related that he had reviewed Dr. Estwanik's report. Dr. Taub stated:

"I would like to again reiterate my opinion that [appellant] did not have symptomatology previous to his injury on May 15, 1989. [Appellant] is in continuous pain since that time. Therefore, in my opinion, his ongoing pain is in great part related to that event. [Appellant] clearly does have [o]steoarthritis of the back and hips, however, in my opinion, his present condition was in great part initiated by his work[-]related injury. I similarly do not believe that [appellant] has any evidence of symptom magnification or malingering...."

In his clinic note, Dr. Taub attributed appellant's continuing pain to his employment injury because he did not have symptoms prior to his work injury. However, the Board has held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting medical rationale, to establish causal relationship.⁸ Dr. Taub did not provide supporting rationale for his finding that appellant's continued symptoms were related to his employment injury or for his finding that appellant's work injury aggravated his osteoarthritis of the hips and back.⁹ The Office accepted appellant's claim for lumbosacral strain and paraspinal muscle spasm. Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.¹⁰ In this case, Dr. Taub's opinion is insufficient to establish a causal relationship between an aggravation of appellant's preexisting arthritic condition and his May 14, 1989 employment injury or to overcome the special weight accorded to Dr. Estwanik as the impartial medical specialist.

Appellant further submitted an office visit note dated October 11, 2002 from Dr. Watson, who noted that appellant was "still experiencing quite a bit of muscle spasms and leg pain that he has had previously." He, however, did not provide a diagnosis or address appellant's degree of

⁷ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

⁸ *Thomas R. Horsfall*, 48 ECAB 180 (1996).

⁹ *Vicky L. Hannis*, 48 ECAB 538 (1997) (medical conclusions unsupported by rationale are of diminished probative value).

¹⁰ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

disability due to his accepted employment injury. Further, as Dr. Watson was on one side of the conflict that Dr. Estwanik resolved, the additional report from Dr. Watson is insufficient to overcome the weight accorded Dr. Estwanik's report as the impartial medical examiner or to create a new conflict.¹¹ Consequently, the Board finds that the Office discharged its burden of proof to terminate appellant's compensation after February 23, 2003.

The Board also finds that the Office properly terminated appellant's authorization for medical benefits effective February 23, 2003.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹² 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. The Office met this burden through the report of Dr. Estwanik, who found that appellant had no residual condition caused by his accepted employment injuries of lumbosacral strain and paraspinal muscle spasm and provided rationale in support of that conclusion.

The Board finds that the Office properly denied appellant's request for reconsideration under section 8128.

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.¹³ Section 10.608 provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.¹⁴

In support of his request for reconsideration, appellant's representative summarized the medical evidence and argued that Dr. Estwanik did not address whether appellant's employment injury aggravated or accelerated his degenerative disc disease. However, the issue to be resolved prior to the termination of appellant's compensation is whether he has any further disability due to his accepted condition of lumbosacral strain and paraspinal muscle spasms. Dr. Estwanik found that appellant did not have any further condition or disability due to his lumbosacral strain and paraspinal muscle spasm. He further opined that appellant's current condition was due to "chronic and unrelated osteoarthritis of the spine and hips." Thus, appellant has not raised a legal argument sufficient to warrant review of the prior merit decision. Further, as the current

¹¹ *Dorothy Sidwell*, 41 ECAB 857 (1990).

¹² *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹³ 20 C.F.R. § 10.606(b)(2).

¹⁴ 20 C.F.R. § 10.608(b).

issue of whether appellant has continuing disability from his accepted employment injury is medical in nature, it must be resolved by the submission of relevant medical evidence.¹⁵

As appellant has not shown that the Office erred in applying a point of law, advanced a relevant legal argument not previously considered, or submitted relevant and pertinent new evidence, the Office properly denied his application for review of the merits of his claim.

The decisions of the Office of Workers' Compensation Programs dated April 9 and February 12, 2003 are affirmed.

Dated, Washington, DC
January 5, 2004

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁵ Lay persons are not competent to render a medical opinion; *see James A. Long*, 40 ECAB 538 (1989).