

FACTUAL HISTORY

This case has previously been before the Board on appeal. By decision dated May 16, 2002, the Board affirmed an October 24, 2000 decision of an Office hearing representative.¹ The October 24, 2000 decision found that the May 5, 2000 report of Dr. Ritz, a Board-certified orthopedic surgeon, to whom the Office referred appellant to resolve a conflict of medical opinion, constituted the weight of the medical evidence and established that appellant's total left knee replacement surgery on January 11, 1999 was not causally related to his February 21, 1994 employment injury; that appellant's left knee condition, related to his February 21, 1994 employment injury, resolved by January 11, 1999; and that the only remaining residual of appellant's February 21, 1994 employment injury was the degenerative changes in his cervical spine. The October 24, 2000 decision also found that Dr. Ritz did not provide an opinion whether appellant's low back condition continued to be related to his February 21, 1994 employment injury, but that this issue had been adequately addressed by a prior impartial medical specialist, Dr. Raklewicz, a Board-certified orthopedic surgeon. The facts of the case up to that time are set forth in the Office hearing representative's October 24, 2000 decision and are hereby incorporated by reference.

By letter dated May 4, 2003, appellant's attorney requested reconsideration and contended that Drs. Ritz and Raklewicz should not have been selected as impartial medical specialists because they were partners with Dr. Heintz, a Board-certified orthopedic surgeon, to whom the Office referred appellant for an evaluation in 1995. Appellant's attorney submitted an October 13, 1999 newspaper article that referred to Drs. Raklewicz and Heintz as partners and a copy of a page from the Website of Wyoming Valley Health Care System on which Drs. Heintz, Raklewicz and Ritz are listed as part of this organization's orthopedic surgery team.

By decision dated July 1, 2003, the Office found that there was no evidence that Dr. Ritz had a partnership with Drs. Heintz or Raklewicz. The Office found that Dr. Raklewicz was a partner of Dr. Heintz and therefore could not serve as an impartial medical specialist resolving a conflict of medical opinion, but that the opinion of Dr. Raklewicz was in substantial agreement with that of appellant's attending Board-certified orthopedic surgeon, Dr. Carl R. Steindel, who stated in a June 2, 1999 report: "I cannot document that the condition in his lower back is worse as a result of the motor vehicular accident in 1994." The Office found that the medical evidence established that appellant had no work-related residuals to his low back as of Dr. Steindel's June 2, 1999 report and that the report of Dr. Ritz constituted the weight of the medical evidence regarding appellant's left knee and cervical spine conditions.² The Office modified its prior decisions "to the extent that it is determined that the claimant no longer had residuals of his injury-related lumbar strain as of June 2, 1999."

¹ Docket No. 01-135 (issued May 16, 2002).

² As a result of the report of Dr. Ritz, the Office authorized surgery on appellant's cervical spine, which was performed on May 8, 2001.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist⁴ for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁵

The physician serving as the impartial specialist should be one who is wholly free to make a completely independent evaluation and judgment, untrammelled by a conclusion rendered on prior examination.⁶ If the physician serving as the impartial medical specialist is an associate of a physician who previously examined the claimant or rendered an opinion regarding the claimant's case, that physician cannot be considered completely independent and his or her report cannot be used by the Office to resolve the conflict in the medical evidence.⁷

ANALYSIS

As found by the Board on the prior appeal, at the time of the referral to Dr. Ritz, there was a conflict of medical opinion on whether appellant's cervical spine and left knee conditions continued to be causally related to his February 21, 1994 employment injury.⁸ There was, however, no conflict on whether appellant's low back condition was related to the February 21, 1994 employment injury. Appellant's attending orthopedic surgeon, Dr. Steindel, stated in a June 2, 1999 report: "The ongoing problem with his lower back has been present for many years and ... I cannot document that the condition in his lower back is worse as a result of the motor vehicular accident in 1994...." This report is sufficient to show that appellant's low back condition, related to his February 21, 1994 employment injury, resolved by June 2, 1999.⁹ There is no medical evidence indicating that his low back condition related to this injury continued

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) 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."

⁵ *James P. Roberts*, 31 ECAB 1010 (1980).

⁶ *Raymond E. Heathcock*, 32 ECAB 2004, 2008 (1981).

⁷ *Gerard A. Cormier*, 37 ECAB 828 (1986); *Jeannine E. Swanson*, 45 ECAB 325 (1994).

⁸ The Office's letter referring appellant to Dr. Ritz describes the conflict as "Whether the claimant's cervical and left knee condition is causally related to his work injury of February 21, 1994."

⁹ Dr. Steindel has attributed appellant's low back condition to employment injuries in 1984 and 1986, but the effects of these injuries are not addressed by the Office's July 1, 2003 decision.

after that date. Appellant submitted several reports dated from September 18, 2000 to July 10, 2002 from Dr. Pamela J. Costello, a neurosurgeon, who performed surgery on appellant's cervical spine on May 8, 2001 but none of these reports attributes appellant's low back condition to his February 21, 1994 employment injury.

With regard to appellant's left knee condition, the Board, in its prior decision, affirmed the Office's determination that this condition was no longer related to appellant's February 21, 1994 employment injury as of January 11, 1999 and that the total knee replacement surgery appellant underwent on January 11, 1999 was not causally related to his February 21, 1994 employment injury. In so doing, the Board found that the report of Dr. Ritz, an impartial medical specialist resolving a conflict of medical opinion, constituted the weight of the medical evidence regarding appellant's left knee condition.

In his May 4, 2003 request for reconsideration and on appeal, appellant's attorney contends that Dr. Ritz could not serve as an impartial medical specialist because of his professional association with Dr. Heintz and Dr. Raklewicz, both of whom previously examined appellant and submitted reports on his employment-related condition. The Office's procedure manual states that physicians who may not be used as impartial specialists to resolve conflicts include: "Physicians previously connected with the claim or the claimant, or physicians in partnership with those already so connected."¹⁰ In *Ronald Santos*, the Board defined the prohibition more broadly, noting in that a physician who shared the same address, suite number, waiting area and examination room as one who previously examined the claimant for the Office could not serve as an impartial medical specialist based on "an appearance of impropriety due to the close association of the medical practices" of the two physicians, even though there was "no evidence in the record to indicate that the two doctors were in a medical partnership..."¹¹ In *Daniel A. Davis*, the Board stated that "the Office must assure that the person designated as the impartial medical specialist has no prior association or affiliation with any other physician who has examined the claimant or provided an opinion on the claim."¹²

In the present case, the report of Dr. Raklewicz is on stationery of Orthopaedic Consultants of Wyoming Valley and Dr. Heintz is listed as one of the physicians. The Office properly determined that Dr. Raklewicz could not serve as an impartial medical specialist. Dr. Ritz, however, is not so listed, and his reports are on stationery of the Musculo-Skeletal Institute, which lists no other physicians. These medical practices do not share offices: Drs. Raklewicz and Heintz have offices in Kingston while Dr. Ritz's office is in Wilkes-Barre.¹³ The only evidence indicating any association of Dr. Ritz with Drs. Heintz and Raklewicz is the listing of their names as part of the orthopedic surgery team in the Wyoming Valley Health Care System. The Board finds this association too remote to raise an inference of impropriety.

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b(3) (May 2003).

¹¹ *Ronald Santos*, 53 ECAB ___ (Docket No. 02-264, issued August 19, 2002).

¹² *Daniel A. Davis*, 39 ECAB 151, 163 (1987). In this case, the Board also noted that the Office "failed to send any ... letter to the physician advising him of his possible disqualification based on a prior evaluation or examination by members of his medical group or association."

¹³ Dr. Heintz's reports from 1995 and 1996 indicate that his office was in Wilkes-Barre but in a different building from the office of Dr. Ritz.

CONCLUSION

The Board finds appellant's low back condition causally related to his February 21, 1994 employment injury resolved by June 2, 1999, that appellant's total left knee replacement surgery on January 11, 1999 was not causally related to his February 21, 1994 employment injury; and that appellant's left knee condition related to his February 21, 1994 employment injury resolved by January 11, 1999.

ORDER

IT IS HEREBY ORDERED THAT the July 1, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member