

lumbosacral strains, internal derangement of the left knee and subluxation at L5 when he slipped on a truck step on December 4, 1986. In an October 5, 1999 decision, the Office denied appellant's request for a spa tub, but authorized massage therapy. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On June 19, 2001 the Office referred appellant to Dr. Thomas P. Rooney, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion between appellant's treating physicians, Dr. Terry D. Holt, a Board-certified family practitioner, Dr. Carol A. Phillips, a Board-certified psychiatrist, and Dr. Scott R. Van Wilpe, a chiropractor, who authorized the purchase of a whirlpool spa tub for treatment of his accepted back condition and Dr. Harold H. Chakales, a second opinion Board-certified orthopedic surgeon, and the Office medical adviser who concluded that appellant did not require a whirlpool spa tub as it was not mandatory for treatment of his accepted back condition.²

In a July 18, 2001 report, Dr. Rooney diagnosed degenerative disc disease at L4-5 and L5-S1, mild degenerative arthritis in both knees, cervical spondylosis in C4-5, C5-6 and C6-7 and mild degenerative arthritis in the thoracic spine. Dr. Rooney opined that degenerative disc disease at L4-5 and L5-S1, cervical spondylosis in C4-5, C5-6 and C6-7 and mild degenerative arthritis in the thoracic spine were "degenerative in nature, and are not a result of the accident." Dr. Rooney concluded, based upon a review of the medical evidence, statement of accepted facts and physical examination, that appellant had no disability due to his accepted employment injuries. In an attached work capacity evaluation (Form OWCP-5c), Dr. Rooney concluded that appellant was capable of working eight hours per day with restrictions on lifting, squatting, kneeling and climbing. He noted that appellant's severe depression was a medical factor which should be taken into consideration in identifying a position for appellant.

In a January 2, 2003 work capacity evaluation form, Dr. Norman Tubb, an attending physician, diagnosed degenerative disc disease of the lumbar, cervical and thoracic spine and a nonemployment-related post-traumatic stress syndrome. Dr. Tubb concluded that appellant was totally disabled due to his employment-related and nonemployment-related conditions.

In a January 3, 2003 report, Dr. Tubb diagnosed degenerative disc disease and concluded that appellant could not perform the duties of the position of telephone operator as he is unable to sit for prolonged periods of time.³

In a January 13, 2003 letter, appellant advised the Office that he was unable to perform the duties of the offered position due to mental and physical disabilities. In support of this, he submitted a copy of a January 6, 2003 report by Dr. Phillips who concluded that he was totally disabled due to his post-traumatic stress disorder.

On January 17, 2003 the Office issued a notice of proposed termination of compensation.

² By decision dated October 2, 2002, an Office hearing representative concluded that the evidence was sufficient to warrant the purchase of a whirlpool spa.

³ Based upon a vocational rehabilitation report and an employing establishment job offer for the position of telephone operator, the Office informed appellant on December 19, 2002 that the position of telephone operator was suitable to his work capabilities.

On February 5, 2003 the Office expanded appellant's accepted conditions to include aggravation of his preexisting post-traumatic stress disorder and depression. The Office advised appellant that the proposed termination may be modified to only terminate his medical benefits for his back condition and not his compensation for lost wages for his emotional condition.

In a letter dated February 7, 2003 and received by the Office on February 11, 2003, appellant responded to the Office's January 17, 2003 proposal to terminate his medical benefits for his back condition and contended that he remained totally disabled due to his employment injuries including his back.

By decision dated March 3, 2003, the Office terminated appellant's medical benefits compensation on the basis that he no longer had any continuing disability or residuals due to his accepted low back strain, but did not terminate his wage-loss compensation and medical benefits for his emotional condition.⁴

Appellant requested an oral hearing by letter dated March 15, 2003. A hearing was held on June 25, 2003 at which appellant testified.⁵

Subsequent to the hearing, the Office received an April 1, 2003 report by Dr. Cyril A. Raben, a treating Board-certified orthopedic surgeon, who based upon a history of the employment injury, objective tests and a physical examination, diagnosed multilevel degenerative disc disease due to a "long-standing service-connected injury." A review of an x-ray interpretation revealed degenerative changes in the thoracic, cervical and lumbar spine and early osteophytosis. A physical examination revealed:

"[H]e has some pain and tenderness on palpation of both cervical and lumbar spine with marked reduction of range of motion. Muscular strengths are intact and symmetrical for the upper and lower extremities. Deep tendon reflexes are all symmetrical. Babinski's signs are down turning. Hoffman's reflexes are negative. Sensation appears to be intact throughout."

In a June 27, 2003 report, Dr. Van Wilpe reported accelerated degenerative changes in his thoracic, lumbar and cervical spine based upon a September 12, 2002 x-ray interpretation. The chiropractor noted appellant's condition had deteriorated since his compensation was terminated as appellant could not afford the treatment.

In a July 1, 2003 report, Dr. Michael Rice, a chiropractor, noted that appellant was treated for low back and neck pain due to his degenerative disc disease. He opined that "[c]hiropractic treatments greatly alleviate [appellant's] pain, although they are of a palliative nature; not corrective."

⁴ The Department of Veterans Affairs increased appellant's compensation for the accepted condition of post-traumatic stress syndrome from 60 percent to 100 percent effective April 1, 1990.

⁵ In a letter dated April 14, 2003, the Office suspended appellant's wage-loss compensation due to his failure to respond to the Office's March 12, 2003 letter requesting an election between benefits under the Federal Employees' Compensation Act and the increase in benefits from the Department of Veterans Affairs. In a letter dated August 15, 2003, the Office reinstated appellant's wage-loss compensation benefits retroactively to April 20, 2003.

In a decision dated September 15, 2003, the hearing representative affirmed the termination of appellant's medical compensation benefits for his low back condition. In support of this opinion, the hearing representative found that Dr. Rooney's opinion constituted the weight of the evidence as his opinion was well reasoned and that he had been selected to resolve the conflict in the medical opinion evidence.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁶ 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.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁸ 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.⁹

ANALYSIS

In this case, the Office initially accepted the conditions of sustained cervical and lumbosacral strain, internal derangement of the left knee and subluxation at L5 as being effects of an injury appellant sustained at work on December 4, 1986. The record reflects that appellant completely stopped working on March 26, 1989. The Office, on February 5, 2003, expanded the accepted conditions to include aggravation of appellant's preexisting post-traumatic stress disorder and depression.

The Board notes that Dr. Rooney was selected to resolve the conflict in the medical opinion evidence regarding appellant's request for purchase of a whirlpool spa tub. At the time of the referral to Dr. Rooney, a conflict in the medical opinion evidence concerning whether appellant had any continuing disability or residuals due to his back condition had not been identified for resolution. Thus, Dr. Rooney's resulting opinion on the issue of whether appellant's employment-related back condition had resolved is that of a second opinion physician and, accordingly, is not afforded the special weight given to an impartial specialist.¹⁰

In the instant case, the Office terminated appellant's medical compensation benefits for his back condition on the basis that he had no disability or continuing residuals due to his accepted back condition. As noted above, the Office did not terminate appellant's wage-loss compensation benefits for his emotional condition as he continued to be totally disabled due to

⁶ *Paul L. Stewart*, 54 ECAB ____ (Docket No. 03-1107, issued September 23, 2003).

⁷ *Elsie L. Price*, 54 ECAB ____ (Docket No. 02-755, issued July 23, 2003).

⁸ *James F. Weikel*, 54 ECAB ____ (Docket No. 01-1661, issued June 30, 2003).

⁹ *Donald T. Pippin*, 54 ECAB ____ (Docket No. 03-205, issued June 19, 2003).

¹⁰ *See Brady L. Fowler*, 44 ECAB 343, 352 (1992).

an employment-related emotional condition. In order to terminate appellant's medical benefits for his back condition, the burden of proof is on the Office to show that appellant no longer has any residuals or disability due to his back condition. The issue to be resolved is whether appellant had any residuals or disability due to his back condition.

In his July 18, 2001 report, Dr. Rooney diagnosed degenerative disc disease at L4-5 and L5-S1, cervical spondylosis in C4-5, C5-6 and C6-7 and mild degenerative arthritis in the thoracic spine and concluded these conditions were "not a result of the accident" as these conditions were "degenerative in nature." The physician also concluded that appellant had no disability due to his accepted employment injuries.

In an opinion dated April 1, 2003, Dr. Raben reported a marked reduction in appellant's range of motion and "some pain and tenderness on palpation of both the cervical and lumbar spine." The physician diagnosed, based upon appellant's medical and employment injury histories, multilevel degenerative disc disease which he attributed to appellant's employment injury.

The record also contains reports from appellant's chiropractors, Drs. Van Wilpe and Rice. Dr. Van Wilpe reported accelerated degenerative changes in his thoracic, lumbar and cervical spine based upon a September 12, 2002 x-ray interpretation in a June 27, 2003 report. In a July 1, 2003 report, Dr. Rice indicated that appellant was being treated for low back and neck pain due to his degenerative disc disease.

The Board finds that Dr. Rooney's conclusions regarding the issue of whether appellant's continuing disability or residuals due his back condition has ceased are not sufficient to meet the Office's burden of proof to terminate appellant's medical compensation benefits. Dr. Rooney has not provided an opinion stating that appellant's accepted back condition had resolved or that appellant no longer required any medical treatment for his accepted back condition. In his report, Dr. Rooney concluded that appellant no longer had any disability due to his accepted back condition. Dr. Rooney did not provide any supporting rationale to support this conclusion. He also opined that appellant's lumbar, cervical and thoracic conditions were degenerative in nature and not a result of the employment injury. However, Dr. Rooney failed to provide any explanation as to whether or not these conditions had been aggravated by the employment injury. Dr. Rooney merely noted that these conditions were not as a result of the injury.

Furthermore, the Board finds that the April 1, 2003 report from Dr. Raben submitted by appellant is sufficiently well rationalized to support that appellant has a continuing disability causally related to his December 4, 1986 accepted back condition.

As the Office failed to base its decision to terminate appellant's medical compensation benefits for his back condition upon a sufficiently well-rationalized medical report, it failed to meet its burden of proof.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's medical benefits compensation on the grounds that he had no disability or residuals due to his accepted back condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 15, 2003 is hereby reversed.

Issued: October 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member