

appellant returned to limited duty on September 7, 2000 working four hours per day.¹ Appellant gradually increased his workday to 6½ hours in May 2001. The Office paid appropriate wage-loss compensation for appellant's partial disability.

A July 10, 2001 lumbar discography performed by Dr. Jeffrey D. Petersohn, a Board-certified anesthesiologist, revealed disc tears at L3-4, L4-5 and L5-S1. Dr. Petersohn recommended that appellant undergo an intradiscal electrothermal (IDET) annuloplasty. The Office referred the request to its medical adviser, who recommended that authorization for the IDET procedure be denied. The Office subsequently referred appellant to Dr. Irving D. Strouse, a Board-certified orthopedic surgeon.

In a report dated November 21, 2001, Dr. Strouse diagnosed lumbar degenerative disc disease with secondary sprain and left knee sprain. He explained that the injury to appellant's low back was an aggravation of a preexisting condition of degenerative disease of the lumbar spine. Dr. Strouse further stated that the aggravation was temporary and that it had resolved. He further noted that the injury to appellant's left knee condition was directly caused by the August 10, 2000 employment incident, but it also had resolved. Dr. Strouse advised that appellant was capable of resuming his regular work duties.²

In a report dated July 10, 2002, Dr. Petersohn advised that appellant was last seen one year earlier and that his low back pain persists without change. He noted that the previously recommended IDET procedure had not been approved. Dr. Petersohn advised appellant to continue with pain medication and continue working with his usual restrictions. He further recommended a surgical consultation to determine whether a discectomy and interbody fusion would be an appropriate modality for treatment of appellant's persistent symptoms.

The Office subsequently referred appellant to Dr. Howard Zeidman, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a report dated September 19, 2002, Dr. Zeidman stated that on examination appellant had no objective evidence of neurological loss and no evidence of limitation of motion in the back. He found that appellant had sustained a lumbosacral strain superimposed upon an underlying degenerative process, which currently had returned to a reasonable functional level without any permanent residua attributable to the August 10, 2000 employment incident. He also stated that there was no indication for continued treatment. He noted, however, that the underlying degenerative problem may require treatment on its own merits. With respect to appellant's left knee condition, Dr. Zeidman noted a paucity of physical findings. He concluded that while appellant probably sustained a sprain or strain of the knee on August 10, 2000, there was currently no problem and no residua attributable to the August 10, 2000 injury.

Dr. Andrew S. Glass, a Board-certified neurosurgeon, examined appellant on September 25, 2002 and diagnosed low back pain with left lumbosacral radiculopathy. He also

¹ Following his return to duty appellant filed an occupational disease claim, which the Office accepted for aggravation of lumbar degenerative disc disease with a September 8, 2000 date of injury (02-2003312).

² In an accompanying work capacity evaluation (Form OWCP-5c), Dr. Strouse imposed a 70-pound weight restriction with respect to pushing and pulling. He also noted a 50-pound lifting restriction.

diagnosed disc degeneration with annular bulge at L3-4 and L4-5. Dr. Glass recommended an updated magnetic resonance imaging (MRI) scan. An October 29, 2002 MRI scan of the lumbar spine revealed multilevel degenerative disc disease and a disc herniation at L4-5 that extended into the neural foramen. In a follow-up report dated November 18, 2002, Dr. Glass recommended a laminectomy at L3 through S1 with bilateral L3-4, L4-5 and L5-S1 discectomy and posterior lumbar interbody arthrodesis.

The Office sought clarification from Dr. Zeidman regarding appellant's ability to work. The Office also provided Dr. Zeidman a copy of Dr. Glass' reports and the recent lumbar MRI scan and inquired as to what, if any, effect this additional information had on his prior assessment. Dr. Zeidman provided a November 25, 2002 work capacity evaluation (Form OWCP-5c) in which he indicated that there was no reason why appellant could not work an eight-hour day. He imposed a 25-pound restriction with respect to pushing and pulling and noted that the weight restriction was due to appellant's underlying degenerative condition. In a supplemental report dated December 11, 2002, Dr. Zeidman reviewed the October 29, 2002 MRI scan report and Dr. Glass' findings and stated that it appeared that appellant had, at most, continued symptomatic difficulties without specific neurological loss. He noted that this was essentially what he had previously described. Dr. Zeidman stated that he saw no reason to modify his prior assessment. The doctor, however, suggested that it would be better to review the actual MRI scans for comparison rather than rely on the reports interpreting the studies. The Office subsequently asked appellant to make the films available for Dr. Zeidman's review. In a January 15, 2003 report, Dr. Zeidman stated that he had reviewed the September 6, 2000 and October 29, 2002 lumbar MRI scans and saw no change in the appearance of the discs over the two-year interval. He concluded that there was no reason to modify his prior opinion.

On February 3, 2003 the Office issued a notice of proposed termination of compensation. The Office found that Dr. Zeidman's opinion represented the weight of the medical evidence of record.

In a decision dated March 24, 2003, the Office terminated appellant's wage-loss compensation and medical benefits effective March 24, 2003.

Appellant requested an oral hearing, which was held on October 27, 2003. Following the hearing appellant submitted a December 15, 2003 report from Dr. Glass, who stated that he had last seen appellant 13 months ago. In the intervening period appellant reported unremitting severe low back pain with left lower extremity radicular pain. He also noted that appellant continued to work light duty. On physical examination Dr. Glass noted restriction of anterior flexion with pain on deflexion and left paramedian lower lumbar point tenderness and muscle spasms. He also performed neurological and sensory examinations, the latter of which revealed decreased pinprick in the left L5 and left S1 dermatomes. Dr. Glass noted that he discussed appellant's surgical options with him.

By decision dated January 2, 2004, the Office hearing representative affirmed the March 24, 2003 decision terminating wage-loss compensation and medical benefits.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ 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.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ 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.⁶

ANALYSIS

The Office determined that a conflict of medical opinion existed based on the opinions of Drs. Petersohn and Strouse.⁷ Therefore, the Office properly referred appellant to an impartial medical examiner.⁸ Dr. Zeidman, the impartial medical examiner, conducted a thorough examination and reported that appellant had no objective evidence of neurological loss and no evidence of limitation of motion in the back. According to Dr. Zeidman, appellant sustained a lumbosacral strain superimposed upon an underlying degenerative process. At the time of the September 19, 2002 examination, appellant had returned to a reasonable functional level without any permanent residuals attributable to the August 10, 2000 employment incident.⁹ Appellant's left knee condition had similarly resolved with no residuals attributable to the August 10, 2000 injury. Dr. Zeidman subsequently reviewed additional medical evidence, including a series of lumbar MRI scans and he reiterated his prior opinion. Dr. Zeidman found no basis on which to attribute any continuing condition to the accepted employment injury. The Board finds that the Office properly relied on the impartial medical examiner's opinion as a basis for terminating benefits. Dr. Zeidman's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records.

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁶ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁷ The doctors disagreed as to whether appellant was able to return to full-time employment and resume his regular duties as a letter carrier.

⁸ The Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁹ While Dr. Zeidman stated that there was no indication for continued treatment regarding the lumbosacral sprain, he noted that appellant's underlying degenerative problem may require treatment on its own merits.

Dr. Zeidman also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiner's findings.¹⁰

While Dr. Glass continued to recommend surgical intervention, he failed to specifically address whether appellant's current low back complaints were attributable to his accepted employment injury or due to his preexisting degenerative condition. Absent of a rationalized opinion on causal relationship, Dr. Glass' findings are of limited probative value and are clearly insufficient to overcome the weight of the medical opinion evidence as represented by the impartial medical examiner's findings or to create a new conflict in the medical evidence.¹¹ As the weight of the medical evidence establishes that appellant's August 10, 2000 employment injury has resolved, the Office properly terminated appellant's wage-loss compensation and medical benefits.¹²

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective March 24, 2003.

¹⁰ Where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹¹ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment. *Id.*

¹² After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. *Joseph A. Brown, Jr.*, 55 ECAB ____ (Docket No. 04-376, issued May 11, 2004).

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member