

injury on January 4, 1999 when he slipped on ice and fell. The Office accepted appellant's January 4, 1999 injury for back contusion and aggravation of the April 2, 1998 herniated disc at L5-S1 (09-0449267).¹ Appellant briefly returned to work following his January 4, 1999 injury and he stopped all work on February 13, 1999. The Office paid appropriate wage-loss compensation and placed appellant on the periodic compensation rolls.

In a report dated June 28, 2000, Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon and Office referral physician, stated that appellant's back contusion and aggravated herniated disc had resolved. He explained that the January 4, 1999 injury temporarily aggravated appellant's herniated disc and the aggravation ceased in April 1999. Dr. Sheridan advised that no further treatment was required as a result of the January 4, 1999 injury and that appellant could return to his full duties.

The Office provided appellant's treating physician, Dr. Jonathan J. Paley, a Board-certified orthopedic surgeon, with a copy of Dr. Sheridan's report and asked that he comment on appellant's current level of disability.² In a report dated November 1, 2001, Dr. Paley stated that appellant might be able to return to work provided he continued to receive supportive care. He expressed general agreement with Dr. Sheridan regarding appellant's ability to return to some type of gainful employment. Dr. Paley noted that he had reviewed appellant's job description and felt that appellant would be able to perform the majority of functions required. He specifically stated that appellant may work on scaffolding and ladders as indicated in his job analysis. Dr. Paley also noted that while appellant's job required lifting up to 100 pounds, appellant would be restricted to lifting 50 pounds only. Additionally, Dr. Paley disagreed with Dr. Sheridan regarding appellant's need for further treatment. He advised that appellant required continued supportive care, which included medications when indicated, rest, possible physical therapy and use of a lumbosacral orthosis for support. In a December 26, 2001 report, Dr. Paley reiterated that appellant should be limited to lifting 50 pounds. He also advised that appellant should avoid scaffolding and ladders as it was questionable whether appellant would be able to support or protect himself while using that type of equipment. Dr. Paley also noted that appellant was currently taking Oxycontin and that he required a lumbosacral corset.

The Office determined that a conflict of medical opinion existed between Drs. Sheridan and Paley. In view of the conflict, the Office referred appellant for an impartial medical evaluation. Dr. Ronald J. Moser, a Board-certified orthopedic surgeon and impartial medical examiner, examined appellant on October 17, 2002. In a similarly dated report he noted appellant's history of injury and subsequent medical treatment as well as his findings on physical examination and the results of recent x-rays of the lumbosacral spine. Dr. Moser stated that appellant's back contusion and lumbar strain had resolved. Additionally, he reported that accepted aggravation of spondylolysis and spondylolisthesis had also resolved. With respect to appellant's herniated disc at L5-S1, Dr. Moser indicated that the condition was stable and not currently causing any symptoms. He also reported that the January 4, 1999 aggravation of the herniated disc had resolved. Dr. Moser stated that based on the findings on physical

¹ The Office combined the case records from appellant's 1998 and 1999 low back injuries under claim number 09-0446257.

² Dr. Paley first examined appellant on November 17, 1999 at the request of the Office.

examination, there was no objective evidence to support that appellant's conditions were still causing symptoms. He further stated that appellant's current problems were primarily due to degenerative disc disease,³ which was a part of the normal aging process and unrelated to appellant's employment injuries. Dr. Moser indicated that he could not document any residuals of the accepted conditions. He concluded that appellant was able to return to his full-time duties as a water treatment plant operator and that a lumbosacral corset was unnecessary at this point.

On March 12, 2003 the Office issued a notice of proposed termination of compensation and medical benefits. The Office explained that the record established that appellant no longer suffered from any residual disability or impairment as a result of his accepted work-related injuries of April 2, 1998 and January 4, 1999. Additionally, the Office found that with the exception of the herniated disc at L5-S1, all accepted conditions had resolved. The Office advised appellant that medical benefits remained available for conservative care of his herniated disc only.

In a report dated April 9, 2003, Dr. Paley noted his disagreement with the Office's decision and advised that appellant required periodic supportive care, including additional physical therapy. He explained that spondylolisthesis and a L5-S1 disc herniation would not automatically resolve on its own. Dr. Paley also stated that appellant's back would continue to cause him problems and progressively worsen over time.

In a decision dated April 17, 2003, the Office terminated appellant's wage-loss compensation effective that day. The Office also terminated medical benefits, with the exception of continued conservative treatment for the accepted L5-S1 disc herniation.

Appellant requested an oral hearing, which was held on January 13, 2004. By decision dated April 14, 2004, the Office hearing representative affirmed the April 17, 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.⁴ 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.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁶ To terminate authorization for medical treatment,

³ He noted subjective findings on examination of tenderness without myospasm of the paravertebral muscle gutters of L5-S1 bilaterally. He also noted a positive straight leg raising test and decreased dermatome sensation of both feet and ankles.

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

ANALYSIS

The Office determined that a conflict of medical opinion existed based on the opinions of Drs. Paley and Sheridan.⁸ Therefore, the Office properly referred appellant to an impartial medical examiner.⁹ Dr. Moser, the impartial medical examiner, reported that appellant's back contusion and lumbar strain had resolved and that the accepted aggravation of spondylolysis and spondylolisthesis had also resolved. Additionally, the impartial medical examiner found that appellant's herniated disc at L5-S1 was stable and not currently causing any symptoms and that the accepted January 4, 1999 aggravation of the herniated disc had resolved. According to Dr. Moser, there was no objective evidence to support that appellant's conditions were still causing symptoms. He attributed appellant's subjective complaints to his degenerative disc disease, which he explained was a part of the normal aging process and unrelated to appellant's employment injuries. Absent any documented residuals of the accepted conditions, Dr. Moser found that appellant was able to return to his date-of-injury job as water treatment plant operator. The Board finds that the Office properly relied on the impartial medical examiner's opinion as a basis for terminating benefits. Dr. Moser'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. Dr. Moser also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiner's findings.¹⁰

Although Dr. Paley took issue with the Office's decision to terminate benefits, his April 9, 2003 report did not explain how appellant was currently disabled by his accepted employment injuries. The weight of the medical evidence, as represented by the impartial medical examiner's October 17, 2002 opinion, establishes that appellant no longer suffers from any residual disability or impairment as a result of his accepted work-related injuries of April 2, 1998 and January 4, 1999. As this additional report essentially repeated a prior opinion on causal relationship and as Dr. Paley was on one side of the conflict that Dr. Moser resolved, his additional report is insufficient to overcome the special weight accorded Dr. Moser's opinion or to create a new conflict with it.¹¹ Therefore, the Office met its burden to terminate wage-loss

⁷ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁸ The doctors disagreed as to whether appellant was able to resume his regular, full-time duties as a water treatment plant operator.

⁹ 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).

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 See *Alice J. Tysinger*, 51 ECAB 638, 646 (2000).

compensation. The Office also properly limited appellant's medical benefits to treatment for his accepted L5-S1 disc herniation.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and in limiting medical benefits to the treatment of appellant's L5-S1 disc herniation.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member