

**United States Department of Labor
Employees' Compensation Appeals Board**

ROBERT S. HUGGINS, Appellant

and

**PEACE CORPS, Manzini, Swaziland,
Employer**

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**Docket No. 03-827
Issued: September 30, 2004**

Appearances:
Robert S. Huggins, pro se
Thomas Giblin, Esq., for the Director

Oral Argument July 7, 2004

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 13, 2003 appellant filed a timely appeal of the September 11, 2002 merit decision of the Office of Workers' Compensation Programs which terminated his medical benefits effective September 11, 2002 and denied wage-loss compensation for various periods between May 2, 1995 and August 1, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant established that he was disabled from May 2 to June 18, 1995 and from December 20, 1995 to August 1, 2000, as a result of his February 23, 1993 employment injury; and (2) whether the Office properly terminated appellant's medical benefits effective September 11, 2002.

FACTUAL HISTORY

On March 27, 2000 appellant, then a 50-year-old former Peace Corps volunteer, filed an occupational disease claim for an employment-related cervical condition. He identified February 23, 1993 as the date he first realized that his condition was employment related. On

May 17, 2000 the Office accepted the claim for cervical disc herniation at C6-7.¹ On August 9, 2000 appellant filed a claim for wage-loss compensation for the period beginning May 2, 1995 through August 1, 2000.

In a report dated March 23, 1995, Dr. James E. Beale Jr., an orthopedic surgeon, advised that appellant had a ruptured cervical disc at C6-7 and that he had been referred for surgery. He also noted a possible ruptured lumbosacral disc. Dr. Beale further indicated that appellant was disabled relative to the herniated cervical disc.² On June 19, 1995 Dr. Murali Guthikonda, a Board-certified neurosurgeon, performed an anterior cervical discectomy and fusion at C6-7.

Dr. Laran J. Lerner, a Board-certified osteopathic physiatrist, treated appellant for both his cervical and lumbar conditions and provided numerous work disability notes. He found that appellant was disabled beginning March 6, 1995 due to cervical and lumbar radiculopathy. In a report dated March 3, 2000, Dr. Lerner explained that he began treating appellant on March 6, 1995 for injuries he sustained while in the Peace Corps. He provided a history of appellant's 1993 employment-related cervical and lumbar injuries and the respective surgeries appellant underwent in 1995 and 1997. Following surgery, appellant continued to complain of severe low back pain radiating into his left lower extremity and neck pain radiating into his left upper extremity. Dr. Lerner explained that the cervical spine injury developed as a result of appellant's work with the employing establishment and that he denied having any neck pain prior to his tenure with the employing establishment. Dr. Lerner also explained that appellant would not have been able to perform the heavy physical labor required of his position had he had a preexisting cervical condition. The physician diagnosed, among other things, chronic cervical and lumbar radiculopathy, secondary to cervical and lumbar disc herniations, chronic pain syndrome with resultant post-surgical scar tissue in the cervical and lumbar areas with nerve root compression and degenerative cervical and lumbar disc disease. He indicated that appellant would continue to develop progressive post-traumatic cervical and lumbar disc disease and arthritis and he would continue to suffer with chronic pain syndrome. Dr. Lerner stated that appellant remained totally and permanently disabled from any type of gainful employment.

Appellant was involved in a motor vehicle accident on October 5, 2000 and was diagnosed with a cervical strain as a result of the accident.

Appellant submitted a September 26, 1996 Social Security Administration (SSA) disability finding relevant to his cervical and lumbar conditions. The date of onset of disability was identified as July 23, 1993.

Appellant also submitted a number of medical reports from Dr. William H. Kole, an anesthesiologist specializing in pain management. Dr. Kole began treating appellant in

¹ Appellant also sustained a low back injury on July 9, 1993 (A25-0432817), which the Office accepted for lumbar sprain, sciatica and herniated lumbar disc. He received appropriate wage-loss compensation and medical benefits through May 2, 1995; at which point the Office terminated all benefits because the record demonstrated that appellant had fully recovered from his accepted lumbar injury. On March 25, 1997 appellant underwent a lumbar laminectomy at L5-S1.

² Dr. Beale reported that appellant was disabled from constant and repetitive bending, lifting, twisting, turning, pushing, pulling and lifting more than 10 pounds above waist level.

January 1998 for low back pain. In April 2001, Dr. Kole diagnosed cervical post-laminectomy syndrome, with bilateral upper extremity radiculopathy. On November 30, 2001 he reported that appellant was experiencing severe chronic pain in his neck. Dr. Kole stated that appellant was status post surgery after an injury while working for the Peace Corps. He indicated that appellant was completely disabled and unable to perform any tasks.

In January 2001, the Office referred appellant to Dr. Kanwaldeep S. Sidhu, a Board-certified orthopedic surgeon, to resolve a conflict of medical opinion. The Office found that a conflict existed between appellant's physician, Dr. Lerner and Dr. Carla E. Morton, a Board-certified physiatrist and Office referral physician. The Office had referred appellant to her in 1994, regarding his accepted lumbar condition.³ Dr. Morton's May 9, 1994 report formed the basis for the Office's May 2, 1995 decision terminating compensation and medical benefits under claim number A25-0432817.

Dr. Sidhu examined appellant on February 20, 2001 and issued a preliminary report that same day. He deferred offering a final opinion until appellant underwent a cervical magnetic resonance imaging (MRI) scan. After reviewing a March 21, 2001 MRI scan, Dr. Sidhu submitted a March 27, 2001 report finding a solid cervical fusion at C6-7. He also noted what appeared to be degenerative changes of the cervical spine proximal to the cervical fusion site. Dr. Sidhu stated that there was no evidence of any work-related conditions with respect to the disc at C6-7. He stated that appellant was not disabled as a result of the cervical condition and that appellant could perform a job with restrictions of no lifting more than 25 pounds in an overhead capacity. Dr. Sidhu advised that appellant had reached maximum medical improvement with respect to his cervical condition at C6-7 and that no further medical treatment was required.

By decision dated April 27, 2001, the Office denied appellant's claim for wage-loss compensation for the period May 2, 1995 through August 1, 2000. The Office also declined to authorize appellant's June 19, 1995 anterior cervical discectomy and fusion at C6-7.

On April 30, 2001 the Office issued a notice of proposed termination of medical benefits based on Dr. Sidhu's opinion.

Appellant requested an oral hearing, which was held on December 18, 2001.

In a report dated December 15, 2001, Dr. Lerner stated that appellant injured his cervical spine in 1993 while unloading approximately 85 cement blocks from a flatbed truck and carrying the blocks approximately 15 feet. He reported that the blocks weighed about 62 pounds each. The pressure from lifting the cement blocks reportedly caused appellant's cervical spine discs to herniate. Additionally, the lifting caused injuries to the muscles and ligaments which produced disc herniations and subsequent cervical arthritis. Dr. Lerner further explained that the disc herniations caused nerve root impingement and cervical radiculopathy. He also provided information regarding appellant's June 19, 1995 surgery and post-surgical treatment, which

³ In a report dated May 9, 1994, Dr. Morton diagnosed preexisting thoracic scoliosis, with no evidence of correlating pain or neurological deficits. She also diagnosed thoracic lumbar sacral pain by history with normal neurological and muscular skeletal examination and no evidence of nerve root irritation or compression.

included physical therapy. Dr. Lerner explained that appellant did not have a history of neck pain prior to his February 1993 employment injury. He also noted that appellant would not have been able to perform his physically demanding job had his cervical condition preexisted the 1993 injury. With respect to appellant's October 5, 2000 motor vehicle accident, Dr. Lerner explained that appellant was involved in a rear end collision and that his head and neck snapped back over the rear seat, which aggravated his preexisting cervical spine injury. He stated that appellant currently suffered from chronic pain syndrome and was unable to work and perform normal activities of daily living.

By decision dated March 15, 2002, an Office hearing representative set aside the April 27, 2001 decision and remanded the case for clarification of Dr. Sidhu's opinion regarding any periods of disability and ongoing residuals. The Office hearing representative also directed further development on the issue of whether the June 19, 1995 surgery was employment related.

On June 27, 2002 the Office requested a supplemental report from Dr. Sidhu. In an August 13, 2002 report, Dr. Sidhu stated that appellant's June 1995 surgery was appropriate and necessary as a result of the 1993 work injury. He further reported that appellant had done well as far as the surgically treated portion of his cervical spine was concerned. X-rays and MRI scans revealed what Dr. Sidhu characterized as a "solid fusion" and he stated that the area was fully healed. Dr. Sidhu noted evidence of degenerative, age-related changes at C3-4, C4-5 and C5-6, with degenerative bulging. He explained that none of these levels indicated a traumatic injury related to appellant's occupation while a volunteer with the Peace Corps. Dr. Sidhu stated that appellant's "period of disability from May or June of 1995 would last ... approximately six months after his cervical surgery."

Upon reviewing Dr. Lerner's notes, Dr. Sidhu stated that he did not find any objective evidence indicating that appellant's disability from 1995 to 2000 was in any way connected to his work-related diagnosis or his cervical fusion surgery. He reiterated that appellant's fusion at the C6-7 level was solid. Dr. Sidhu further stated that appellant's October 2000 motor vehicle accident did not aggravate, precipitate or accelerate the work-related diagnosis. He explained that appellant's recent MRI scan did not indicate any evidence of a traumatic herniated disc and that it was entirely consistent with an age-related, degenerative process. The physician also stated that the lifting restriction he imposed on March 27, 2001 was related to appellant's subjective complaints of neck pain and the degenerative process in the cervical spine. Dr. Sidhu stated that the restrictions were not due to appellant's employment injury. He noted that appellant's current complaints were essentially related to a degenerative process. Dr. Sidhu stated that he would give appellant a period of disability of approximately six months after his June 1995 surgery and that he could not find any indications of a work-related disability after that time.

On September 10, 2002 the Office advised appellant that, based upon Dr. Sidhu's report, it accepted the June 19, 1995 cervical surgery as related to his employment. The Office advised that appellant would receive wage-loss compensation for the period June 19 through December 19, 1995.

In a decision dated September 11, 2002, the Office noted that the claim had been expanded to include the June 19, 1995 surgery and that appellant was entitled to wage-loss

compensation for the six-month period following his surgery. The Office terminated medical benefits effective September 11, 2002 on the basis that appellant no longer had residuals of his February 23, 1993 employment injury.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.⁵ Whether a particular injury causes disability for work is a medical question which must be resolved by competent medical evidence.⁶

ANALYSIS -- ISSUE 1

At the oral argument, counsel for the Director conceded that Dr. Morton's May 9, 1994 report was insufficient to establish a conflict of medical opinion. The Board notes that her findings predated appellant's June 19, 1995 surgery by more than a year and the report did not specifically address any period of disability due to his cervical condition.⁷ The Board finds that Dr. Morton's May 9, 1994 report does not create a conflict of medical opinion with Dr. Lerner regarding the cause and extent of any disability due to appellant's February 23, 1993 employment injury. As no medical conflict exists, Dr. Sidhu's opinion is not that of an impartial medical examiner. The Board finds, however, that his opinion represents the weight of the medical opinion evidence in this case.

Dr. Sidhu's August 13, 2002 opinion represents the weight of the medical evidence regarding appellant's employment-related disability. He relied upon an accurate history of injury and fully explained the basis for his conclusion that appellant's ongoing cervical condition was age-related and degenerative in nature. Dr. Sidhu's found that appellant underwent a successful cervical fusion on June 19, 1995 and the area of the surgery fully healed within a period of six months. He reported evidence of degenerative changes at C3-4, C4-5 and C5-6, with bulging and he explained that none of these levels revealed evidence of an employment-related traumatic injury. Dr. Sidhu also reviewed Dr. Lerner's findings and he could not discern an objective basis

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ 20 C.F.R. § 10.115(e) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). 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 whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order 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 specific employment factors. *Id.*

⁶ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁷ Furthermore, at the time Dr. Morton authored her 1994 opinion the Office had yet to accept an employment-related cervical condition.

for finding that appellant's disability from 1995 to 2000 was in any way connected to his work-related diagnosis or his cervical fusion surgery. As Dr. Sidhu's opinion represents the weight of the medical opinion evidence, appellant has failed to establish that he was disabled after December 19, 1995 due to his February 23, 1993 employment-related cervical condition.

Appellant claimed that he was disabled from May 2, 1995 to August 1, 2000, as a result of his employment-related cervical condition. The Office awarded compensation for the six-month period following the June 19, 1995 cervical surgery, relying on Dr. Sidhu's August 13, 2002 report as the basis for accepting the surgery and awarding wage-loss compensation from June 19 to December 19, 1995. Dr. Sidhu, however, noted a period of disability beginning in "May or June 1995," but was not specific as to the actual date appellant became disabled in May 1995. Drs. Beale and Lerner both opined that appellant was disabled due to his cervical disc herniation as early as March 1995 required surgery, which eventually occurred on June 19, 1995. Accordingly, the Board finds the evidence of record sufficient to establish that appellant was disabled due to his February 23, 1993 employment injury for the seven-week period prior to his June 19, 1995 surgery. Therefore, appellant is entitled to additional wage-loss compensation for the period May 2 to June 18, 1995.

Appellant has failed to establish that he was disabled by his February 23, 1993 employment injury after December 19, 1995. He submitted a September 26, 1996 SSA disability finding with respect to his cervical and lumbar conditions. Although the SSA found that appellant was disabled as of July 23, 1993, the Office is not bound by such a finding.⁸

Dr. Kole's various reports are also insufficient to establish that appellant was disabled after December 19, 1995 due to his February 23, 1993 employment injury. He diagnosed cervical post-laminectomy syndrome, with bilateral upper extremity radiculopathy and he indicated that appellant was completely disabled. However, in his most recent report dated November 30, 2001, Dr. Kole failed to provide an explanation of how appellant's current condition was related to the February 23, 1993 employment injury.⁹ To the extent that Dr. Kole attributed appellant's current cervical condition to the June 19, 1995 surgery he failed to explain the relationship between the two. This oversight is particularly significant given Dr. Sidhu's opinion that the June 19, 1995 surgery resulted in a solid fusion at C6-7 and that the area was fully healed.

From March 6, 1995 onward Dr. Lerner continued to find appellant totally disabled due to both cervical and lumbar radiculopathy. Additionally, he diagnosed chronic pain syndrome with resultant post-surgical scar tissue in the cervical and lumbar areas with nerve root compression and degenerative cervical and lumbar disc disease. Dr. Lerner attributed his condition to his service as a volunteer; noting among other things that appellant denied having any neck pain prior to his tenure with the employing establishment. In his most recent report dated December 15, 2001, Dr. Lerner erroneously attributed appellant's February 23, 1993 cervical condition to the July 9, 1993 employment incident that caused his lumbar injury in claim

⁸ See *Freddie Mosley*, 54 ECAB ____ (Docket No. 02-1915, issued December 19, 2002) (entitlement to benefits under another act does not establish entitlement to benefits under the FECA).

⁹ *Victor J. Woodhams*, *supra* note 5.

number A25-0432817. Accordingly, his opinion regarding causal relationship is diminished because it is based on an inaccurate history of injury.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.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.¹³

ANALYSIS -- ISSUE 2

Dr. Sidhu's opinion represents the weight of the medical opinion evidence on the issue of ongoing residuals and the need for further medical treatment. While it is evident that appellant has an ongoing cervical condition, the record establishes that this condition is not employment related. Dr. Sidhu explained that appellant's current cervical complaints are age related and degenerative in nature and that he had fully recovered from the June 19, 1995 cervical fusion at C6-7. In a March 27, 2001 report, Dr. Sidhu advised that appellant had reached maximum medical improvement with respect to his cervical condition at C6-7 and that no further medical treatment was required.

Appellant contends that the bone graph performed on June 19, 1995 is an obvious residual of his injury because the bone that was used to fuse his spine remains wedged between his cervical discs. He also noted that he personally observed the bone graph on x-ray. However, there is no medical evidence that appellant has residuals of the February 23, 1993 employment injury or from the authorized cervical fusion performed on June 19, 1995. Although he correctly notes that a bone graph is not a naturally occurring event, there is no indication from the record that the bone graft surgery is responsible for his current degenerative cervical condition. Dr. Sidhu found that the surgery resulted in a solid spinal fusion and that the affected area had fully healed. Accordingly, the Board finds that the Office met its burden of proof in terminating medical benefits.

CONCLUSION

Appellant is entitled to wage-loss compensation for the period May 2 to June 18, 1995. The Office's September 11, 2002 decision is modified to reflect his entitlement to additional benefits. The Board further finds the evidence of record insufficient to establish that appellant was disabled from December 20, 1995 to August 1, 2000, as a result of his February 23, 1993

¹⁰ *Id*

¹¹ *Curtis Hall*, 45 ECAB 316 (1994).

¹² *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

¹³ *Calvin S. Mays*, 39 ECAB 993 (1988).

employment injury. The Board finds that the Office met its burden to justify termination of appellant's medical benefits effective September 11, 2002.

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2002 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: September 30, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member