United States Department of Labor
Employees' Compensation Appeals Board

DONALD L. PENNIE, Appellant	)	
and	)	**Docket No. 04-1099**
	)	**Issued: September 1, 2004**
DEPARTMENT OF THE AIR FORCE, WRIGHT PATTERSON AIR FORCE BASE, OH, Employer	)	

Appearances:
Donald L. Pennie, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 18, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated August 1, 2003, which terminated his compensation benefits on the grounds that he no longer had any disability due to his accepted March 16, 2001 employment injury effective August 9, 2003, and a January 20, 2004 decision which denied modification of the August 1, 2003 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation and medical benefits effective August 9, 2003 on the grounds that he had no further disability or residuals causally related to a March 16, 2001 employment injury; and (2) whether appellant met his burden of proof to establish that he had any disability after August 9, 2003 causally related to the March 16, 2001 employment injury.

FACTUAL HISTORY

On March 21, 2001 appellant, a 53-year-old fire dispatcher, filed a traumatic injury claim alleging that he injured his back, head and shoulders on March 16, 2001 when he slipped and fell on a wet floor.[1] The Office accepted the claim for lumbar and cervical radiculopathy. Appellant stopped work on March 16, 2001 and subsequently was placed on the periodic rolls for temporary total disability.

In an April 2, 2002 report, Dr. Michael J. Pedoto, an attending Board-certified physiatrist, reported "chronic neck and back pain due" due to a March 16, 2001 fall. The physician stated that appellant had "findings to suggest right cervical radiculopathy and left lumbosacral radiculopathy based on history, examination, and associated MRI [magnetic resonance imaging] and electrodiagnostic testing." A physical examination revealed tenderness in the levator scapulae, trapezius and cervical paraspinals, mild tenderness in the left mid-lumbar paraspinal muscles, negative impingement signs, no tenderness to percussion over the spine or costovertebral angle and "no SI joint tenderness or tenderness over the greater trochanters." With regard to range of motion, Dr. Pedoto reported flexion and extension to 30 degrees, rotation to 60 degrees, left side bending to 30 degrees and right side bending to 20 degrees.

By letter dated April 29, 2003, the Office referred appellant, together with the case record and a statement of accepted facts, for a second opinion evaluation.

In a June 11, 2003 report, Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon selected as the second opinion specialist, concluded that there was no objective medical evidence showing appellant's lumbar and cervical radiculopathy was still present. On physical examination of the cervical spine, the physician stated:

> "He has preservation of cervical lordosis. There is no evidence of facial asymmetry or torticollis or webbing of the neck. There are no points of tenderness over the skull or the cervical spinous processes or interspinous ligaments in the cervical area or in the paracervical soft tissues. Cervical spine motion is 50 degrees in flexion, 60 degrees in right and 40 degrees in left lateral rotation, and 30 degrees in right and 20 degrees in left lateral flexion. His Spurling's test and the lateral root traction and foraminal encroachment tests are negative to both sides. He has no tenderness or spasm in either trapezius muscle. There is no paraspinous or infraspinous atrophy."

With regard to the lumbar spine, Dr. Sheridan reported normal standing and sitting stations, "no abnormal rotation or flexion of the truck to one side or the other," 60 degrees flexion, "no lumbar paravertebral spasm," and "positive Waddell rotation tests, left greater than right." Dr. Sheridan opined, based upon a review of the objective evidence, physical examination and review of the medical evidence, that appellant's lumbar and cervical radiculopathy had resolved and no further treatment was required. In a work capacity evaluation (Form OWCP-5c), he indicated that appellant was capable of performing his date-of-injury job with no restrictions.

[1] The employing establishment terminated appellant's employment effective June 1, 2001 on the grounds of negligence in the performance of duties and misrepresentation of facts in connection with an emergency log.

On June 26, 2003 the Office issued a notice of proposed termination of compensation stating that the evidence of record failed to establish that appellant had continuing residuals of his March 16, 2001 work-related injury. The Office found the report of Dr. Sheridan to constitute the weight of the evidence in establishing that the accepted condition of cervical and lumbar radiculopathy had resolved.

On August 1, 2003 the Office terminated appellant's compensation and medical benefits effective August 9, 2003. The Office noted that Dr. Sheridan, the Office referral physician, found that appellant had recovered from his March 16, 2001 work-related injury of cervical and lumbar radiculopathy.

In a letter dated August 15, 2003 and received on September 23, 2003, appellant argued that his compensation should not be terminated and disagreed with the medical report of Dr. Sheridan. Appellant submitted MRI scan tests dated August 27, 2003, which diagnosed cervical spondylosis and rotator cuff rupture, an August 26, 2003 report by Dr. Samuel A. Laneve, an attending Board-certified internist, and reports dated August 25 and September 8 and 15, 2003 by Dr. Rudolf Hofmann, a treating physician specializing in orthopedic surgery.

Dr. Laneve, in an August 26, 2003 report, noted appellant's "previous diagnoses were left lumbar radiculopathy as well as right cervical radiculopathy." He concluded that appellant was unable to work due to "pain related to the injury that has been cited."

In an August 25, 2003 report, Dr. Hofmann noted appellant slipped and fell at work in March 2001 and that he fell on his right side. A physical examination revealed limited cervical spine range of motion, tenderness in the right trapezius area, 20 degrees bending and 30 degrees rotation to the right. He diagnosed a chronic cervical sprain due to the March 2001 injury and "preexistent multilevel cervical degenerative disc disease with a painfully limited range of motion of the cervical spine, but no objective radiculopathy or myelopathy," right shoulder degenerative rotator cuff disease with a possible tear, and carpal tunnel syndrome.

Dr. Hofmann, in a September 8, 2003 report, diagnosed rotator cuff tear and degenerative disc disease at C4-5 and C5-6. He concluded that appellant was capable of working with restrictions, which included no overhead work, no pulling, pushing or reaching above his right shoulder, no carrying or lifting more than 20 pounds, and carrying and lifting of 10 to 20 pounds occasionally.

In a September 15, 2003 report, Dr. Hoffmann, based upon MRI scans, reported a rotator cuff tear and degenerative disc disease, which he stated was the same as spondylosis.

On September 25, 2003 appellant requested reconsideration.

By decision dated January 20, 2004, the Office denied modification of the August 1, 2003 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.[3] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[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 -- ISSUE 1

The Office accepted appellant's March 16, 2001 work-related cervical and lumbar radiculopathy and paid appropriate benefits. However, on June 11, 2003, Dr. Sheridan, a Board-certified orthopedic surgeon and a second opinion physician, provided a thorough, well reasoned and exhaustive medical review of appellant's record and a complete and detailed physical examination. He found appellant had no spasms in the cervical or lumbar spine. Dr. Sheridan noted that his cervical range of motion included 50 degrees flexion, 60 degrees right lateral rotation, 40 degrees left lateral rotation, and 30 degrees right lateral flexion and 20 degrees left lateral flexion, no abnormal flexion or rotation of the lumbar spine and standing and sitting positions were normal. Dr. Sheridan further noted that the MRI scans and x-ray interpretations of the lumbar and cervical spine showed degenerative changes, but no compression or disc herniation. Thus, Dr. Sheridan concluded appellant's cervical and lumbar radiculopathy condition had resolved, that he could perform his date-of-injury position with no restrictions and that no further medical treatment was required.

The Board finds that the weight of the medical evidence is represented by the Office second opinion specialist, Dr. Sheridan who provided a complete comprehensive report based on a review of the medical records, a statement of accepted facts and a complete examination. In an April 2, 2002 report, Dr. Pedoto noted findings suggesting appellant had right cervical and left lumbar radiculopathy by history and chronic back and neck pain since the March 16, 2001 employment injury. Dr. Pedoto did not provide a rationalized opinion on whether appellant continued to have any disability due to the March 16, 2001 employment injury. Since no rationale was provided describing or explaining a causal relationship between his current medical condition, any continuing disability and his employment, Dr. Pedoto's report is neither sufficient

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[2] *John D. Jackson*, 55 ECAB ___ (Docket No. 03-2281, issued April 8, 2004).

[3] *Elsie L. Price*, 54 ECAB ___ (Docket No. 02-755, issued July 23, 2003); *David W. Green*, 43 ECAB 883 (1992).

[4] *Jaja K. Asaramo*, 55 ECAB ___ (Docket No. 03-1327, issued January 5, 2004).

[5] *Thomas Lee Cox*, 54 ECAB ___ (Docket No. 02-1286, issued March 26, 2003).

[6] *Donald T. Pippin*, 54 ECAB ___ (Docket No. 03-205, issued June 19, 2003).

to overcome the weight of Dr. Sheridan's report or to create a conflict in medical opinion. The Board finds that the opinion of Dr. Sheridan is well rationalized and based upon an accurate medical history. Accordingly, Dr. Sheridan's opinion constitutes the weight of the medical evidence regarding the termination effective August 9, 2003.

LEGAL PRECEDENT -- ISSUE 2

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he had disability causally related to his accepted injury.[7] To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.[8] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[9] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

ANALYSIS -- ISSUE 2

In support of his request for reconsideration, appellant submitted MRI scans dated August 27, 2003, which diagnosed cervical spondylosis and rotator cuff rupture, an August 26, 2003 report by Dr. Laneve, an attending Board-certified internist, and reports dated August 25 and September 8 and 15, 2003 by Dr. Hofmann, a treating physician specializing in orthopedic surgery. The Board, however, finds that these reports lack adequate rationale to establish any

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[7] *John F. Glynn*, 53 ECAB ___ (Docket No. 01-1184, issued June 4, 2002); *Manuel Gill,* 52 ECAB 282 (2001). (Following a proper termination of compensation benefits, the burden of proof shifts back to the claimant to support his claim of employment-related continuing disability with probative medical evidence).

[8] *John D. Jackson*, 55 ECAB ___ (Docket No. 03-2281, issued April 8, 2004).

[9] *Phillip L. Barnes*, 55 ECAB ___ (Docket No. 02-1441, issued March 31, 2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *Steven S. Saleh*, 55 ECAB ___ (Docket No. 03-2232, issued December 12, 2003) (A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. 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 claimant's specific employment factors).

[11] *Phillip L. Barnes*, *supra* note 9.

continuing disability subsequent to August 9, 2003 causally related to his March 16, 2001 employment injury.

Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[12] The Board finds that as the August 27, 2003 MRI scans do not address the issue of causal relationship, they are insufficient to meet appellant's burden of proof.

Similarly, Dr. Laneve's August 26, 2003 report is insufficient to meet appellant's burden of proof. Dr. Laneve noted previous diagnoses of left lumbar radiculopathy and right cervical radiculopathy and opined that appellant was disabled from working due to "pain related to the injury that has been cited." The Board has held that a diagnosis of "pain" does not constitute the basis for the payment of compensation.[13] Moreover, Dr. Laneve's opinion is unrationalized as he provides no medical rationale explaining the nature of the relationship between appellant's current medical condition and disability and the March 16, 2001 employment injury.

The Board also finds the reports of Dr. Hofmann to be insufficient to support any continuing disability due to the accepted March 16, 2001 employment injury. In the August 25, 2003 report, Dr. Hofmann agreed with Dr. Sheridan that there was no evidence of any continuing lumbar or cervical radiculopathy. As Dr. Hofmann did not specifically attribute appellant's continuing disability due to his accepted employment injury, his opinion is of diminished probative value. Additionally, the Office did not accept appellant's claim for chronic cervical strain. Appellant bears the burden of establishing causal relationship for any condition not accepted by the Office.[14] In this case, Dr. Hoffman opined appellant's chronic cervical strain was due to the employment injury, but provided no supporting medical rationale explaining but did not address the issue of causation. The Board has further explained that a medical opinion consisting solely of a conclusory statement regarding disability, without supporting rationale, is of little probative value.[15] These reports also fail to establish that appellant was disabled from work on or after August 9, 2003 causally related to appellant's March 16 2001 work-related injury.

CONCLUSION

Accordingly, the Board finds that Dr. Sheridan's opinion is sufficient to meet the Office's burden of proof in terminating appellant's compensation. Further, the Board finds that appellant

[12] *Linda I. Sprague*, 48 ECAB 386 (1997).

[13] *Phillip L. Barnes*, *supra* note 9.

[14] *Charlene R. Herrera*, 44 ECAB 361 (1993).

[15] *Marilyn D. Polk*, 44 ECAB 673 (1993); *Leon Harris Ford*, 31 ECAB 514 (1980); *Neil Oliver*, 31 ECAB 400 (1980); *Leontine F. Lucas*, 30 ECAB 925 (1979).

failed to establish that he was disabled from work on or after August 9, 2003 causally related to the March 16, 2001 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 20, 2004 and August 1, 2003 are affirmed.

Issued: September 1, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member