

Appellant's claim was initially accepted based upon the medical report of appellant's treating physician, Dr. John F. Ferguson, a Board-certified neurosurgeon. In a report dated March 28, 2000, Dr. Ferguson reviewed cervical spine x-rays which he stated demonstrated osteophytic spurring and collapse of the disc space, particularly at C5-6 and to a lesser extent at C4-5, with mild diffuse degenerative changes throughout the cervical spine. Dr. Ferguson concluded that appellant had a normal neurological examination, with cervical spondylosis and osteophytic spurs, and neuroforaminal encroachment at C4-5 and C5-6.

In order to determine appellant's current condition, the Office referred appellant for a second opinion examination with Dr. Arthur S. Daus, a Board-certified neurosurgeon. In a report dated July 16, 2001, Dr. Daus advised that appellant was not able to return as a city letter carrier. He stated that given the fact that appellant had cervical spinal stenosis, returning to his former job would probably aggravate his back and his leg pain. Dr. Daus concluded that appellant probably was not going to be able to resume his job as a city letter carrier and had not yet reached maximum medical improvement.

In a report dated December 31, 2001, Dr. Hish S. Majzoub, a Board-certified neurosurgeon serving as an Office referral physician, stated that appellant experienced neck pain in addition to bilateral shoulder and arm pain. Dr. Majzoub advised that appellant probably had cervical spondylosis with some foraminal stenosis at C5-6 and possibly at C6-7. He stated that a magnetic resonance imaging (MRI) scan was not very conclusive and recommended that appellant undergo a myelography and a computerized axial tomography (CAT) to determine whether he indeed had foraminal stenosis that could be corrected with surgery. In a January 21, 2002 report, Dr. Majzoub indicated that appellant had undergone a cervical myelography on January 14, 2002 which revealed minimal edema of the nerve root sleeve at C5-6, in addition to mild foraminal stenosis at C4-5 on the right. Dr. Majzoub stated that appellant had no significant disease at the C5 or C6 interspaces or significant foraminal stenosis to justify surgery and confirmed a diagnosis of mild cervical spondylosis at C4-5 and minimal spondylosis at C5-6. He recommended that appellant continue with conservative treatment.

In a supplemental report dated February 28, 2002, Dr. Daus responded to questions posed by the Office. When asked whether appellant's current neurologic work-up demonstrated a cervical condition caused by his employment, Dr. Daus replied that appellant's current neurological examination did demonstrate a cervical strain which appeared to be caused or aggravated by his employment at the employing establishment. He stated, however, that appellant's initial MRI scan had been erroneously interpreted. Dr. Daus asserted that his current cervical MRI scan, myelogram and CAT scan of appellant indicated that the diagnosis of C6-7 disc herniation/protrusion was incorrect, and that appellant actually had disc bulging at C6-7 and a minimal bulge at C3-4. He stated that he had misdiagnosed the initial MRI scan as showing spinal stenosis at the C5-6 level during his first evaluation in July 2001, but that, based on the myelogram CAT scan results done by Dr. Majzoub, he could comfortably dismiss this initial misdiagnosis. Dr. Daus reiterated the diagnoses of cervical strain and C5-6 cervical degenerative disc disease, a C3-4 disc bulge and a C6-7 disc bulge.

When asked whether these conditions were permanent or temporary, Dr. Daus advised that appellant had a condition which was aggravated by his employment. In addition, he stated that although appellant claimed to have ongoing pains, he believed that they had already stopped.

Dr. Daus noted that on examination appellant stated that he experienced shoulder and arm pain and described aspects of the pain and in the process of describing this, he was able to move his arm and shoulder in an unguarded manner. Dr. Daus stated:

“[Appellant] has indeed reached his maximum medical improvement within a reasonable degree of medical certainty. Also within a reasonable degree of medical certainty I am of the opinion that no further surgery is needed in this gentleman nor should be entertained. He appears to have no ongoing aggravation from his job and the degree of symptoms that he does have are significantly less than that which he experienced with his work. I would consider a formulation and move to settlement offer of his workers’ compensation injury.

“In summary, I believe that he has reached maximum medical improvement, that his symptoms that he experiences now are symptoms that would experience whether he was in postal employment or not. However, with medications he appears to function in a very reasonable manner and I think it is very sensible to consider a possibility that he could indeed be employed or employable in some other functional manner in civil society. In order to properly pursue this issue, however, I would recommend that you get a functional capacity [examination] either through Freeman Hospital or a physical therapy group of your choosing and based on the evidence acquired in the examination, we can determine whether the examination is genuinely reliable or the symptoms are being fabricated and findings being fabricated in the examination. Assuming the examination to be reliable, vocational rehabilitation assessment could be made, a specific determination then could be formulated as to whether he actually is employable and if so in what capacity and whether that job genuinely is open at the present time.”

In accordance with Dr. Daus’ recommendation, appellant underwent a functional capacity evaluation on April 5, 2002. In a report dated April 15, 2002, Dr. Daus reviewed the functional capacity evaluation and stated that appellant could return to work for eight hours per day with physical restrictions. He advised that the functional capacity study appellant underwent demonstrated definite symptom exaggeration on appellant’s part. Dr. Daus concluded that appellant made attempts to control the test results by exerting less than maximum voluntary effort.

The Office determined that there was a conflict in the medical evidence regarding appellant’s diagnosis and disability between Dr. Ferguson and Dr. Daus. I referred appellant to Dr. Jeffrey A. Greenberg, a Board-certified neurosurgeon, for an impartial examination to resolve the conflict in the medical evidence. In a July 9, 2002 report, Dr. Greenberg noted that appellant’s past medical history was significant for osteoarthritic disease. He stated that his neurological examination of appellant was essentially normal and that MRI’s of the cervical spine had been reviewed from 1996, 2000 and 2001 and these studies “look essentially entirely normal.” Dr. Greenberg explained that he saw no indication to consider any form of spinal surgical intervention in the patient regarding the cervical spine.

In a report dated July 25, 2002, Dr. Ferguson, a Board-certified neurosurgeon, stated that he had examined appellant on March 28, 2000, at which time he had recommended that appellant remain off work and undergo physical therapy because of the severity of pain, which was aggravated by lifting, pushing, pulling or standing with pain extending to his arms and hands bilaterally. Dr. Ferguson stated that appellant was seen last at a pain clinic and to his knowledge he had returned to work.

In a supplemental report dated August 15, 2002, Dr. Greenberg advised that appellant had no hard objective findings other than a slight decrease in the range of motion of the lumbar spine. He stated that appellant did not demonstrate any neurological pathology regarding his neck. Dr. Greenberg concluded that appellant did not have any permanent disability. He indicated that appellant could return to work as a letter carrier and that he had no further recommendations for the medical management of appellant, except to decrease his narcotic use.

By decision dated October 3, 2002, the Office terminated appellant's compensation, finding that Dr. Greenberg's opinion represented the weight of the medical evidence and established that appellant was no longer disabled due to the accepted employment injury.

By letter dated October 15, 2002, appellant requested an oral hearing, which was held on July 30, 2003. Appellant did not submit any additional medical evidence with his request.

By decision dated October 24, 2003, an Office hearing representative affirmed the October 3, 2002 decision terminating compensation.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.³

ANALYSIS

The Office properly determined that a conflict existed in the medical opinion evidence between Dr. Ferguson, appellant's treating physician who opined that appellant had cervical spondylosis and osteophytic changes, and neuroforaminal encroachment at C4-5, C5-6, which

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ 5 U.S.C. § 8123(a).

caused disability for work and Dr. Daus, the Office's second opinion physician who opined that appellant had cervical strain and C5-6 cervical degenerative disc disease, a C3-4 disc bulge and a C6-7 disc bulge, but concluded that appellant could return to work.

The Office based its decision to terminate appellant's compensation on Dr. Greenberg's impartial medical evaluation. It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴ Dr. Greenberg explained in his July 9, 2002 report that, while appellant's medical history was significant for osteopathic disease, appellant's neurological examination of the cervical spine was essentially normal. Furthermore, while the Office had determined that a conflict existed as to the nature of appellant's current diagnosis, based upon x-ray and MRI scan findings, Dr. Greenberg explained that appellant's cervical spine MRI scan studies were "essentially normal." In a supplemental report dated August 15, 2002, Dr. Greenberg advised that appellant had no objective findings other than a slight decrease in the range of motion of the lumbar spine. He stated that appellant did not demonstrate any neurological pathology regarding his neck. Dr. Greenberg advised that appellant did not have any permanent disability and opined that appellant could return to work as a letter carrier. The Office relied on Dr. Greenberg's opinion in its October 3, 2002 termination decision, finding that appellant had no objective test results to support a finding of continuing disability for work resulting from the accepted conditions.

The Board finds that the Office properly found that Dr. Greenberg's impartial opinion established that appellant was no longer disabled due to his accepted cervical conditions. Dr. Greenberg concluded that appellant had no neurological or objective findings which would cause disability. His report is sufficiently probative, rationalized and based upon a proper factual background. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁵ The Board finds that Dr. Greenberg's referee opinion constituted medical evidence sufficient to establish that appellant was no longer disabled due to his accepted cervical conditions and supports the Office's decision to terminate his compensation benefits.

Once the Office properly terminated appellant's compensation in its October 3, 2002 decision, the burden of proof shifted to appellant to establish a continuing employment-related disability.⁶ Appellant, however, did not submit any additional medical evidence. The weight of the medical evidence is represented by Dr. Greenberg's opinion, and the Office hearing representative properly affirmed the October 3, 2002 decision. The Board will affirm the Office's October 24, 2003 decision affirming the termination of compensation.

⁴ *Michael Hughes*, 52 ECAB 387 (2001).

⁵ *See Anna C. Leanza*, 48 ECAB 115 (1996).

⁶ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

CONCLUSION

The Board finds that the Office met its burden to terminate appellant's compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 12, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member