

containers. The Office accepted his claim for a lumbar strain.¹ Appellant returned to light duty for four hours a day on July 25, 2000 and began working six hours a day on October 5, 2000. His work hours were reduced to four hours a day on June 15, 2001. At the time of the May 18, 2000 employment injury, appellant was performing work as a light-duty mail handler due to an employment-related herniated disc at L5-S1 sustained on August 6, 1980. He also sustained a work-related herniated disc in 1975.

On November 17, 2003 appellant filed a claim for a recurrence of total disability on October 16, 2003 causally related to his May 18, 2000 employment injury.

In a March 10, 2004 report, Dr. Melinda Campopiano, an attending Board-certified family practitioner, indicated that appellant was totally disabled from October 16 to December 11, 2003 due to an exacerbation of his employment-related back condition. She opined that appellant was unable to perform even sedentary work due to pain and impaired sleep. In an April 21, 2004 report, she indicated that appellant was totally disabled due to back pain caused by spinal stenosis.

The Office referred appellant, together with a statement of accepted facts, to Dr. Howard J. Senter, a Board-certified neurosurgeon, for an examination and evaluation of whether he had any residual disability or medical condition causally related to his May 18, 2000 employment injury. In a report dated April 13, 2004, Dr. Senter opined that appellant had no residuals of his May 18, 2000 employment injury.

By letter dated June 3, 2004, the Office asked Dr. Senter whether appellant had fully recovered from his 1975 and 1980 back injuries and related surgeries in 1978 and 1980 and his May 18, 2000 back injury.

On June 10, 2004 Dr. Senter stated:

“[Appellant] had fully recovered from his 1978 and 1980 surgeries which were in turn related to work injuries in 1975 and August 6, 1980. He had fully recovered from those injuries with no residual or partial deficit and has no evidence that he has had any nonwork-related recurrence of either of the two herniated discs. Examination and medical records and x-ray strongly suggest frank symptom magnification and malingering. I feel that he is not disabled from performing his previous occupation as mail handler in relationship to the May 18, 2000 injury and is able to do the same job that he was able to do before that injury even though he had already had two prior disc surgeries from which he had fully recovered and was in fact performing that same job.”

¹ The record reflects that the Office subsequently accepted a conversion reaction (a type of emotional condition) as work related. However, there is no medical evidence of record regarding this condition or a letter of acceptance from the Office for a conversion reaction. The nonfatal summary in this case indicates that the Office also accepted a lumbar disc displacement as work related.

The Office found a conflict between Dr. Campopiano and Dr. Senter and referred appellant, together with the case record, to Dr. Frank T. Vertosick, Jr., a Board-certified neurosurgeon, for an evaluation as to whether he had any residual disability or medical condition causally related to his May 18, 2000 employment injury. In a report dated January 25, 2005, Dr. Vertosick provided a history of appellant's condition and findings on physical examination. He opined that appellant was capable of performing his light-duty position. Dr. Vertosick stated:

“[Appellant] has some exaggerated pain behavior, positive axial rotation and nondermatomal sensory loss on the left leg below the knee. He has three out of five symptom magnifying signs.

“Straight leg raise tests are subjectively positive at 90 degrees for hip pain, negative on the right. Strength is normal. He has nondermatomal sensory loss in the left leg which is not physiologic. Reflexes are 1+ at the knees, trace at the ankles. He has no atrophy or weakness.

“[Appellant's] gait is slightly antalgic using a cane to walk. He can stand on his heels and toes with assistance but will not walk in those positions because of unsteadiness.

“His low back had normal lordosis, no spasm, no tenderness, forward flexion of 70 degrees, extension of 20 degrees and side bending of 30 [to] 35 degrees all of which are normal.

“Basically, [appellant] has a normal examination with the exception of some subjective findings which are not physiologic. I see no percent restriction of bodily function that would be attributable to the May 18, 2000 event.”

* * *

“I reviewed lumbar MRIs [magnetic resonance imaging scans] dated January 25, 1999, June 15, 2000 and November 15, 2003. All show postoperative changes on the left at L4-5 and L5-S1. They show no recurrent disc [problems] and are negative otherwise. All look the same. I see no change in the MRIs attributable to the May 18, 2000 event.”

Based on his examination, Dr. Vertosick stated that he could find no residuals of the May 18, 2000 injury and that he would not place appellant on any restrictions due to that injury. He advised that appellant had fully recovered from the accepted injury and could work for eight hours a day as a mail handler.

By decision dated February 15, 2005, the Office denied appellant's claim for a recurrence of total disability as of October 16, 2003 on the grounds that the weight of the medical evidence, as represented by the January 25, 2005 report of Dr. Vertosick, established that he could perform his light-duty position.

By letter dated February 16, 2005, the Office proposed to terminate appellant's compensation and medical benefits on the grounds that the weight of the medical evidence also established that he had fully recovered from his May 18, 2000 employment injury. Appellant did not submit any addition medical evidence.

By decision dated March 18, 2005, the Office finalized its termination of appellant's compensation and medical benefits effective March 20, 2005.

LEGAL PRECEDENT -- ISSUE 1

Where an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish, by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

The Board notes that the term "disability," as used in the Federal Employees' Compensation Act means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.³ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁴ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁵ "Recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁶

Section 8123(a) of the 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 [of Labor] shall appoint a third physician who shall make an examination."⁷ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Patricia A. Keller*, 45 ECAB 278 (1993).

⁴ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁵ *Clement Jay After Buffalo*, 45 ECAB 707 (1994).

⁶ 20 C.F.R. § 10.5(x).

⁷ 5 U.S.C. § 8123(a); see also *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁸

ANALYSIS -- ISSUE 1

Appellant sustained a lumbar strain and disc displacement on May 18, 2000 and returned to work in a light-duty capacity. He subsequently filed a claim for a recurrence of total disability as of October 16, 2003. To be entitled to compensation for total disability beginning on October 16, 2003, appellant must provide medical evidence establishing that he became disabled due to a worsening of his accepted work-related conditions or a change in his job duties such that he was unable to perform his light-duty work.

The Office properly found that there was a conflict between Dr. Campopiano and Dr. Senter on the issue of whether appellant sustained a recurrence of total disability on October 16, 2003 and referred appellant to Dr. Vertosick, a Board-certified neurosurgeon.

In a report dated January 25, 2005, Dr. Vertosick provided a history of appellant's condition and detailed findings on physical examination. He stated that appellant had some exaggerated pain behavior and three out of five symptom-magnifying signs. Appellant had nondermatomal sensory loss in the left leg which was not physiologic and no atrophy or weakness. His low back had normal lordosis, no spasm, no tenderness and normal range of motion. Dr. Vertosick indicated that he had reviewed lumbar MRI scans from 1999, 2000 and 2003 which revealed postoperative changes on the left at L4-5 and L5-S1 but no recurrent disc problems and the scans were negative otherwise. He stated that he saw no change in the MRI scans attributable to the May 18, 2000 event. Dr. Vertosick concluded that appellant had a normal examination with the exception of some subjective findings which were not physiologic. He opined that appellant was capable of returning to work as a mail handler for eight hours a day without restriction.

The Board finds that the thorough and well-rationalized report of Dr. Vertosick establishes that appellant was capable of performing his light-duty position. Appellant failed to establish that he had a change in the nature and extent of his injury-related conditions or a change in the nature and extent of the light-duty job requirements such that he was totally disabled. Therefore, the Office properly denied his claim for a recurrence of total disability on October 16, 2003.

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁹ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.¹⁰ The

⁸ See *Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁹ *Barry Neutach*, 54 ECAB ____ (Docket No. 01-1532, issued January 6, 2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

¹⁰ *Id.*

Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹¹ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.¹²

ANALYSIS -- ISSUE 2

The Office accepted appellant's claim for a lumbar strain and disc displacement. On March 20, 2005 the Office finalized its termination of appellant's compensation and medical benefits on the grounds that the accepted conditions had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.¹³

Dr. Vertosick was selected to resolve the conflict between the attending physician and the Office referral physician as to the nature and extent of any disability due to his May 18, 2000 employment injury. As noted, he conducted a thorough physical examination of appellant and determined that he had no continuing disability or medical condition causally related to his May 18, 2000 employment injury. Dr. Vertosick provided a full review of appellant's medical history and noted that there were no changes on MRI scans at the L4-5 or L5-S1 disc spaces that could be attributable to the May 18, 2000 injury. He opined that appellant had no residuals of the accepted injury and could return to full-time work as a mail handler. The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits effective March 20, 2005 based on the thorough and well-rationalized report of Dr. Vertosick.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of total disability on October 16, 2003 causally related to his May 18, 2000 employment injury. The Board further finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits effective March 20, 2005.

¹¹ See *Del K. Rykert*, 40 ECAB 284 (1988).

¹² *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

¹³ *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 18 and February 15, 2005 are affirmed.

Issued: November 23, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board