United States Department of Labor
Employees' Compensation Appeals Board

MONROE QUINN, Appellant	)	
and	)	**Docket No. 05-1619**
	)	**Issued: February 1, 2006**
U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA, Employer	)	

Appearances:
Monroe Quinn, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On July 27, 2005 appellant filed a timely appeal from the August 10, 2004 and May 11, 2005 merit decisions of the Office of Workers' Compensation Programs terminating his compensation and medical benefits effective August 28, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof in terminating appellant's compensation and medical benefits effective August 28, 2003.

FACTUAL HISTORY

This case has previously been before this Board. In a decision dated September 20, 1995, this Board found that the Office improperly terminated appellant's compensation and reversed the Office's decisions dated July 8, 1993 and December 23, 1992.[1] The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated hereby by

[1] Docket No. 94-615 (issued September 20, 1995).

reference.[2] Although the history of the case can be found in the Board's prior appeal, relevant facts and medical evidence regarding the current appeal will be summarized here.

On May 31, 1989 appellant, then a 53-year-old distribution clerk, filed a traumatic injury claim alleging that he had fallen in an employing establishment restroom on that date because he was unable to reach a hand railing. He stopped work on May 31, 1989. Appellant had a preexisting neurological problems (spastic paralysis) following removal of a spinal cord tumor in 1968 and has been confined to a wheelchair since 1985. By letter dated August 7, 1989, the Office accepted his claim for contusion left hip, back and left arm strain.

In a September 23, 1997 report, Dr. Richard Aptaker, an osteopath with Kaiser Permanente, indicated that appellant had been under the care of Kaiser physicians for several years dating back to his work injury in 1989. He noted that she has an underlying quadriparesis secondary to a spinal cord tumor which was resected and for which appellant underwent radiation therapy during the years 1968 and 1969. Dr. Aptaker noted that appellant sustained a soft tissue injury while working for the employing establishment in 1989 and has been in chronic pain since that time. He suggested that every effort be made to return him to work, but that, for that to happen, he would need to receive some type of transportation. Appellant returned to work on November 5, 2001.

In a report dated March 4, 1999, Dr. Kandice Strako, a Board-certified internist, indicated that appellant was a paraplegic who was confined to a motorized wheelchair. He noted that he had fairly good function in his upper extremities although it was not 100 percent. Dr. Strako noted that appellant was able to function in a job situation where he could be in a wheelchair and just use his upper body. By letters to Dr. Strako dated April 25 and August 1, 2001, the Office requested an update on his condition. These letters were not answered.

On October 22, 2002 the Office referred appellant to Dr. Thomas Schmitz, a Board-certified orthopedic surgeon, for a second opinion. In a report dated November 14, 2002, he stated that appellant's symptoms were not ratable. Dr. Schmitz further opined that "all the symptoms at the present time would have to be related to the previous nonindustrial 1968 injury."

By letter dated February 21, 2003, the Office referred appellant to Dr. Stanley Baer, a Board-certified orthopedic surgeon, for a second opinion. In a report dated March 13, 2003, he stated that he would recommend that a neurologist or neurosurgeon evaluate him. Dr. Baer did opine: "I would tend to agree that [appellant's] problems are secondary to progressive radiation myelopathy rather than try to attribute this to the injury of [May 31, 1989]. Dr. Baer further stated:

> "It is likely that [appellant's] condition progressed from a nonindustrial post radiation myelopathy. [He] most likely had strains of his right hip, left elbow, probably right arm, low back and possibly the cervical spine as the result of the work injury, but they would have recovered in approximately three months. These injuries apparently did not leave residuals in [appellant] other than what

[2] *Lynn C. Huber*, 54 ECAB 281 (2002).

> seems to be a progressive problem with regard to post radiation myelopathy of the cervical spine upper thoracic spine. It is not likely that [he] would have progressive myelopathy from the May 31, 1989 injury since he was progressively losing function without any injuries prior to that time."

On May 2, 2003 the Office referred appellant to Dr. Daniel K. Lee, a Board-certified neurologist, for a second opinion. In a report dated June 2, 2003, he noted that appellant had been on a progressive course of quadriparesis since the early 1980s that was directly related to his spinal cord tumor and his subsequent treatment and radiation. Dr. Lee did not believe that his current condition was in any way related to the accepted work-related injury.

In a form completed on July 22, 2003 for the California Division of Workers' Compensation, Dr. Linda Morse, appellant's treating physician, Board-certified in occupational medicine, noted new onset of left upper extremity arm and upper back pain for which she listed her impressions as "biomechanical localized muscle pain due to changes in wheelchair vs. progression of underlying non[industrial] disorder."

On July 25, 2003 the Office issued a proposed termination of compensation and medical benefits on the grounds that appellant's employment-related disability had ceased.[3] The Office found the weight of the medical evidence to rest with the second opinion physicians. Appellant was allotted 30 days to reply, but did not respond.

On August 28, 2003 the proposed termination of compensation was made final effective that date. Additionally, the Office denied appellant's claim for a schedule award and the purchase of a van.

On September 15, 2003 appellant requested an oral hearing. At the hearing held on June 21, 2004, he testified, *inter alia,* that he sees Dr. Strako every two to three months.

By letter dated July14, 2004, Dr. Joseph J. Fanucchi, the associate area medical director for the employing establishment, indicated that he reviewed a copy of the transcript and denied appellant's inference that he had any improper contact with Dr. Morse.

By decision dated August 10, 2004, the hearing representative affirmed the termination of benefits on the basis that appellant is no longer experiencing residuals from the accepted employment injury and that his disability was due to his preexisting quadriparesis.

On October 26, 2004 appellant requested reconsideration. He did not present new evidence, but made several contentions. Appellant contended, *inter alia*, that the hearing representative placed too much weight on second opinions that were contradicting and did not state that examiners had reviewed the entire medical file, that Dr. Baer said that a radiologist could more appropriately diagnose whether this condition could have been progressive without the injury and that Dr. Fanuchi from the employing establishment had inappropriate contact with the Office.

[3] The Office noted that it was also proposing to terminate appellant's contract for the purchase of a van and for the transportation for commuting to work.

By decision dated May 11, 2005, the Office reviewed appellant's case on the merits but denied modification.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[4] After it has been 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.[5]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[6] 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.[7]

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report.[8]

ANALYSIS

The Office only accepted the conditions of contusion left hip, back and left arm strain. Appellant has a serious preexisting neurological condition of spastic paralysis following the removal of a spinal cord tumor in 1968 and has been confined to a wheelchair since 1985. The Office bears the burden of establishing that he no longer has residuals of the employment-related condition.

In terminating appellant's compensation, the Office relied on the second opinions of Dr. Schmitz, Dr. Baer and Dr. Lee. All of these opinions unequivocally support that his work-related soft-tissue injuries have healed and that he has no ongoing disability related to the 1989 employment injury. Specifically, Dr. Schmitz opined that appellant's symptoms were not ratable and that all the symptoms at the present time would have to be related to the previous nonindustrial 1968 injury. Dr. Baer stated that he agreed that appellant's problems are secondary to the progressive radiation myelopathy rather than to the work injury. Finally, Dr. Lee stated

[4] *Gewin C. Hawkins,* 52 ECAB 242 (2001); *Alice J. Tysinger,* 51 ECAB 638 (2000).

[5] *Mary A. Lowe,* 52 ECAB 223 (2001).

[6] *Furman G. Peake,* 41 ECAB 361, 364 (1990).

[7] *Id.*

[8] *Jean Cullition,* 47 ECAB 728 (1996).

that appellant's condition is directly related to his spinal cord tumor and subsequent radiation and that he did not believe that it was in any way related to the accepted work injury.

Furthermore, the Board notes that there are no current medical reports from appellant's physicians indicating that he has a current disability causally related to the work incident. Although he testified that he sees Dr. Strako every two to three months, the last report of Dr. Strako that is contained in the record is a report from March 4, 1999 wherein he made no comment as to whether appellant was still suffering from the work incident. He never answered the Office's letters for more information. Finally, Dr. Morse, in her July 22, 2003 report, noted that there was a new onset of left upper extremity arm and upper back pain, but she attributed this to changes in appellant's wheelchair and not to the industrial incident. Furthermore, none of these reports constitute a complete, rationalized medical report in that they do not thoroughly discuss his history of make specific findings on examination.

As the only recent rationalized opinions were the second opinion physicians who found that appellant no longer had any work-related condition and as there is no current rationalized opinion that he continues to suffer from the work-related injury, the Office properly terminated his benefits. His arguments to the contrary are without merit. The reports of Dr. Baer, Dr. Lee and Dr. Schmitz were based on proper medical background and their observations of appellant. The record shows that the Office submitted a copy of all medical records to these physicians and there are references in these reports to those prior records. With regard to appellant's contention that Dr. Baer recommended that he see a radiologist, it is clear from his report that he recommended that appellant see a neurologist or neurosurgeon. He simply noted that a radiologist could also probably answer questions. Finally, there is no evidence that Dr. Fanuchhi had any improper contact with Dr. Morse or any other physician. Furthermore, the termination was based on the opinion of the second opinion physicians and not appellant's physicians. Based on these facts, the Office properly terminated his compensation and medical benefits.

CONCLUSION

The Office met its burden of proof in terminating appellant's compensation and medical benefits effective August 28, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 27, 2005 and August 10, 2004 are affirmed.

Issued: February 1, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board