

FACTUAL HISTORY

On February 24, 2001 appellant, a 55-year-old truck driver, filed a claim for a traumatic injury alleging that he injured his lower back when he fell on snow and ice on February 22, 2001. His claim was accepted for low back sprain and was later expanded to include aggravation of post-traumatic stress disorder, aggravation of adjustment reaction and aggravation of pain disorder. Appellant was placed on the periodic rolls.

Appellant moved to the State of Washington in April 2003 and came under the care of Dr. Thomas L. Dillon, a Board-certified psychiatrist. The record contains narrative reports from Dr. Dillon dated January 14, May 28 and August 4, 2004, as well as unsigned chart notes for the period January 21 to December 20, 2004. In his January 14, 2004 report, Dr. Dillon opined that appellant's pain disorder, major depression, panic disorder with agoraphobia and post-traumatic stress disorder were all related to his industrial injuries and sequelae. On May 28, 2004 he indicated that appellant had made gradual progress in the past few months of treatment. In his August 4, 2004 report, Dr. Dillon opined that appellant was still symptomatic, although he reported no panic attacks or severe post-traumatic stress disorder. The record does not contain any medical reports reflecting treatment for appellant's low back condition subsequent to his move to the State of Washington.

The Office referred appellant to Dr. Barbara Jessen, a Board-certified orthopedic surgeon, for a second opinion as to whether appellant had residuals from his accepted back injury and, if so, whether he was disabled as a result of those residuals. The Office also referred appellant to Dr. Frederick Montgomery, a Board-certified psychiatrist, for a second opinion as to whether appellant suffered from and was disabled as a result of a work-related emotional condition. In a January 23, 2004 report, Dr. Jessen found no objective evidence to support residuals. In a January 28, 2004 report, Dr. Montgomery opined that appellant's psychiatric limitations were not due to the accepted work-related condition. Appellant's representative objected to the reports of Drs. Jessen and Montgomery on the grounds that he had not received notification of the examination. Due to the oversight, the Office notified appellant's representative that it would obtain additional second opinion reports.

The Office referred appellant, along with a statement of accepted facts and the entire medical record, to Dr. Carl F. Brunjes, a Board-certified orthopedic surgeon, and Dr. Linda M. Wray, a Board-certified neurologist, for a second opinion examination and an opinion as to whether there existed residuals from the February 22, 2001 back injury and, if so, whether appellant was disabled from work as a result of those residuals. The Office also referred appellant, along with a statement of accepted facts and the entire medical record, to Dr. David G. Grubb, a Board-certified psychiatrist, for a second opinion examination and an opinion as to whether appellant suffered from and was disabled as a result of a work-related emotional condition.

In a report dated July 14, 2004, Drs. Brunjes and Wray opined that there were no objective findings to support ongoing residuals related to appellant's accepted low back sprain. The physicians related appellant's medical history, history of injury and job requirements. They noted that appellant was markedly obese. Examination revealed a normal gait; slight gluteal tenderness on the right side; left trochanteric tenderness; and no sciatic tenderness present. Back

range of motion was 30 degrees extension; forward flexion 70 degrees; left and right bend 25 degrees; left and right turn 25 degrees, all with some discomfort at the lumbosacral level. Straight leg raising was not impaired. Deep tendon reflexes were 2+ upper and lower extremities. Appellant described some numbness in the left lower extremity in the anterior and lateral thigh, but not in the posterior thigh or the lateral left calf. There was no decreased sensation found in the feet and circulation appeared to be normal. Motor strength was 5/5 overall. Range of motion of the lower extremity joints was normal. Neurologically, appellant demonstrated a slow but smooth, well-coordinated gait, without limp or list and the ability to toe walk with intact strength. Squatting was limited to 30 percent due to alleged low back pain. Muscle strength was 5/5 throughout and both knees extended to 180 degrees readily in the seated position, with no apparent discomfort or tripod, even with ankle dorsiflexion. Drs. Brunjes and Wray found that appellant had continuing low back strain symptoms of a subjective nature. They also opined that he had underlying degenerative lumbar spondylosis, as noted on imaging studies, without any definite neurological localized nerve root impairment, as well as exogenous obesity and general deconditioning, unrelated to his work injury. The physicians stated that the subjective symptoms related to the February 22, 2001 injury should have resolved within a two through three-month period and that his ongoing mechanical low back symptoms were a result of his other diagnosed conditions. Drs. Brunjes and Wray opined that appellant was disabled from performing his date-of-injury job, but that the disability was due to his diagnosed degenerative spondylosis of the lumbar spine and exogenous obesity, rather than to his accepted low back sprain.

In a report dated July 14, 2004, Dr. Grubb provided a thorough history of appellant's condition and rendered a diagnosis of mood disorder with depressive anxious features, related to appellant's lumbar sprain/strain syndrome. He noted that appellant's histories of anxiety disorder, panic attacks and post-traumatic stress disorder were in remission. Dr. Grubb opined that appellant's psychological complaints were a direct result of his work-related orthopedic injury. He stated that, although "any direct residual of the injury would have healed," appellant continued to be angry and to have an attitude of entitlement and hostile dependency regarding his income directed at his previous employer. Dr. Grubb indicated that appellant exhibited ongoing anxiety about the future and his perception of himself as unemployable as a result of his physical condition. He opined that appellant's "work-related disability would not prevent him from employment to which he is physically suited and appropriate for his education and cognitive capacities." He indicated that, from a psychiatric standpoint, appellant was capable of participating in a vocational rehabilitation program, but that his attitude about such a program would make success unlikely. In an August 13, 2004 work capacity evaluation, Dr. Grubb stated that, "from a psychiatric viewpoint, he can work in a job he is physically able to perform." He further indicated that appellant had no psychiatric limitations.

On December 6, 2004 the Office issued a notice of proposed termination of compensation benefits related to appellant's psychological condition and termination of medical and compensation benefits related to his accepted back condition. Appellant was given 30 days to submit additional evidence or argument in support of his case. No additional evidence was submitted.

On January 5, 2005 the Office finalized the termination of appellant's wage loss effective that date for his accepted back and psychiatric conditions. The Office also finalized the

termination of appellant's medical benefits for his back accepted back condition. The Office found that the weight of the medical evidence, contained in the report of Drs. Brunjes and Wray, established that appellant's accepted low back sprain had resolved. The Office further found that the weight of the medical evidence, contained in Dr. Grubb's report, demonstrated that appellant was not prevented by his emotional condition from performing his date-of-injury job.

On January 11, 2005 the Office received a letter dated January 4, 2005 from appellant's representative, who contended that the Office had not met its burden of proof to terminate appellant's benefits, in that the reports are not rationalized and do not establish that his accepted conditions have resolved.

On January 19, 2005 the Office issued a decision finalizing the termination of appellant's wage loss, effective January 23, 2005, for his accepted back and psychiatric conditions. The Office also finalized the termination of appellant's medical benefits for his accepted back sprain.

On January 25, 2005 appellant requested a review of the written record. Appellant submitted unsigned chart notes for the period September 22, 2004 through April 25, 2005 from Dr. Dillon. In unsigned notes dated February 14, 2005, Dr. Dillon stated that appellant's worsening depression and post-traumatic stress disorder symptoms made gainful employment problematic at that time. He also recommended further psychiatric and medical treatment before making a realistic attempt to achieve a sustainable return to work effort. Appellant also submitted unsigned treatment notes from Walla Walla Veterans Administration (VA) Medical Center for the period February 18 through June 22, 2005.

By decision dated September 15, 2005, the Office hearing representative affirmed the termination of benefits, finding that the reports of Drs. Brunjes and Wray established that appellant had no remaining residuals from his accepted back injury and that Dr. Grubb's report established that appellant was not disabled from work as a result of his accepted psychological condition. The Office indicated that it had considered the January 4, 2005 response from appellant's representative.

LEGAL PRECEDENT -- ISSUE 1

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 The Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

¹ See *Kathryn E. Demarsh*, 56 ECAB ____ (Docket No. 05-269, issued August 18, 2005). See also *Beverly Grimes*, 54 ECAB 543 (2003).

² *Id.*

³ *James M. Frasher*, 53 ECAB 794 (2002).

Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁴ 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits for his accepted back sprain effective January 23, 2005.

Having accepted the condition of lumbar strain, the Office based its decision to terminate appellant's compensation and medical benefits on the opinion of Drs. Brunjes and Wray, who performed the second opinion examination for the Office. In their well-rationalized report, which was based on a proper factual background, Drs. Brunjes and Wray opined that appellant had no residuals from his accepted condition. They noted that there were no objective findings to support ongoing residuals related to appellant's accepted low back strain and that the subjective symptoms related to the February 22, 2001 injury should have resolved within a two through three-month period. They further opined that, although appellant was disabled from performing his date-of-injury job, his disability was not due to his accepted back sprain, but rather was caused by his nonwork-related degenerative spondylosis of the lumbar spine and exogenous obesity. Their detailed findings on examination and thorough explanation support their conclusion. On the other hand, appellant submitted no probative medical evidence prior to the termination supporting that he suffered residuals from his accepted injury. In fact, the record is devoid of any medical evidence establishing that appellant sought any medical treatment whatsoever for his low back sprain after he moved to the State of Washington in April 2003. The Board finds that the opinion of Drs. Brunjes and Wray constituted the weight of medical evidence and was sufficiently rationalized to support the Office's decision to terminate appellant's compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 2

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.⁶ The Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁷ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

⁴ See *Kathryn E. Demarsh*, *supra* note 1. See also *Franklin D. Haislah*, 52 ECAB 457 (2001).

⁵ See *Kathryn E. Demarsh*, *supra* note 1.

⁶ See *supra* note 1.

⁷ *Id.*

⁸ *James M. Frasher*, *supra* note 3.

ANALYSIS -- ISSUE 2

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits for his accepted psychiatric condition, effective January 23, 2005, on the grounds that he had no further disability due to that condition.

Having accepted the conditions of aggravation of post-traumatic stress disorder, aggravation of adjustment reaction and aggravation of pain disorder, the Office based its decision to terminate appellant's compensation on the opinion of Dr. Grubb, who performed the second opinion examination for the Office. In his well-rationalized July 14, 2004 report, Dr. Grubb noted that appellant's histories of anxiety disorder, panic attacks and post-traumatic stress disorder were in remission and opined that appellant's psychiatric condition would not prevent him from employment to which he was physically suited. In an August 13, 2004 work capacity evaluation, Dr. Grubb stated that, "from a psychiatric viewpoint, he can work in a job he is physically able to perform." He further indicated that appellant had no psychiatric limitations. Dr. Grubb's well-rationalized report and accompanying work capacity evaluation support his conclusion that appellant was not disabled as a result of his accepted psychiatric conditions as of January 23, 2005.

On the other hand, appellant submitted no probative medical evidence prior to the termination supporting that he was disabled as a result of those conditions. Contemporaneous medical evidence of record relating to appellant's psychiatric condition consisted of treatment notes from Dr. Dillon. Dr. Dillon's notes lack probative value in that they are unsigned.⁹ Moreover, none of the reports from Dr. Dillon received prior to the termination contained an opinion that appellant was disabled from performing his date-of-injury job. The Board finds that Dr. Grubb's opinion constituted the weight of medical evidence and was sufficiently rationalized to support the Office's decision to terminate appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 3

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant.¹⁰ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors.¹¹ The opinion of the

⁹ *Merton J. Sills*, 39 ECAB 572 (1988). (Reports not signed by a physician lack probative value).

¹⁰ See *Joseph A. Brown, Jr.*, 55 ECAB ____ (Docket No. 04-376, issued May 11, 2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

¹¹ *Juanita Pitts*, 56 ECAB ____ (Docket No. 04-1527, issued October 28, 2004).

physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.¹²

ANALYSIS -- ISSUE 3

The Board finds that appellant failed to establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.

Subsequent to the January 23, 2005 termination decision, the Office received additional unsigned treatment notes from Dr. Dillon and from Walla Walla VA Medical Center. In that they are unsigned, these notes cannot be considered to be probative medical evidence.¹³ Moreover, Dr. Dillon did not render an unequivocal opinion that appellant was disabled. In unsigned notes dated February 14, 2005, Dr. Dillon stated that appellant's worsening depression and post-traumatic stress disorder symptoms made gainful employment problematic at that time and recommended further psychiatric and medical treatment before making a realistic attempt to achieve a sustainable return to work effort. However, this opinion is speculative and fails to explain how appellant's condition is related to his 2001 employment injury. In fact, Dr. Dillon attributed the deterioration in appellant's condition to concern over loss of his workers' compensation benefits. Such a condition does not arise in the performance of duty, as this matter bears no relation to appellant's day-to-day or specially assigned duty.¹⁴ Thus, Dr. Dillon's opinion is insufficient to create a conflict in the evidence or establish any continuing disability.

CONCLUSION

The Board finds that the Office properly terminated compensation benefits for appellant's accepted psychiatric condition, effective January 23, 2005, on the grounds that he had no further disability due to that condition. The Board further finds that the Office properly terminated compensation and medical benefits for appellant's accepted back sprain, effective January 23, 2005, on the grounds that he had no further residuals due to that condition. The Board also finds that he had no continuing disability on or after January 23, 2005 causally related to his February 22, 2001 employment injury.

¹² *Bobbie F. Cowart*, 55 ECAB ____ (Docket No. 04-1416, issued September 30, 2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ *See Merton J. Sills*, *supra* note 9.

¹⁴ *Lillian Cutler*, 25 ECAB 125 (1976).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 15 and January 19, 2005 are affirmed.

Issued: July 12, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board