

**United States Department of Labor
Employees' Compensation Appeals Board**

EDWARD A. PATACSIL, Appellant

and

**DEPARTMENT OF THE AIR FORCE,
TRAVIS AIR FORCE BASE, CA, Employer**

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**Docket No. 05-1264
Issued: June 5, 2006**

Appearances:
Edward A. Patacsil, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 23, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated November 15, 2004 which terminated his compensation benefits and an April 1, 2005 decision, denying modification regarding his back condition and denying his schedule award claim. 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 benefits effective November 15, 2004 on the grounds that his employment-related conditions had resolved; (2) whether he established that he had any continuing employment-related disability after November 15, 2004; and (3) whether appellant met his burden of proof to establish that he has an impairment to a scheduled member caused by his accepted conditions that would entitle him to a schedule award.

FACTUAL HISTORY

On March 28, 2002 appellant, then a 48-year-old heavy equipment mechanic, filed an occupational disease claim alleging that he sustained back pain while in the performance of duty. He did not stop work. On April 24, 2002 the Office accepted his claim for a lumbar strain under file number 132050968 and appellant obtained leave buyback for intermittent periods. The accepted condition was later expanded to include aggravation of degenerative lumbar/lumbosacral disc disease. On October 25, 2002 appellant filed a traumatic injury claim, alleging that he injured his right ankle on October 16, 2002 while washing a vehicle. The Office adjudicated this claim under file number 132067462 and accepted that he sustained a right foot sprain in the performance of duty.

Appellant came under the care of Dr. David F. LaRochelle, an orthopedic surgeon, for both his back and foot conditions. In a report dated February 18, 2003, he diagnosed an ankle ligament tear, foot sprain and fractured lateral malleolus. Dr. LaRochelle also reported that a magnetic resonance imaging (MRI) scan of the ankle revealed no tears. He diagnosed lumbar sprain, herniated discs and facet arthritis of the lumbar spine.

On September 12, 2003 the Office referred appellant, his medical records, a statement of accepted facts and a list of questions, to Dr. John R. Chu, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an October 10, 2003 report, he reviewed the statement of accepted facts and medical record, the history of injury and appellant's history of intermittent lower back pain which worsened with prolonged standing, sitting and lifting. Physical examination revealed negative straight leg raising with low back flexion limited by discomfort. Ankle examination revealed full range of motion and mild lateral tenderness on the right. Dr. Chu diagnosed lumbar strain with degenerative disc disease without neurological deficit, based on appellant's subjective discomfort. His review of the MRI scan demonstrated degenerative disc disease at L4-5 and L5-S1 and advised that there were no objective findings of neurological deficit. Dr. Chu opined that employment factors caused only a temporary aggravation of a lumbar sprain, noting that appellant could also have sustained an aggravation in a motor vehicle accident that occurred two years previously. He recommended a 50-pound lifting restriction for 2 hours a day, based on appellant's underlying degenerative disc disease and not on employment factors. Regarding the right ankle, Dr. Chu stated that it showed mild lateral tenderness but was stable with full range of motion.

Dr. LaRochelle submitted reports and requested authorization for ankle surgery. In a report dated October 27, 2003, he advised that he had treated appellant since May 22, 2002 for degenerative disc disease at L4-5 and L5-S1 and facet joint arthropathy at L4-5 and L5-S1. By report dated January 20, 2004, Dr. LaRochelle advised that appellant continued to have foot and low back pain with bending at the waist. In a work capacity evaluation dated February 16, 2004, he advised that appellant could work with restrictions of sitting, standing, twisting, bending/stooping 1 hour a day and lifting and squatting no more than 20 pounds for 4 hours a day and that appellant could operate a motor vehicle for 15 minutes at a time up to 2 hours a day. He also noted his right ankle ligament instability.

The Office determined that a conflict in the medical evidence arose between the opinions of Dr. LaRochelle, appellant's treating physician, and Dr. Chu, the second opinion physician, regarding appellant's employment-related conditions and work capacity. On March 30, 2004 it referred him, together with the medical record, the statement of accepted facts and a set of questions, to Dr. John R. Lang, a Board-certified orthopedic surgeon, for an impartial medical evaluation. The Office asked him to determine if appellant had any ongoing low back and/or right foot conditions causally related to his employment. Dr. Lang was also asked to describe any preexisting injuries and to specify the physical limitations resulting from each condition.

In a report dated May 11, 2004, Dr. Lang stated that he had examined appellant on May 5, 2004 and reported a familiarity with his low back injury. Current symptoms included low back pain and paresthesias in the right and left inner thighs. Dr. Lang reviewed the medical record, including MRI scan findings. Sensory and motor examinations were normal and low back range of motion was nearly full with no instability, effusion or other objective findings to support a disability from work. Dr. Lang diagnosed lumbar syndrome without neurological involvement, secondary to an aggravation of a preexisting mild spondylosis. He advised that appellant's subjective complaints were nonspecific and did not require formal treatment or time off from work. Dr. Lang added that there were no indications of permanent aggravation and opined that appellant would have recovered from the February 2002 back injury in three to four months but, based on his subjective complaints, the likelihood of his return to his normal position was not good. Regarding the right ankle injury, Dr. Lang stated that objective examination was unremarkable. In a work capacity evaluation dated May 17, 2004, he advised that appellant's right ankle sprain had resolved. Dr. Lang stated that appellant was capable of working an eight-hour day with a two-hour restriction on sitting, walking, twisting and bending/stooping and a four-hour restriction on standing, pulling/pushing. Lifting was restricted to 25 pounds for no more than 2 hours a day and he was not to squat.

Dr. LaRochelle requested authorization for right ankle surgery and reiterated his diagnoses and opinion regarding appellant's lower back condition. In a form report dated July 2, 2004, he diagnosed spondylosis, lumbar disc displacement and low back pain syndrome and released him to return to modified duty, effective that date. On July 4, 2004 Dr. LaRochelle opined that appellant had stress and a chronic pain syndrome and was referred to a psychologist.

On August 18, 2004 the Office informed appellant that it proposed to terminate his compensation for both injuries on the grounds that work-related residuals had ceased. The Office stated that Dr. Lang was considered the impartial medical examiner with respect to the issue of work restrictions and was considered a second opinion examiner with respect to the issue of whether appellant had continuing medical residuals of his work-related back and foot injuries.

In response to the proposed termination, appellant submitted form reports dated August 24, October 5 and 25, 2004 in which Dr. LaRochelle noted his continued complaint of right ankle pain and was restricted from working on a wet surface.

By decision dated November 15, 2004, the Office finalized the termination of appellant's compensation benefits, effective that day. The Office found that the opinion of Dr. Lang as the

impartial medical examiner constituted the weight of medical opinion, regarding appellant's work status and Dr. Lang and Dr. Chu, as second opinion physicians, regarding the issue of continuing residuals of the accepted conditions.

On November 18, 2004 and January 12, 2005 appellant filed schedule award claims and on November 20, 2004 requested reconsideration. He submitted additional form reports from Dr. LaRochelle dated July 4 and November 16, 2004 to February 9, 2005. Dr. LaRochelle reiterated his ankle diagnoses and noted appellant's complaint of ankle pain. Appellant also submitted an attending physician's report dated July 5, 2004 in which Dr. LaRochelle noted findings of tenderness on back examination and advised that he could return to work with restrictions to his physical activity. In a report dated February 22, 2005, John R. Brandes, Ph.D., stated that Dr. LaRochelle had referred appellant for psychological counseling relating to a physical injury. By decision dated April 1, 2005, the Office denied modification of the November 15, 2004 decision with regard to appellant's back claim, Office file number 132050968. The Office also denied his schedule award claim on the grounds that he was not entitled to a schedule award because he had no residuals of his employment injuries.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²

Section 8123(a) of the Federal Employees' Compensation Act³ 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.⁴ When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁵

ANALYSIS -- ISSUE 1

The Office determined that a conflict in the medical evidence was created between the opinions of Dr. LaRochelle, appellant's treating orthopedic surgeon, and Dr. Chu, a Board-certified orthopedic surgeon, who provided a second opinion evaluation for the Office, regarding

¹ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

² *Gewin C. Hawkins*, 52 ECAB 242 (2001).

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

⁵ *Manuel Gill*, 52 ECAB 282 (2001).

appellant's work capacity. The Office properly referred appellant to Dr. Lang, Board-certified in orthopedic surgery, for an impartial evaluation. The Office asked him to render an opinion regarding any continuing residuals of appellant's accepted back and foot conditions.

The Board finds Dr. Lang's report is sufficiently well rationalized to support a finding that appellant's low back strain, aggravation of degenerative disc disease and right foot sprain had resolved.⁶ Thus, the Office met its burden of proof to terminate his compensation benefits effective November 15, 2004.

In a comprehensive report dated May 11, 2004, Dr. Lang stated that he had examined appellant on May 5, 2004 and reported on the history of low back injury and current symptoms of low back pain and paresthesias in the right and left inner thighs. He noted his review of the medical record, including MRI scan findings and advised that appellant's physical examination showed no objective physical impairment to support a disability from work. Dr. Lang stated that he had lumbar syndrome without neurological involvement, secondary to a temporary aggravation of a preexisting mild spondylosis and had recovered from the February 2002 back injury within three to four months. He also advised that examination of appellant's right ankle was unremarkable. In a work capacity evaluation dated May 17, 2004, Dr. Lang advised that his right ankle sprain had resolved and that appellant was capable of working an eight-hour day with restrictions due to his underlying degenerative disc disease.

Under the Act, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.⁷ In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁸

Appellant submitted additional reports from Dr. LaRochelle. It is well established that he subsequently submitted reports of a physician on one side of a conflict of medical opinion, are generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.⁹ Other than requesting authorization for ankle surgery, Dr. LaRochelle merely reiterated his previous diagnoses and conclusions. The Board, therefore, finds these reports are insufficient to overcome the weight accorded Dr. Lang, the impartial medical specialist, whose opinion was well rationalized and established that appellant's

⁶ *Manuel Gill, supra* note 5.

⁷ *Raymond W. Behrens*, 50 ECAB 221 (1999).

⁸ *Manuel Gill, supra* note 5.

⁹ *Richard O'Brien*, 53 ECAB 234 (2001).

employment-related residuals had ceased.¹⁰ The Office, therefore, met its burden of proof to terminate his compensation benefits effective November 15, 2004.¹¹

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits effective November 15, 2004, the burden shifted to him to establish that he had any continuing disability causally related to his accepted injuries.¹² 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 factual and medical background, supporting such a causal relationship.¹³ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁴ Rationalized medical evidence is medical 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 medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁵

ANALYSIS -- ISSUE 2

The medical evidence submitted by appellant after the November 15, 2004 termination of benefits consists of form reports from Dr. LaRochelle, who restricted the ankle diagnoses. He did not provide a rationalized explanation to explain why appellant's back and foot conditions continued to be related to his employment or to cause any disability.¹⁶ These reports are, therefore, insufficient to establish that he continued to have an employment-related condition. In his February 22, 2005 report, Dr. John R. Brandos, a psychologist, merely noted that he was seeing appellant for psychological counseling. He provided no opinion regarding disability. The Board finds that appellant submitted insufficient medical evidence to establish that he continued to be disabled after November 15, 2004 due to the accepted work injuries. He has not met his burden of proof.¹⁷

¹⁰ See *Manuel Gill*, *supra* note 5.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Donna L. Mims*, 53 ECAB 730 (2002).

¹⁵ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁶ See *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

¹⁷ *Leslie C. Moore*, *supra* note 15.

LEGAL PRECEDENT -- ISSUE 3

Under 5 U.S.C. § 8107(a) a compensation schedule was enacted, providing that, if there is permanent disability involving the loss or loss of use of a member or function of the body or involving disfigurement, the employee is entitled to basic compensation for the disability.¹⁸ As interpreted by the Office and the Board, the “permanent disability” described under this section is known as “permanent impairment.”¹⁹ Section 8107(b) provides the statutory compensation schedule for various members of the body which has been supplemented by the Secretary under the implementing regulations.²⁰ Compensation for permanent impairment is paid in fixed numbers of weeks for loss of use of defined members, organs or bodily functions.²¹

ANALYSIS -- ISSUE 3

It is the claimant’s burden of establishing that he or she sustained an impairment of a scheduled member or function as a result of an employment injury.²² When there are no longer any residuals from an accepted condition, a claimant is deemed to have recovered from the accepted employment condition.²³ As stated above, the medical evidence in this case supports that appellant has no residuals of his accepted lumbar strain, aggravation of degenerative disc disease and right foot sprain. The medical evidence does not establish impairment related to his accepted conditions which would support entitlement to a schedule award. The Board finds that the medical evidence of record establishes that appellant had no work-related impairment after November 4, 2004 and is not entitled to a schedule award related to his accepted employment injuries.²⁴

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits effective November 15, 2004. The Board also finds that he failed to meet his burden of proof to establish that he had any disability after November 15, 2004 causally

¹⁸ 5 U.S.C. § 8107(a).

¹⁹ 20 C.F.R. § 10.404.

²⁰ 5 U.S.C. § 8107(b).

²¹ See *Carol T. Collins (Harold Turner)*, 54 ECAB 417 (2003).

²² *Tammy L. Meehan*, 53 ECAB 229 (2001).

²³ See generally *John F. Glynn*, 53 ECAB 562 (2002).

²⁴ *Tammy L. Meehan*, *supra* note 22.

related to his federal employment and the Office properly determined that appellant was not entitled to a schedule award.²⁵

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 1, 2005 and November 15, 2004 be affirmed.

Issued: June 5, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

²⁵ The Board notes that appellant submitted evidence subsequent to the April 11, 2005 decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence or record which was before the Office at the time of its April 11, 2005 decision. 20 C.F.R. § 501.2(c). The Board further notes that the record before the Board does not indicate that the Office issued a final decision on appellant's reconsideration request of the November 15, 2004 decision regarding his ankle condition.