

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

CEPHUS C. ADDISON, Appellant)	
and)	Docket No. 06-522
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Washington, DC,)	Issued: June 2, 2006
Employer)	

<i>Appearances:</i> Cephus C. Addison, <i>pro se</i> Office of Solicitor, for the Director		<i>Case Submitted on the Record</i>
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DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 3, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated October 31, 2005, denying modification of a prior decision which terminated his compensation and medical benefits. 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 in terminating appellant's compensation and medical benefits effective September 14, 2000; and (2) whether appellant met his burden of proof to establish that he had any disability or medical condition after September 14, 2000 causally related to his employment injuries.

FACTUAL HISTORY

On March 15, 1995 appellant, then a 43-year-old maintenance worker sustained a low back sprain and muscle spasm in the performance of duty while he was pushing a trash container. He was released to return to regular duty on November 6, 1995. On December 31, 1999 appellant sustained a back strain in the performance of duty when he slipped on paper while emptying trashcans.¹

In a March 17, 2000 report, Dr. Robert E. Aguirre, a psychiatrist, indicated that appellant was hospitalized for post-traumatic stress disorder, depression and substance-induced mood disorder and experiencing difficulty with his medication for back pain. In a form report dated April 27, 2000, Dr. Paul B. Rosenberg, an attending psychiatrist, diagnosed post-traumatic stress disorder which was aggravated by appellant's back pain. In a May 30, 2000 report, Dr. Aguirre diagnosed major depression, recurrent, an anxiety disorder and paranoid personality disorder.

On June 2, 2000 appellant was placed on the periodic rolls to receive compensation for temporary total disability.

In a June 16, 2000 report, Dr. William Brown, an attending physician, indicated that appellant's December 31, 1999 back injury had resolved. In a July 17, 2000 report, Dr. John B. Cohen, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's condition, findings on physical examination, and the results of x-rays. The Office had provided Dr. Cohen with the case file and statement of accepted facts. He stated:

“At this time, my diagnosis for [appellant's] back condition is subjective complaints of pain only. There [is] no objective evidence to indicate that his work-related lumbar strain is active. The prognosis for [appellant] is severely quieted by his history of mental disease. As best as I can tell, I would treat [appellant] with two weeks of appropriate level of anti-inflammatory [medication] along with physical therapy and return to his previous occupation. I would not restrict him from his previous duty in any way and I would have him return to work within that time. If he continues to complain of pain in his back, he will need an MRI [magnetic resonance imaging] scan. But at this time, his complaints are strictly subjective and only evidence when he flexes while standing. He had no complaints of back pain either in supine or sitting straight leg raising and has a normal neurologic exam[ination]. His x-rays are unremarkable, except for his lumbar back. His x-ray of the shoulder showed an old condition that is unrelated to his alleged slip and fall.”

On August 14, 2000 the Office advised appellant that it proposed to terminate his compensation and medical benefits.

¹ Docket No. 04-470 (order remanding case issued June 15, 2005). This case was previously before the Board. By order dated June 15, 2005, the Board granted the Director's motion to remand the case for the Office to combine Office File No. 25-553174, regarding appellant's December 31, 1999 employment-related back strain and Office File No. 25-477264 regarding his March 15, 1995 employment-related low back strain and muscle spasms. The Board set aside the Office's September 24, 2003 decision that denied appellant's request for reconsideration.

On September 14, 2000 the Office finalized the termination of appellant's compensation and medical benefits on the grounds that he had no continuing disability or medical condition causally related to his December 31, 1999 back strain.

In an August 31, 2000 report, Dr. Hampton J. Jackson, an attending Board-certified orthopedic surgeon, provided a history of appellant's condition, findings on physical examination and the results of x-rays, which revealed no significant conditions. He diagnosed a right shoulder rotator cuff injury and lumbar disc injury caused by the December 31, 1999 employment injury.

By decision dated November 13, 2000, the Office denied modification of its September 14, 2000 decision.

In an October 30, 2000 report, Dr. Jackson stated that an MRI scan of appellant's lower back revealed a central to left disc rupture at L5-S1 and a right shoulder MRI scan revealed tendinosis or a partial tear of the supraspinatus muscle. He stated:

“For [appellant's] lower back, we will continue to treat him without surgery. He does fairly well with total rest and medication. For his shoulder, I am going to have him see an upper extremity specialist concerning treatment measures for his shoulder. Again, he cannot walk, stand, lift, bend, sit, push and pull ... enough for any gainful employment.”

In a November 30, 2000 report, Dr. Jackson stated that appellant had continuing symptoms in his back and shoulder that occurred when he slipped and fell at work on December 31, 1999 and sustained a right rotator cuff tear and a ruptured lumbar disc. He indicated that appellant was temporarily totally disabled. In disability certificates dated November 30, 2000 to January 25, 2001, Dr. Jackson diagnosed lumbar disc syndrome and a right rotator cuff tear.

In a March 8, 2001 report, Dr. Jackson stated that appellant had a confirmed disc injury at L5-S1 and was temporarily totally disabled. In disability certificates dated March 8 to April 5, 2001, Dr. Jackson diagnosed lumbar disc syndrome and a right rotator cuff tear.

By decision dated October 1, 2001, the Office denied modification of its November 13, 2000 decision.

In an October 18, 2001 report, Dr. Jackson stated that appellant was experiencing significant back pain, increased by standing, walking and sitting. He stated:

“[Appellant's] records were read thoroughly. On December 31, 1999 [appellant] was at work, at which time he was lifting multiple canisters on that day. He developed back pain from lifting those canisters. Actually, the lifting episodes caused him a significant fall on that date, December 31, 1999. He developed pain not only to the back, but the pain eventually became shooting into his legs, and

the symptoms persisted consistently until I saw [appellant] initially on August 31, 2000.

“Evaluations and treatments indicate that [appellant] had evidence of a lumbar disc injury, which was finally confirmed by an MRI [scan], which was not done until September 2, 2001.... After my initial examination, I recommended that [appellant] get MRI s[cans], which confirmed a disc injury at L5-S1. This disc injury at L5-S1 did not respond to treatment measures for many months. After a satisfactory period of conservative measures, it was recommended that [appellant] have a discogram to confirm whether he would be a good candidate for an ... intradiscal electrothermal treatment procedure, which we are awaiting the decision soon.

“In summary, the multiple lifting episodes on December 31, 1999 that caused a fall and injuries to [appellant’s] lower back on December 31, 1999 are the approximate [sic, proximate] cause of [appellant’s] persistent pain syndrome as of today. This pain syndrome has been proven to be a lumbar disc injury at L5-S1 supported by MRI [scan] and by recent discogram.

“In addition to the injuries to his lower back, [appellant] also sustained an injury to his shoulder. The injury of his right shoulder came when his legs gave out on him subsequent to the accident of December 31, 1995, but secondary to the accident of December 31, 1999.”

By decision dated July 15, 2002, the Office denied modification of its October 1, 2001 decision.

In a June 18, 2003 report, Dr. Jackson stated:

“Treatment ... as well as diagnostic studies ... confirm that, as a result of the slip and fall at work on December 31, 1999, [appellant] sustained a partial tear of his right supraspinatus [muscle] with tenderness in the shoulder, and a lumbar disc injury at L5-S1. Examinations and special studies such as MRI scans and discograms confirmed both diagnoses. Certainly, these injuries are not uncommon to falls for the type he sustained on December 31, 1999, and indeed, this injury at work on December 31, 1999 indeed is the cause of the conditions mentioned above that [appellant] continues to suffer from.

“The condition in [appellant’s] shoulder prevents him from using his right upper extremity enough to lift, push and pull and the lumbar disc injury makes it difficult for him to lift, push and pull, but also affects his ability to stand, walk and sit in a very negative way. He has sustained a permanent partial impairment and permanent disability because of these work-related injuries listed above.

“It is my opinion that [appellant] has reached maximum improvement and will not improve without surgery, although surgery offers no guarantee.”

Appellant requested reconsideration. He asserted that the medical evidence supported his continuing disability and medical condition as work related.

By decision dated September 24, 2003, the Office denied appellant's request for reconsideration.

As noted, by order dated June 10, 2005, the Board remanded the case for the Office to combine the case files for the 1995 and 1999 employment injuries.

By decision dated October 31, 2005, the Office denied modification of its September 14, 2000 decision, terminating appellant's compensation and medical benefits. It further found that appellant had no work-related disability or medical condition after September 14, 2000.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ 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.⁵

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for work-related back strains sustained on March 8, 1995 and December 31, 1999. Effective September 14, 2000, the Office finalized its termination of his compensation and medical benefits on the grounds that the accepted back strains had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.⁶

Following his March 15, 1995 employment-related back strain, appellant was medically released to return to regular duty on November 6, 1995. On December 31, 1999 he sustained a back strain when he slipped on paper while emptying trashcans. In a June 16, 2000 report, Dr. Brown indicated that appellant's December 31, 1999 back injury had resolved.

² *Barry Neutach*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁶ *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

In reports dated March 17 and May 30, 2000, Dr. Aguirre diagnosed major depression, an anxiety disorder and a paranoid personality disorder. He indicated that appellant was also having difficulty with his medication for back pain. In a form report dated April 27, 2000, Dr. Rosenberg diagnosed post-traumatic stress disorder which was aggravated by appellant's back pain. The Office has not accepted these diagnosed conditions and the physicians failed to provide adequate medical rationale explaining how these psychological conditions were caused or aggravated by appellant's accepted 1995 and 1999 back strains. Therefore, these reports are of diminished probative value on the issue of whether appellant had any continuing employment-related medical condition related to his accepted back strains.

In a July 17, 2000 report, Dr. Cohen provided a history of appellant's condition, findings on physical examination and the results of x-rays. He stated that appellant had only subjective complaints of back pain and there was no objective evidence to indicate that his work-related lumbar strain was active. Dr. Cohen noted that appellant had no complaints of back pain either in supine or sitting straight leg raising and had a normal neurologic examination. He stated that appellant had an old shoulder condition that was unrelated to his employment injuries. Dr. Cohen's opinion that appellant had no continuing work-related disability or medical condition was based on a thorough review of the medical records, statement of accepted facts, a physical examination and the results of x-rays. His thorough and well-rationalized report established that appellant had no residual disability or medical condition causally related to his 1995 or 1999 employment injuries. The Board finds that the medical evidence establishes that appellant's employment-related back strains had resolved and the Office met its burden of proof in terminating his compensation and medical benefits on September 14, 2000.

LEGAL PRECEDENT -- ISSUE 2

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the employment injury.⁷ To establish a causal relationship between appellant's thoracic and lumbar strains and his ongoing back problems after October 1, 2003, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁸ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹

Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's 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

⁷ See *Darlene R. Kennedy*, 57 ECAB ____ (Docket No. 05-1284, issued February 10, 2006); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation benefits warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wages).

⁸ *Michael S. Mina*, 57 ECAB ____ (Docket No. 05-1763, issued February 7, 2006).

⁹ *Id.*

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.¹⁰ Neither the mere fact that the disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS -- ISSUE 2

The Board further finds that, following the proper termination of his compensation and medical benefits, appellant failed to establish that he had any disability or medical condition causally related to his 1995 and 1999 employment injuries.

In an August 31, 2000 report, Dr. Jackson provided a history of appellant's condition, findings on physical examination and the results of x-rays, which revealed no significant problems. He diagnosed a right shoulder rotator cuff injury and lumbar disc injury caused by the December 31, 1999 employment injury. A right shoulder injury has not been accepted by the Office and Dr. Jackson provided insufficient explanation as to how this condition was related to the December 31, 1999 fall at work or why appellant did not seek treatment for the shoulder condition until eight months after the December 31, 1999 employment injury. Dr. Jackson also provided insufficient explanation as to how the lumbar disc problem diagnosed in August 2001 was causally related to the 1999 employment-related back strain. In an October 30, 2000 report, Dr. Jackson stated that an MRI scan of appellant's lower back revealed a disc rupture at L5-S1 and a right shoulder MRI scan revealed tendinosis or a partial tear of the supraspinatus muscle and he indicated that he was totally disabled. As noted, the Office has not accepted a shoulder condition as work related and Dr. Jackson provided insufficient medical rationale explaining how appellant's shoulder condition and disc rupture were causally related to his accepted employment injuries. In a November 30, 2000 report, Dr. Jackson stated that appellant had continuing symptoms in his back and shoulder that occurred when he slipped and fell at work on December 31, 1999 and sustained a right rotator cuff tear and a ruptured lumbar disc. He indicated that appellant was temporarily totally disabled. The history provided by Dr. Jackson is not accurate as the Office accepted only a low back strain as a result of the December 31, 1999 fall at work. He failed to provide medical rationale explaining how the lumbar disc syndrome and right rotator cuff tear were related to appellant's accepted December 31, 1999 back strain.

In reports dated March 8 and October 18, 2001 and June 18, 2003, Dr. Jackson stated that appellant had a disc injury at L5-S1 and was experiencing significant back pain, increased by standing, walking and even sitting and was temporarily totally disabled. He stated that on December 31, 1999 appellant developed back pain caused by lifting multiple canisters. However, this history is not consistent with the history given by appellant that he slipped on paper while emptying a trash receptacle. Dr. Jackson stated that appellant sustained a partial tear of his right supraspinatus muscle and a lumbar disc injury at L5-S1. He stated that these conditions were not uncommon to falls for the type he sustained on December 31, 1999 and

¹⁰ Gary J. Watling, 52 ECAB 278 (2001); Gloria J. McPherson, 51 ECAB 441 (2000).

¹¹ Michael S. Mina, *supra* note 8.

indeed the December 31, 1999 employment injury was the cause of the conditions. Dr. Jackson did not provide sufficient medical rationale explaining how appellant's disc and shoulder conditions and resulting disability were causally related to his accepted back strain in 1995 and 1999. Such rationale is critical in light of the fact that appellant was not examined and treated by Dr. Jackson until eight months after the December 31, 1999 employment injury. Due to these deficiencies, the reports from Dr. Jackson are not sufficient to establish that appellant had any disability or medical condition after September 14, 2000 causally related to his 1995 or 1999 employment-related back strains. Appellant failed to meet his burden of proof.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits effective September 14, 2000. The Board further finds that appellant failed to meet his burden of proof to establish that he had any employment-related disability or medical condition after September 14, 2000.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 31, 2005 is affirmed.

Issued: June 2, 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