

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

A.G., Appellant)

and)

GENERAL SERVICES ADMINISTRATION,)
Del Rio, TX, Employer)

Docket No. 06-888
Issued: October 31, 2006

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 8, 2006 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated April 20, 2005 and January 13, 2006, which terminated his compensation 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 to terminate appellant's compensation benefits effective April 20, 2005 on the grounds that his accepted lumbar strain had resolved; and (2) whether appellant established that he had any continuing employment-related disability after April 20, 2005.

FACTUAL HISTORY

This case has previously been before the Board. In an October 10, 1996 decision, the Board reversed a July 27, 1996 Office decision terminating appellant's benefits. The Board found that a conflict in medical evidence remained unresolved regarding the diagnosis of

appellant's condition and whether his inability to return to work was causally related to his employment injury.¹ The law and the facts of the previous Board decision are incorporated herein by reference.

Subsequent to the Board's October 10, 1996 decision, appellant was returned to the periodic rolls. He continued under the care of Dr. Gilbert R. Meadows, a Board-certified orthopedic surgeon, who in a June 3, 2003 report noted findings on examination including decreased range of motion. Dr. Meadows advised that the effects of the employment injury persisted which prevented appellant from returning to his previous work or any job on a repetitive basis. He provided physical restrictions including a lifting restriction of 15 pounds and advised that surgery, work hardening and vocational rehabilitation were not recommended. He concluded that he did not expect appellant to improve.

On November 18, 2003 the Office referred appellant, together with a statement of accepted facts with an addendum, a set of questions and the medical record, to Dr. Govindasamy Durairaj, Board-certified in orthopedic surgery. By report dated December 20, 2003, Dr. Durairaj noted his review of the medical records, the history of injury and appellant's complaint of back pain. Examination findings of the lumbosacral region included local tenderness, muscle spasms and decreased range of motion. Dr. Durairaj opined that the accepted lumbosacral strain had resolved. He diagnosed degenerative disease at L3-4, L4-5 and L5-S1 with possible disc herniation and recommended a magnetic resonance imaging (MRI) scan. An MRI scan of the lumbar spine dated January 16, 2004 demonstrated disc dehydration at L3 to S1, disc bulges and L3-4 and L4-5 with a disc protrusion at L5-S1. In a supplementary report dated January 22, 2004, Dr. Durairaj noted his review of the MRI scan findings and advised that these findings were probably aggravated by the 1987 employment injury. In a January 26, 2004 work capacity evaluation he noted the disc protrusion and advised that appellant could return to restricted duty for four hours a day, working up to eight hours daily.

The Office determined that a conflict in medical evidence had been created between the opinions of Dr. Durairaj and Dr. Meadows regarding the relationship between appellant's current condition and work factors. It referred appellant, together with a statement of accepted facts with an addendum, a set of questions and the medical record, to Dr. Theodore W. Parsons, III, Board-certified in orthopedic surgery, for an impartial evaluation, Dr. Parsons was asked to address if there was current evidence of the lumbosacral strain 16 years after the date of injury and 15 years after any work exposure and whether residuals of the June 26, 1987 employment injury had ceased.

In a report dated March 6, 2004, Dr. Parsons noted the history of injury, his review of the medical records and appellant's complaints of pain. Examination findings of the lower back included diffuse superficial tenderness to palpation with no spasm and modest decreased range of motion. Examination of the lower extremities revealed diffuse hyporeflexia with decreased light touch and pinprick diffusely on the right. While seated and distracted, straight-leg raising was to 90 degrees but while supine appellant complained of pain beyond 35 degrees. Passive range of motion of the right hip and knee caused complaints of back pain. Dr. Parsons diagnosed

¹ Docket No. 94-2536. The Office accepted that appellant sustained a lumbosacral strain on June 26, 1987 when he lifted a metal hole cover.

progressive lumbar spondylosis and chronic pain syndrome with evidence of functional overlay. He advised that appellant had diffuse degenerative changes, which had progressively worsened over time. While the employment injury exacerbated the preexisting degenerative changes, at the time of his examination there was clearly no evidence of a lumbosacral strain which he concluded had long resolved. Dr. Parsons stated that appellant's current condition was not due to the June 1987 work injury but was secondary to his progressive degenerative disc disease and subsequent chronic pain behavior. Dr. Parsons opined that appellant was "quite capable" of performing many activities, reiterating that the residuals of the work injury had long ceased and that any exacerbation would have ceased by June 1988, one year following the employment injury. He advised that appellant had a functional overlay and that any limitations to his physical activity were due to the progressive degenerative changes and not to the June 1987 employment injury. In an attached work capacity evaluation, Dr. Parsons opined that appellant could return to restricted duty for four hours a day, possibly working up to an eight-hour day.

By letter dated March 18, 2005, the Office informed appellant that it proposed to terminate his compensation benefits on the grounds that he had no continuing employment-related disability.² Appellant disagreed with the proposed termination and submitted reports from Dr. Meadows dated May 12 and June 8, 2004. Dr. Meadows reiterated his conclusion that appellant remained totally disabled.

On April 20, 2005 the Office terminated appellant's compensation benefits. The Office found that the weight of the medical evidence rested with the opinion of Dr. Parsons, the referee examiner who advised that residuals of the employment injury had ceased. On April 26, 2005 appellant requested a review of the written record. He submitted evidence previously of record and an August 20, 2005 report in which Dr. Meadows opined that appellant was getting worse with advancing stenosis at L3-4 and L4-5 and remained disabled. In a January 13, 2006 decision, an Office hearing representative affirmed the April 20, 2005 decision.

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.³ 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.⁴

² On May 17, 2004 appellant was referred to a vocational rehabilitation counselor who provided job placement services. The job search was not successful and the rehabilitation file was closed.

³ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

Section 8123(a) of the Federal Employees' Compensation Act⁵ 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.⁶ 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.⁷

ANALYSIS -- ISSUE 1

In this case, the Office determined that a conflict in the medical evidence had been created between the opinions of Board-certified orthopedic surgeons Dr. Meadows, appellant's treating physician, and Dr. Durairaj who provided a second opinion evaluation. The physicians disagreed regarding whether appellant's current back condition was caused by employment factors and whether she remained totally disabled. The Office properly referred appellant to Dr. Parsons, Board-certified in orthopedic surgery, for an impartial medical evaluation.⁸

The Board finds Dr. Parsons' report is sufficiently well rationalized to support that appellant's ongoing back condition and any disability therefrom is not causally related to his accepted lumbar strain.⁹ The Office met its burden of proof to terminate appellant's compensation benefits effective April 20, 2005.¹⁰ In a comprehensive report dated March 6, 2004, Dr. Parsons noted the history of injury, a review of the medical records and appellant's complaints of pain. His physical findings regarding the lower back included diffuse superficial tenderness to palpation with no spasm and modest decreased range of motion with straight-leg raising to 90 degrees while seated and distracted. Dr. Parsons advised that appellant was suffering from diffuse degenerative changes which had progressively worsened overtime. He noted that, while the employment injury exacerbated the preexisting degenerative changes, at the time of his examination there was clearly no evidence of lumbosacral strain which had long resolved. He attributed appellant's current condition to his progressive degenerative disc disease and subsequent chronic pain behavior. Dr. Parsons opined that appellant was "quite capable" of performing many activities, stating that all residuals of the work injury would have ceased by June 1988, one year following the employment injury. He advised that appellant had a functional overlay and that any limitations to his physical activity were due to the progressive degenerative changes and not to the June 1987 employment injury. In an attached work capacity evaluation he opined that appellant could return to restricted duty for four hours a day, possibly working up to an eight-hour day.

⁵ 5 U.S.C. §§ 8101-8193.

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

⁷ *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Supra* note 6.

⁹ *Supra* note 7.

¹⁰ *See supra* note 3.

As Dr. Parsons provided a well-rationalized evaluation in which he clearly advised that any residuals of appellant's June 1987 lumbosacral strain had resolved, the Board finds that it is entitled to special weight as a referee opinion.¹¹ The Office, therefore, met its burden of proof to terminate appellant's compensation benefits on April 20, 2005.¹²

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had any continuing disability causally related to his accepted injuries.¹³ 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.¹⁴ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁵ 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.¹⁶

ANALYSIS -- ISSUE 2

The bulk of the medical evidence submitted by appellant after the April 20, 2005 termination decision consists of duplicates of medical evidence previously of record. This evidence is, therefore, not relevant to any continuing disability.¹⁷ Appellant also submitted an August 2, 2005 report from Dr. Meadows. In this report, however, Dr. Meadows merely reiterated his opinion that appellant remained totally disabled. A subsequently submitted report of a physician on one side of a resolved conflict of medical opinion is generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.¹⁸ Dr. Meadow did not provide sufficient explanation for the opinion he expressed and

¹¹ *Supra* note 7.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Donna L. Mims*, 53 ECAB 730 (2002).

¹⁶ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁷ *See supra* note 15.

¹⁸ *Richard O'Brien*, 53 ECAB 234 (2001).

which gave rise to the conflict. The Board, therefore, finds that appellant submitted insufficient medical evidence to establish that he continues to be disabled from the accepted lumbar strain. He has not met his burden of proof.¹⁹

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 20, 2005. The Board further finds that appellant failed to meet his burden of proof to establish that he had any disability after April 20, 2005 causally related to employment.²⁰

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 13, 2006 and April 20, 2005 be affirmed.

Issued: October 31, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ *Leslie C. Moore, supra* note 16.

²⁰ The Board notes that appellant submitted evidence with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).