United States Department of Labor
Employees' Compensation Appeals Board

R.A., Appellant	)	
and	)	**Docket No. 07-231**
	)	**Issued: August 13, 2007**
DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Norton, VA, Employer	)	

Appearances:
Appellant, 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 November 3, 2006 appellant filed a timely appeal from the September 14, 2006 merit decision of the Office of Workers' Compensation Programs, which denied modification of an earlier decision terminating his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the termination.

ISSUE

The issue is whether the Office met its burden to justify the termination of compensation for appellant's September 9, 1988 employment injury.

FACTUAL HISTORY

On September 9, 1988 appellant, then a 43-year-old coal mine inspector, sustained an injury in the performance of duty: "I twisted my body to go under a trolley wire and experienced severe pain in the lower back." The Office accepted his claim for low back sprain. Appellant received compensation for temporary total disability on the periodic rolls until he returned to

work on March 9, 1992 as a mine safety and health specialist. He received compensation for partial disability thereafter. Appellant retired on April 24, 2000. He received compensation for temporary total disability on the periodic rolls. The Office expanded its acceptance of his claim to include aggravation of preexisting lumbar degenerative disc disease.[1]

On March 18, 2004 the Office referred appellant, together with copies of medical records and a statement of accepted facts, to Dr. Paul V. Brooks, Board-certified in physical medicine and rehabilitation, an opinion on whether the employment-related aggravation of degenerative disc disease had ceased. Dr. Brooks examined appellant on April 8, 2004. He reviewed appellant's extensive history and his findings on physical examination. Dr. Brooks diagnosed "L3-L4 degenerative disc disease as well as L5-S1 bilateral spondylysis with resultant Grade 1 to 2 spondylolisthesis not considered work related according to patient's statement of accepted facts." He offered his prognosis and treatment recommendations. Dr. Brooks then addressed the Office's question on whether the employment-related aggravation of degenerative disc disease had ceased:

> "Considering the claimant has not worked for the Federal Government since April 2000, has the aggravation of the degenerative disc disease by [f]ederal[-] work duties ceased? To this I respond in the affirmative. I would have anticipated that he has ceased his aggravation 12 to 16 months after his last reported injury involving the lumbosacral spine [on October 13, 1999]. Again, this is with the understanding that his L5-S1 spondylolisthesis is considered nonwork related and we are only considering his degenerative disc disease."

Dr. Brooks reported that appellant was unable to return to work, with restrictions, for multiple reasons. He completed a work capacity evaluation form.

On July 9, 2004 the Office issued a notice of proposed termination. The Office found that Dr. Brooks' comprehensive, well-reasoned opinion represented the weight of the medical evidence and established that appellant no longer had any disability or residuals due to the accepted employment injury of September 9, 1988.

In a decision dated August 9, 2004, the Office terminated appellant's compensation benefits effective that date. On July 20, 2005 an Office hearing representative affirmed the termination. In a decision dated September 14, 2006, the Office reviewed the merits of appellant's case and denied modification of its prior decision. In a nonmerit decision dated October 20, 2006, the Office denied appellant's request for reconsideration. This appeal followed.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[2] After it has determined that an employee has disability

[1] Appellant has a significant history of employment injuries both before and after the September 9, 1988 injury presently under consideration.

[2] *Harold S. McGough*, 36 ECAB 332 (1984).

causally related to his 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.[3] Having accepted a claim and initiated payments, the Office may not terminate compensation without a positive demonstration by the weight of evidence that entitlement to benefits has ceased.[4]

ANALYSIS

Dr. Brooks, the Office referral physiatrist, found that the accepted aggravation of appellant's degenerative disc disease had ceased. However, he did not explain how he came by this conclusion. Dr. Brooks stated only that he would have "anticipated" an end to the aggravation 12 to 16 months after the last reported injury to the lumbosacral spine. This opinion on the issue of whether appellant's accepted condition had resolved is speculative. Dr. Brooks did not explain the basis of this anticipation. He pointed to no diagnostic testing or clinical findings to show how the medical record supported this conclusion. Dr. Brooks made no effort to address how he was able to determine, to a reasonable medical certainty, that the aggravation of the degenerative process had come to an end. There is nothing convincing about Dr. Brooks' opinion, nothing that shows his opinion to be sound, rational and logical.[5]

Medical conclusions unsupported by rationale are of diminished probative value.[6] The Board finds that Dr. Brooks' opinion is not well reasoned and does not represent the weight of the medical evidence. The Board finds, therefore, that the Office did not meet its burden of proof to terminate of compensation benefits for appellant's September 9, 1988 employment injury. The Board will reverse the Office's most recent merit decision and remand the case for payment of appropriate compensation benefits.[7]

[3] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (July 1993).

[5] The Office did not request, and Dr. Brooks did not provide, a well-reasoned opinion on whether appellant continued to suffer residuals of the accepted lumbar sprain, which appellant also sustained as a result of the September 9, 1988 incident at work.

[6] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[7] The disposition of this issue renders moot the Office's October 20, 2006 decision denying a merit review of appellant's case.

CONCLUSION

The Office has not met its burden of proof to justify the termination of compensation for appellant's September 9, 1988 employment injury. The opinion of the Office referral physician lacks sound medical reasoning and carries little probative or evidentiary weight.

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2006 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for payment of appropriate compensation.

Issued: August 13, 2007
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