United States Department of Labor
Employees' Compensation Appeals Board

R.D., Appellant	)	
and	)	**Docket No. 07-869**
	)	**Issued: August 23, 2007**
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer	)	

Appearances:
James R. Linehan, Esq., for the appellant
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 February 8, 2007 appellant, through his attorney, filed a timely appeal from the December 19, 2006 decision of the Office of Workers' Compensation Programs affirming the termination of his medical and wage-loss 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 properly terminated appellant's compensation benefits, effective June 24, 2004, on the grounds that he had no disability or residuals causally related to his accepted employment injury; and (2) whether appellant established that he continues to have disability or residuals related to his accepted employment injury. On appeal, appellant contends that the medical evidence establishes that he is still disabled and has residuals related to his accepted employment injury.

FACTUAL HISTORY

On March 26, 2003 appellant, then a 39-year-old letter carrier,[1] sustained injury to his legs, neck and back when he was involved in an automobile accident the previous day. On March 26, 2003 an emergency room physician diagnosed contusions and pain, but no fractures and released him to sedentary duties. On April 8, 2003 Dr. Daniel Gallagher, a Board-certified orthopedic surgeon, diagnosed sprains of the back, neck, both wrists and right ankle, stated that there should be no resulting permanent impairment and provided sedentary restrictions for four weeks. The Office accepted appellant's claim for sprains of the neck, lumbar spine, right wrist, right ankle and aggravation of right medial meniscus tear.

On July 7, 2003 Dr. Gallagher found that appellant had no objective orthopedic abnormalities that would explain his continued complaints of pain. He stated that, while appellant was physically capable of working in his previous light-duty position, he had not been working because he was unable to tolerate sitting. Dr. Gallagher transferred treatment of appellant's hands and wrists to Dr. Jefferson Kaye, a hand specialist. On July 23, 2003 appellant was placed on the periodic rolls for wage-loss compensation.

On September 8, 2003 Dr. Gallagher released appellant from his care and transferred his back treatment to a pain management specialist. On December 1, 2003 he reported that Dr. Kaye could find no reason for appellant's continued right wrist pain, but ordered a magnetic resonance imaging (MRI) scan to rule out any ligamentous injury. The MRI scan revealed very mild arthritis in the carpal bones, which Dr. Gallagher found to be insignificant. On December 19, 2003 the Office notified appellant that a second opinion evaluation was necessary.

On January 19, 2004 appellant's spine, wrists, knees and ankles were examined by Dr. Christopher Cenac, a Board-certified orthopedic surgeon, who found no objective evidence of injury, but noted that appellant voluntarily limited motion in his cervical and lumbar regions and did not use full effort in the grip strength test. Dr. Cenac noted no loss of motion, muscle spasm or decreased sensation in the back, arms or legs. Review of x-rays revealed that the cervical spine, lumbar spine, right knee, wrists and ankles were normal. Dr. Cenac stated that, based upon his examination, appellant had no mechanical dysfunction or neurological deficits and had reached maximum medical improvement.

On February 6, 2004 appellant underwent a functional capacity evaluation. The physical therapist stated that he had used submaximal effort, which made it unclear whether appellant could return to his previous employment. The therapist noted, however, that even with diminished effort, appellant had demonstrated an ability to tolerate activities at a sedentary physical level. Dr. Cenac reviewed the functional capacity evaluation report and reconfirmed his opinion that there was no objective evidence that appellant had remaining disability or residuals.

On February 11, 2004 Dr. Gallagher refused appellant's request to provide a prescription for additional pain medication. He stated that, while appellant had degenerative disc disease in

[1] The record indicates that appellant was on permanent light-duty status due to another employment injury related to his right knee.

the lumbar spine and an old knee injury with meniscal tear, he had no orthopedic abnormalities requiring further care or intervention.

On February 12, 2004 Dr. Paul Hubbell, a Board-certified anesthesiologist, stated that appellant had not yet reached maximum medical improvement and disagreed with the decision to conduct a functional capacity examination. He stated that appellant had degenerative disc disease at two levels and might also have internal disc derangement and sacroiliac joint pain. On March 4, 2004 the Office provided Dr. Hubbell a copy of Dr. Cenac's report and asked for his opinion as to whether appellant was capable of working in his regular-duty capacity. A copy of the letter was sent to Dr. Gallagher.

By letter dated March 30, 2004, the Office notified appellant that a conflict in medical opinion arose related to his continued disability. Appellant was referred to Dr. Robert Ruel, a Board-certified orthopedic surgeon, for an impartial medical examination scheduled for April 27, 2004.[2]

On March 31, 2004 Dr. Hubbell notified the Office that, after reviewing Dr. Cenac's findings and the functional capacity evaluation, he was in agreement that appellant was capable of working in his regular-duty capacity. He referred appellant for psychological evaluation and treatment to address his exaggeration of symptoms and lack of effort on his functional capacity evaluation. Dr. Hubbell postponed all treatment pending completion of the psychological evaluation.

On April 14, 2004 Dr. Aaron Wolfson, a rehabilitation psychologist, examined appellant and diagnosed moderate, recurrent major depression. He opined that appellant was "somatasizing as a way of dealing with his depression as opposed to deliberately feigning physical problems." Dr. Wolfson reported that appellant's pain increased over the course of the day; with certain activities, including housework, walking more than 10 minutes and sitting more than 45 minutes; and with certain emotions, such as stress, anger and anxiety. He found that there were no overt signs of malingering, but that there may be a tendency to exaggerate physical symptoms during times of acute stress.

On May 3, 2004 Dr. Gallagher stated that he agreed with the functional capacity examination and that appellant's orthopedic condition was essentially normal. He also stated that appellant was "certainly capable of performing his previous level of work activity."

By notice dated May 24, 2004, the Office proposed termination of appellant's wage-loss compensation and medical benefits on the basis of Dr. Cenac's reports, which represented the weight of the medical evidence because they were comprehensive and well reasoned. The Office noted that both Dr. Gallagher and Dr. Hubbell had seen and agreed with Dr. Cenac's opinion and had released appellant to his date-of-injury duties. The Office found that Dr. Cenac's opinion established that the strains of appellant's cervical and lumbar spine, right wrist and right ankle had ceased.

[2] The record indicates that Dr. Ruel did not examine appellant until June 8, 2004 and did not issue a report until July 19, 2004.

On May 25, 2004 Dr. Hubbell notified the Office that he was changing his March 31, 2004 opinion on the basis of Dr. Wolfson's April 14, 2004 report. He stated that, because Dr. Wolfson found appellant to be acting psychologically correctly, appellant was not physically able to return to work. Dr. Hubbell noted that appellant had degenerative disc disease at L3-4, L4-5, C3-4 and C4-5 and recommended transforaminal epidural steroid injections.

By decision dated June 21, 2004, the Office terminated appellant's medical and wage-loss benefits effective June 24, 2004. The Office found that the opinion of the orthopedic physicians, Dr. Cenac and Dr. Gallagher, carried the weight of the medical evidence and established that appellant had no residuals causally related to his accepted employment injuries. The Office emphasized that Dr. Gallagher, who was fully familiar with the history of appellant's work-related medical conditions and the treatment provided, believed that appellant was able to return to his prior level of work activity.

On July 12, 2004 Dr. Gallagher reported that appellant continued to complain of chronic neck pain, lower back pain and right knee pain. He again found that appellant was neurologically intact and had good range of motion, with no muscle spasms, in his lumbar or cervical spine. Dr. Gallagher noted that appellant was capable of performing under the permanent light-duty restrictions associated with his prior knee injury. He also stated that he was no longer appellant's treating physician and deferred to other physicians for the treatment of the spine.

On July 19, 2004 Dr. Ruel issued a report based on his June 8, 2004 examination of appellant. He reviewed appellant's medical history and diagnostic reports and conducted a physical examination, in which he noted inconsistencies and symptom exaggeration. Based on the physical examination, he stated that the only objective evidence of injury was in the right knee. Dr. Ruel found that the accepted employment injury had not caused any permanent residual injury to the right knee and that the sprains to the wrists and ankle had resolved. He found that the accepted employment injury superimposed a sprain on preexisting cervical spondylosis, but that a nonwork-related automobile accident that occurred a few weeks later "significantly accentuated" these symptoms. Dr. Ruel stated that appellant had lumbar spondylosis, osteochondrosis, minimal bulging of L4-5 and L5-S1 and chronic S1 radiculopathy, which should be treated conservatively. He opined that appellant could work in a sedentary capacity and did not need any further orthopedic treatment related to his employment injuries. Dr. Ruel recommended that appellant be treated by a pain psychologist to address his unsubstantiated subjective complaints.

On July 21, 2004 Dr. Hubbell stated that an electromyogram (EMG) study showed evidence of chronic radiculopathy at C7, left-sided and S1, bilaterally. He noted, however, that a follow-up MRI scan did not show significant nerve compression. Dr. Hubbell could not explain the cause of appellant's EMG, but recommended epidural injections to determine whether or not that would decrease his pain.

On May 5, 2005 appellant requested reconsideration of the Office's decision to terminate his benefits. He submitted Dr. Ruel's July 19, 2004 report and Dr. Wolfson's psychological

report.[3] MRI scans conducted on June 17, 2004 showed evidence of spondylosis and herniation in the cervical spine and spondylosis, osteochondrosis and minimal bulging of the lumbar spine. July 7, 2004 nerve conduction studies of the upper and lower extremities showed chronic cervical radiculopathy affecting the C7 root and chronic bilateral S1 radiculopathy. On January 4, 2005 Dr. Stephan Pribil, a Board-certified neurological surgeon, reported on his initial consultation with appellant. He reviewed the previous diagnostic reports and recommended a "stand-up" MRI scan of the cervical and thoracic spine to see if that better explained appellant's pain and a new nerve conduction study to determine the progression of his radiculopathy. The January 18, 2005 nerve conduction study diagnosed right L5-S1 radiculopathy, mild right carpal tunnel syndrome and left mid-cervical radiculopathy. The February 3, 2005 MRI scan of the thoracic spine showed eccentric bulging of the T3-4 intravertebral disc, dorsal spondylosis and T7 Shmorl's node. The MRI scan of the cervical spine showed herniation from C3 to 7, bulging at C2-3, facet arthritis at the right C4-5 neural foramen and spondylosis.

On February 22, 2005 Dr. Pribil reported on the findings of the new diagnostic tests and opined that appellant's prognosis for a return to full duty was "quite guarded." He recommended surgery for the cervical spine. An April 12, 2005 report, from Dr. Morteza Shamsnia, a Board-certified neurologist, stated that she had been treating appellant since September 2004 and detailed the results of the various MRI scans and nerve conduction studies and Dr. Pribil's reports. Dr. Shamsnia stated that appellant would be unable to return to his previous work and should proceed with the recommended surgery.

By decision dated September 20, 2005, the Office denied modification of its June 21, 2004 decision. The Office stated that Dr. Ruel "agreed that there were no residuals of the motor vehicle (work[-]related) accident of March 26, 2003" and related appellant's current condition to his nonemployment-related automobile accident. It found that the opinions of Drs. Cenac, Gallagher and Ruel were all in agreement that his work-related conditions had resolved. The Office found that the reports from Dr. Pribil and Dr. Shamsnia and the MRI scan and nerve conduction study reports were of little probative value as they did not evaluate the current state of his work-related conditions. The Office also found that the psychological report was of no probative value because the last page was missing and the author was not known and because it did not appear to relate appellant's depression to his accepted employment injury. Finding that appellant had presented no well-rationalized medical evidence to overcome the medical opinions of Dr. Gallagher and Dr. Ruel, the Office denied modification its June 21, 2004 decision.

On September 19, 2006 appellant requested reconsideration on the basis that Dr. Ruel's opinion was not properly sought and that he was not qualified to address appellant's nonorthopedic condition. He argued further that the Office erred in finding that he could return to his prior employment because Dr. Ruel found that he could perform only sedentary work.

By decision dated December 19, 2006, the Office denied modification of its September 20, 2005 decision. It found that Dr. Ruel had been properly appointed and that his only objective findings related to a right knee injury sustained in 1999. The Office stated that appellant had not submitted evidence sufficient to warrant modification of its prior decision.

[3] The Board notes that the majority of these reports had been submitted prior to the reconsideration, but do not appear to have been formally reviewed by the Office.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[4] The Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to the employment injury.[5]

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 appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[6]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for sprains of the neck, lumbar spine, right wrist, right ankle and aggravation of right medial meniscus tear. The issue to be determined is whether the Office has met its burden of proof to establish that appellant had no remaining disability or residuals related to his accepted injury.

On December 19, 2003 the Office referred appellant to Dr. Cenac, a Board-certified orthopedic surgeon, for an opinion on the extent and degree of his employment-related disability. In his January 19, 2004 physical examination, Dr. Cenac found no objective evidence of injury, but noted that appellant voluntarily limited motion in his cervical and lumbar regions and did not use full effort. He found that appellant had no loss of motion, muscle spasm or decreased sensation in the back, arms or legs. Dr. Cenac stated that x-rays of appellant's cervical spine, lumbar spine, right knee, wrists and ankles were in the normal range, that appellant had no mechanical dysfunction or neurological deficits and that he had reached maximum medical improvement. The functional capacity examination he ordered did not provide valid evidence of disability because appellant used submaximal effort on the various tests. On review of the functional capacity examination, Dr. Cenac stated that there was no objective evidence of residual disability related to appellant's accepted employment injury and that he was capable of returning to his preinjury activity level.

Dr. Gallagher, a Board-certified orthopedic surgeon, made several findings from July 2003 to May 2004 that appellant had no orthopedic abnormalities, was in need of no further orthopedic treatment and was physically capable of returning to his date-of-injury employment.

The Board finds that the Office properly relied on the opinions of Dr. Cenac and Dr. Gallagher to terminate appellant's wage loss and medical benefits. These orthopedic surgeons established that appellant had no orthopedic abnormalities and no ongoing condition associated with his accepted injuries of sprains of the neck, lumbar spine, right wrist and right ankle or aggravation of right medial meniscus tear. The Board finds that the opinions of

[4] *Elaine Sneed*, 56 ECAB ___ (Docket No. 04-2039, issued March 7, 2005).

[5] *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

[6] *James F. Weikel*, 54 ECAB 690 (2003).

Dr. Cenac and Dr. Gallagher represent the weight of the medical opinion evidence, as they are experts in a pertinent field, had conducted physical examinations and had reviewed a comprehensive medical history. Because there was no objective evidence that appellant had any remaining disability or residuals from his accepted employment injuries, the Office properly terminated his compensation for wage loss and medical benefits.

The Board also finds that Dr. Hubbell's opinion is insufficient to overcome the weight of the medical evidence. The Office provided Dr. Cenac's report to Dr. Hubbell, a Board-certified anesthesiologist, who initially agreed with the finding that appellant was physically capable of returning to his date-of-injury employment. Shortly, after the notice of proposed termination was issued, Dr. Hubbell notified the Office that he was changing his opinion that appellant was able to return to work on the basis of a psychological examination conducted by Dr. Wolfson, a rehabilitation psychologist, who found that appellant was not malingering, but "somatasizing as a way of dealing with his depression." Dr. Hubbell stated that because appellant was acting psychologically correctly and had diagnosed spondylosis, he was not physically capable of returning to work. The Board notes that the Office has not accepted depression and degenerative disc disease conditions as related to the employment injury. Appellant has the burden of proof to establish causal relationship to his employment, which he has not met. In this regard, Dr. Hubbell did not provide any rationalized evidence that appellant's spinal condition or depression were causally related to his accepted employment injuries or the accepted March 26, 2003 automobile accident. The Board finds that the medical opinion evidence submitted by Dr. Hubbell prior to the termination of appellant's benefits is not sufficient to overcome the weight of the medical evidence.

LEGAL PRECEDENT -- ISSUE 2

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he had disability causally related to his accepted injury.[7] Appellant must submit rationalized medical evidence to establish the causal relationship between his continuing disability and the employment injury.[8] To be rationalized, the opinion must be based on a complete factual and medical background of the claimant[9] and must be one of reasonable medical certainty,[10] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11] Neither the fact that a 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.[12]

[7] *Manuel Gill*, 52 ECAB 282 (2001).

[8] *Id.*

[9] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] *Judy C. Rogers*, 54 ECAB 693 (2003).

[12] *Ernest St. Pierre*, 51 ECAB 623 (2000).

ANALYSIS -- ISSUE 2

Following the termination of appellant's benefits, he requested reconsideration of the Office's decision based on the reports of Dr. Pribil, Dr. Shamsnia and Dr. Ruel. The issue to be determined is whether he has submitted medical evidence sufficient to establish continuing employment-related disability.

Both Dr. Pribil, a Board-certified neurological surgeon, and Dr. Shamsnia, a Board-certified neurologist, diagnosed spondylosis and radiculopathy of the cervical and lumbar spine. The Board notes, however, that neither of these medical opinions, nor the diagnostic reports on which they were based, discussed the causal relationship between appellant's diagnosed conditions and his accepted employment injuries. Because they provide no rationale, the Board finds that these reports are insufficient to establish that appellant has a disability or residual causally related to his accepted employment injuries.

Appellant submitted the report of Dr. Ruel, a Board-certified orthopedic surgeon, as evidence that he continued to be disabled from and require medical treatment for his accepted employment injuries. Dr. Ruel was initially selected by the Office as an impartial medical examiner to resolve the conflict between Dr. Cenac and Dr. Hubbell on appellant's level of disability. When Dr. Hubbell changed his opinion, finding that appellant was physically able to return to his date-of-injury employment and postponing further treatment, there ceased to be a conflict in medical evidence. The Board finds that, because there was no longer a conflict, Dr. Ruel's opinion was no longer necessary for the purpose of resolving a conflict. Further, the Board finds that Dr. Hubbell's retraction of agreement did not create a new conflict of medical opinion evidence because his new opinion was based on the nonaccepted conditions of depression and spondylosis and did not contain adequate rationale explaining how these conditions were employment related. The Board has held that, when there is no actual conflict to resolve, a physician selected to resolve the assumed conflict is not considered an impartial medical specialist and his or her report may be considered for its intrinsic value, though is not entitled to special weight.[13]

Dr. Ruel conducted a medical history review and a physical examination. Based on the physical examination, in which he noted inconsistencies and symptom exaggeration, he stated that the only objective evidence of orthopedic abnormality was related to his preexisting right knee injury. Dr. Ruel found that the accepted injuries to the right knee, right wrist and right ankle had resolved. He stated that the accepted employment injury had superimposed a sprain on preexisting cervical spondylosis, but that a nonwork-related automobile accident that occurred a few weeks later "significantly accentuated" these symptoms. Dr. Ruel found that appellant had lumbar spondylosis, osteochondrosis, minimal bulging at L4-5 and L5-S1 and chronic S1 radiculopathy. He stated that appellant's back conditions should be treated conservatively, without surgery or injections. Dr. Ruel opined that appellant could work in a sedentary capacity and did not need any further orthopedic treatment related to his employment injuries. He also recommended that appellant be treated by a pain psychologist to address his unsubstantiated subjective complaints.

[13] *Delphia Y. Jackson*, 55 ECAB 373 (2004); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

The Board finds that Dr. Ruel's report does not establish that appellant's current disability or need for medical treatment is related to his accepted employment injuries. He explicitly found that appellant had no remaining residuals related to his knee, wrists or ankles. Additionally, as the Office has not accepted appellant's depression as a consequential injury,[14] Dr. Ruel's opinion about the treatment needed for that condition cannot be considered. The only argument that can be made from Dr. Ruel's report is that he may have found that appellant's current cervical and lumbar conditions are related to his accepted employment injuries. The Board finds that, at best, his report gives rise to the inference that appellant's spinal condition is employment related, but that it does not establish this fact. Dr. Ruel found that appellant was in no further need of orthopedic treatment and that his only objective physical abnormalities related to a previous employment-related knee injury. However, he also stated that appellant's neck strain overlaid preexisting cervical spondylosis and was then greatly aggravated by a subsequent automobile accident. Dr. Ruel went on to list conditions affecting appellant's lumbar spine, but did not state explicitly that they were employment related. The Board finds that it is unclear whether he found that the current conditions were caused by or still aggravated by his employment-related sprains. Because appellant has the burden of proof, the Board finds that Dr. Ruel's ambiguous report is not adequate to establish to establish that he had disability causally related to his accepted injuries.

The Board finds that appellant has not established that his continuing disability was caused by his accepted employment injuries.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits, effective June 24, 2004, on the grounds that he had no residuals or disability causally related to his accepted employment injury. The Board further finds that appellant failed to meet his burden of proof to establish continuing employment-related disability or residuals causally related to the March 26, 2003 employment injuries.

[14] The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. *See S.M.*, 58 ECAB ___ (Docket No. 06-536, issued November 24, 2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 19, 2006 is affirmed.

Issued: August 23, 2007
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