

Appellant was referred to Dr. Barry Lotman, an orthopedic surgeon, for a second opinion examination. In a report dated August 17, 2004, Dr. Lotman opined that the February 6, 2004 employment incident caused an aggravation of appellant's underlying back condition. He opined that the aggravation had ceased.

The attending physician, Dr. Graham Whitfield, an orthopedic surgeon, submitted a February 14, 2005 report indicating that appellant could work six hours per day in a light-duty position. Appellant began working six hours per day and the Office began paying compensation for wage loss of two hours per day.

The Office determined that a conflict in the medical evidence existed and appellant was referred to Dr. Burton Wollowick, a Board-certified orthopedic surgeon, for a referee examination. In a report dated July 6, 2005, Dr. Wollowick provided a history and results on examination. He stated:

"The patient has a history of multiple low back problems and evidence on CT [computerized tomography] scan, of degenerative disc disease and spondylosis. The injury of February 6, 2004 was a lumbosacral sprain, and he was treated for that and recovered from that specific injury. The residual pain that he has at the present time is related to a chronic lumbosacral problem related to the findings on the CT scan.

"The diagnosis at the present time is that of spinal stenosis and spondylosis of the lumbosacral spine. These are not related to the injury of February 6, 2004. There are no other conditions at the present time and none at the present time that are related to the injury of February 6, 2004. The subjective complaints are related to the findings on CT scan and further evaluation is indicated in terms of an MRI [magnetic resonance imaging] scan of the lumbar spine to better understand the pathology related to left leg pain, for which he is complaining. All of the symptomology at the present time, I related to preexisting conditions and not related to the injury of February 6, 2004."

Dr. Wollowick concluded that appellant could work eight hours per day with restrictions.

By letter dated November 9, 2005, the Office notified appellant that it proposed to terminate compensation for wage-loss and medical benefits. The Office found that the weight of the medical evidence was represented by Dr. Wollowick.

In response appellant submitted additional medical evidence, including a December 8, 2005 report from Dr. Douglas Maclear, an osteopath, who stated that he agreed with Dr. Wollowick that appellant's current symptoms were related to preexisting conditions and not to a specific injury on February 6, 2004.

By decision dated December 14, 2005, the Office terminated compensation for wage-loss and medical benefits effective December 13, 2005. Appellant requested reconsideration and submitted additional evidence. In a report dated February 7, 2006, Dr. Amos Dare, a surgeon, noted cervical spondylosis, L3-4 disc extrusion and lumbar stenosis. He stated that appellant's complaints were significantly out of proportion to his radiographic findings. In a June 16, 2006

report, Dr. Ejaz Nemat, an internist, opined that appellant was disabled with back and neck pain. The record contains an MRI scan report dated August 14, 2006 indicating disc bulging at L3-4, L4-5 and L2-3. Dr. Nemat opined in a brief report dated August 15, 2006 that appellant was unable to work.

In a decision dated October 25, 2006, the Office reviewed the case on its merits and denied modification of the December 14, 2005 decision.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.³

It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴

ANALYSIS

In the present case, appellant was working six hours per day and receiving compensation for wage loss for the remaining two hours. As noted, it is the Office's burden of proof to terminate compensation. There was a conflict in the medical evidence between an attending physician, Dr. Whitfield, and Dr. Lotman, a second opinion physician, regarding whether appellant continued to have an employment-related disabling condition. Pursuant to 5 U.S.C. § 8123(a), the case was referred to a referee examiner.⁵

The referee physician, Dr. Wollowick, provided a rationalized opinion on the issue presented. He opined that the February 6, 2004 lumbar injury had resolved and that appellant's

¹ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

² *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

³ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁵ The Act provides that, if there is a 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 the examination. 5 U.S.C. § 8123(a). The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. 20 C.F.R. § 10.321 (1999).

current symptoms were related to a preexisting back condition. Dr. Wollowick based his opinion on a complete background and a review of the medical evidence and diagnostic testing. As noted, the rationalized opinion of a referee physician selected to resolve a conflict is entitled to special weight. The Board finds that Dr. Wollowick represented the weight of the evidence in this case.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.⁶ In this case, appellant submitted additional medical evidence from Dr. Dare and Dr. Nemat. These reports do not provide a rationalized medical opinion establishing an employment-related disability or condition after December 13, 2005. Dr. Nemat opined that appellant was disabled, without providing a complete history or a rationalized opinion on causal relationship with the employment injury.

CONCLUSION

The Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective December 13, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 25, 2006 is affirmed.

Issued: July 19, 2007
Washington, DC

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

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

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

⁶ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).