United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 07-1328**
	)	**Issued: November 15, 2007**
DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTER FOR DISEASE CONTROL, Decatur, GA, Employer	)	

Appearances:
Thomas P. DeBerry, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 18, 2007 appellant filed a timely appeal from an April 28, 2006 merit decision of the Office of Workers' Compensation Programs that affirmed the termination of his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the termination issue.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation effective March 12, 2005; and (2) whether he met his burden of proof in establishing that he had any disability or medical condition causally related to his employment after March 12, 2005.

FACTUAL HISTORY

On February 21, 2002 appellant, then a 52-year-old computer specialist, filed an occupational disease claim stating that he developed pain in his hands, elbows and shoulders due

to his federal employment.[1] He stopped work on October 30, 2002 and did not return. The Office accepted the claim for tendinitis of the wrist, fingers, thumbs, shoulders and elbows. On March 26, 2003 appellant filed a second occupational disease claim stating that he developed bone spurs, with disc bulging and herniations at the C3-7 levels.[2] He provided a November 29, 2002 magnetic resonance imaging (MRI) scan report from Dr. Jennifer Cranny, a Board-certified radiologist, who diagnosed diffuse cervical spondylosis, most severe at C3-4 and C6-7, with associated disc herniations and moderate spinal canal narrowing. The Office accepted the claim for aggravation of displacement of cervical intervertebral disc and neck strain.

In an October 30, 2002 report, Dr. Mark Feeman, an osteopath, noted that appellant's medical history was significant for severe cerebral palsy and dystonia. He advised that appellant's "injuries are permanent and will not improve any further." In a March 19, 2003 report, Dr. Feeman explained that appellant's preexisting dystonia caused spasticity of movements, requiring him to exert exorbitant amounts of effort to hold himself still while performing his keyboarding and fine manipulation tasks and straining his cervical spine. He opined that "the long-term repetitive straining of [appellant's] cervical spine due to his dystonia and [spasticity] has contributed substantially to his cervical spine problems." On April 8, 2003 Dr. Feeman recommended that appellant stop work. On October 10, 2003 he stated that appellant had reached maximum medical improvement and was permanently disabled.

By correspondence dated November 5, 2003, the Office requested that Dr. Feeman provide an updated opinion concerning appellant's disability status. On November 19, 2003 Dr. Feeman diagnosed cerebral palsy with associated dystonia, degenerative joint disease of the shoulders, wrists and hands, cervical disc bulge, multilevel cervical disc herniation, multilevel cervical spondylosis, and bilateral hand and wrist joint deformities. He concluded that appellant was permanently disabled.

On May 10, 2004 the Office referred appellant, together with a statement of accepted facts, to Dr. Charles Nicol, a Board-certified neurologist, for a second opinion examination to determine whether appellant had continuing disability causally related to his accepted conditions.[3]

In a May 24, 2004 report, Dr. Nicol diagnosed cerebral palsy, history of hypertension and history of hypercholesthemia. He noted that physical examination yielded generally normal results but that appellant exhibited some difficulty with certain tests with dystonic posturing and movements. Dr. Nicol concluded that appellant's cerebral palsy was a congenital condition and that his hypertension and hypercholesthemia were not work related. He opined that appellant no longer had objective residuals of his employment injuries. In a work capacity evaluation prepared the same day, Dr. Nicol found that appellant was totally incapacitated due to his preexisting cerebral palsy.

[1] The claim was assigned Office file number 062054807.

[2] The claim was assigned Office file number 062084243. The record indicates that the Office had previously accepted bilateral carpal tunnel syndrome in a claim that was retired on June 25, 1999.

[3] On May 11, 2004 the Office combined appellant's two claims, file numbers 062054807 and 062084243.

The Office found a conflict in medical opinion between Dr. Feeman and Dr. Nicol.

On June 17, 2004 the Office referred appellant to Dr. Michael Fleming, a Board-certified neurosurgeon, for an impartial medical examination.

In a July 19, 2004 report, Dr. Fleming noted that appellant's history was significant for cerebral palsy, dystonia, low thyroid, high cholesterol and carpal tunnel syndrome. On physical examination, appellant exhibited dystonic movements and spasms. Dr. Fleming stated that a January 27, 2002 MRI scan revealed cervical spondylosis and disc bulging at the C3-4 and C6-7 levels. He diagnosed bilateral carpal tunnel syndrome, cerebral palsy with dystonia, cervical degenerative disc disease, hypertension, elevated cholesterol and hyperthyroid. Dr. Fleming opined that appellant's dystonia and carpal tunnel syndrome both contributed to the problems he experienced in the bilateral extremities. He concluded: "I believe that [appellant] is significantly disabled because of his residual problems with his hands from the injuries in the early nineties and his underlying problem with cerebral palsy with dystonia." In a July 20, 2004 work capacity evaluation, Dr. Fleming concluded that appellant was permanently and completely disabled due to his cerebral palsy and carpal tunnel syndrome.

On July 29, 2004 the Office requested clarification of Dr. Fleming's opinion concerning the causation of appellant's aggravation of cervical disc disease and tendinitis. In an August 2, 2004 report, Dr. Fleming stated: "I agree with Dr. Nicol. The main problem with the musculoskeletal system is the severe dystonia and this preexisted any work problems." Dr. Fleming opined that appellant's cervical spondylosis was likely the result of the aging process coupled with his dystonia. He concluded that appellant's "present pain and discomfort involves much more of his body than just the carpal tunnel area and I do not think that this is work related."

On September 21, 2004 the Office referred appellant to Dr. Joseph N. Saba, a Board-certified neurologist, for a second impartial medical examination.[4]

In an October 14, 2004 report, Dr. Saba diagnosed bilateral carpal tunnel syndrome secondary to repetitive hand use on the job. He noted that appellant had severe dystonia and athetosis, related to his cerebral palsy. Dr. Saba explained that appellant's congenital condition predisposed him to repetitive stress and other musculoskeletal injuries. However, he found that appellant's degenerative disc disease was most likely due to the normal aging process. Dr. Saba concluded that appellant was disabled "because of this minor residual in the hands from carpal tunnel syndrome with a … severe and preexisting problem with cerebral palsy, dystonia, etc."

On September 15, 2004 the Office requested that Dr. Saba clarify the physical examination findings to support his opinion. In a November 9, 2004 report, Dr. Saba stated that the bulk of appellant's impairment was caused by his cerebral palsy and dystonia, but that his carpal tunnel syndrome was "the straw that broke the camel's back." He explained: "In a 'normal' individual, this carpal tunnel would cause probably only a mild impairment and only a mild disability. The reason this mild impairment from carpal tunnel is causing [appellant] so many problems … is because of his preexisting dystonia."

[4] The Office found that Dr. Fleming's opinion was not fully rationalized.

In a November 22, 2004 memorandum, the Office concluded that Dr. Saba did not provide physical examination findings or rationale supporting his medical opinion. On December 3, 2004 the Office referred appellant to Dr. Howard Ehrenfeld, a Board-certified neurologist, for a third impartial medical examination.[5]

In a January 3, 2005 report, Dr. Ehrenfeld diagnosed cerebral palsy and dystonia, carpal tunnel syndrome, degenerative changes in the cervical spine with some cervical stenosis and chronic pain in multiple joints. He noted that a July 13, 1998 cervical spine MRI scan was abnormal and showed multilevel spondylitic changes. Physical examination revealed moderate spasm and fairly constant dystonic movements of the neck and contracted left hand positioning. On examination, Dr. Ehrenfeld noted that appellant had moderate neck spasms and fairly constant dystonic-type movements of the neck. He also indicated that appellant held his left arm in extension with the wrist flexed and the fist clenched and had decreased fine motor movements bilaterally, although he was able to use his right hand slightly more than his left. Dr. Ehrenfeld concluded that appellant's inability to perform fine motor movements was due to his cerebral palsy and dystonia. He explained that appellant's conditions were disabling but were related to his preexisting cerebral palsy. Dr. Ehrenfeld noted that appellant's work-related carpal tunnel syndrome had responded to release surgery and therefore was not "the main source of his disability." He found that the medical evidence did not support that appellant's disability was causally related to his federal employment.

On January 26, 2005 the Office requested clarification from Dr. Ehrenfeld concerning his opinion on causal relationship and whether appellant's prior work-related carpal tunnel syndrome had resolved. In a January 26, 2005 report, Dr. Ehrenfeld explained that he believed appellant's accelerated degenerative changes to be the result of his cerebral palsy, as his dystonia "causes him to have fairly constant movements of his neck with extension and rotation that puts a strain on the joints of the neck. I have seen several patients with similar symptoms who have similar complaints of neck pain and accelerated arthritis." Dr. Ehrenfeld also reiterated that appellant's cerebral palsy was a congenital condition, not aggravated by his federal employment.

On February 1, 2005 the Office issued a notice of proposed termination of appellant's compensation benefits on the grounds that appellant no longer had residuals or disability causally related to his accepted conditions.

In a February 16, 2005 report, Dr. Christopher E. Wilson, a Board-certified physiatrist, noted that appellant developed severe dystonic spasms shortly after beginning work for the employing establishment and diagnosed cerebral palsy, degenerative joint disease, cervical spondylosis and herniated cervical disc. He noted that, although cerebral palsy was a static condition, appellant's job activities had contributed to both his dystonia and tendinitis. Specifically, Dr. Wilson referred to computer typing, data entry, using a mouse and using small tools. He also characterized appellant's improvement after retirement as "indicative that the job and his duties were the primary culprit."

[5] By correspondence dated December 14, 2004, the Office advised appellant that a referral to a third referee physician was necessary because neither Dr. Fleming nor Dr. Saba provided a well-rationalized opinion.

By decision dated March 8, 2005, the Office finalized termination of appellant's compensation effective March 12, 2005.

Appellant requested a hearing that was held on February 14, 2006. In support of his request, he submitted additional medical evidence.

In a March 3, 2005 report, Dr. Feeman opined that appellant's bilateral degenerative joint disease of the elbows, wrists and hands was directly related to his employment. He explained that cerebral palsy was a static disease and that appellant's aggravated symptoms were not a natural progression of the condition. Dr. Feeman also indicated that appellant's condition improved "with discontinuation of repetitive motions of his hands/arms (when he stopped working)." He concluded that appellant was permanently disabled and would likely experience additional aggravation should he return to work.

In a May 17, 2005 report, Dr. Stewart A. Factor, a neurologist, diagnosed generalized dystonia secondary to cerebral palsy, which was known to accelerate cervical degenerative joint disease. He opined that appellant's job duties, which included fine motor movements, had aggravated his dystonia. Dr. Factor concluded that appellant's cervical stenosis, carpal tunnel syndrome and tendinitis were all related "in a combined way to his cerebral palsy and his job." He opined: "It is more likely than not that the job has contributed substantially to his current difficulties and I am in agreement with Dr. Feeman that he should be permanently placed on disability because of his cerebral palsy."

By decision dated April 28, 2006, the hearing representative affirmed the termination of appellant's compensation.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[6] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[7] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[8]

Section 8123(a) of the Federal Employees' Compensation Act 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.[9] When the case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical evidence, the opinion of such specialist will be given special

[6] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[7] *Id.*

[8] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[9] 5 U.S.C. § 8123(a); *see Elsie L. Price*, 54 ECAB 734 (2003); *Raymond J. Brown*, 52 ECAB 192 (2001).

weight when based on a proper factual and medical background and sufficiently well rationalized on the issue presented.[10]

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.[11] When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report, or if the specialist's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.[12] Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict in the medical evidence.[13]

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation on the grounds that he no longer had employment-related disability. The Office accepted bilateral tendinitis and cervical spine conditions and appellant's medical history was significant for cerebral palsy with severe dystonia. To determine whether appellant's continuing disability was employment related, the Office referred him to Dr. Nicol for a second opinion examination. Dr. Nicol conducted a physical examination which revealed essentially normal findings for an individual with cerebral palsy and dystonia. He concluded that appellant was disabled but that his disability was due to his preexisting cerebral palsy and dystonia, not to an employment-related condition. As appellant's treating physician, Dr. Feeman, supported that appellant's work activities had aggravated his cerebral palsy and dystonia and that he continued to experience residuals of his accepted conditions, the Office properly found a conflict in the medical evidence and referred appellant for an impartial medical examination.

The Office first referred appellant to Dr. Fleming for an impartial medical examination. On July 19, 2004 Dr. Fleming determined that appellant was permanently disabled due to his cerebral palsy and carpal tunnel syndrome.[14] He stated that appellant's diagnostic testing results were normal and his dystonia aggravated "the problems in his extremities." Dr. Fleming found that appellant was disabled by his cerebral palsy and his "injuries in the early nineties," but did not give more specific explanation. The Office requested clarification and on August 2, 2004 Dr. Fleming opined that appellant's musculoskeletal symptoms were caused by his dystonia, which "preexisted any work problems." His clarification report was not sufficiently detailed or

[10] *See Bernadine P. Taylor*, 54 ECAB 342 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

[11] *Roger W. Griffith*, 51 ECAB 491 (2000).

[12] *See Nathan L. Harrell*, 41 ECAB 402 (1990).

[13] *Harold Travis*, 30 ECAB 1071 (1979).

[14] The record reflects that carpal tunnel syndrome is not an accepted condition in the present claim.

rationalized to support his opinion. Accordingly, the Board finds that the Office acted properly, as noted above, in referring appellant to Dr. Saba for a second impartial medical examination.

In an October 14, 2004 report, Dr. Saba opined that appellant was at greater risk for repetitive stress injuries due to his preexisting severe cerebral palsy and dystonia. He found that appellant was disabled due to the "minor residual" carpal tunnel syndrome and the "severe and preexisting" cerebral palsy and dystonia. The Office, in a clarification request, asked that Dr. Saba provide physical examination findings. On November 9, 2004 Dr. Saba reiterated that appellant's disability was due to his cerebral palsy and dystonia with minor contribution from his carpal tunnel syndrome, but did not provide the requested physical examination findings. Because Dr. Saba was not responsive to the Office's clarification request, namely, by identifying specific physical examination findings in support of his conclusions, his report was insufficient to resolve the medical conflict. Accordingly, the Board finds that the Office properly referred appellant to Dr. Ehrenfeld for a third impartial medical examination.

In a January 3, 2005 report, Dr. Ehrenfeld reviewed the medical evidence and diagnostic testing results and conducted a thorough physical examination, concluding that appellant's continuing disability was causally related to his preexisting cerebral palsy and dystonia. He determined that appellant's history of carpal tunnel syndrome was work related, but that the condition had responded to a carpal tunnel release and no longer represented the main cause of appellant's disability. In a January 26, 2005 follow-up report, Dr. Ehrenfeld advised that appellant's accelerated degenerative changes were due to his cerebral palsy, explaining that his dystonia "causes him to have fairly constant movements of his neck with extension and rotation that puts a strain on the joints of the neck." He reiterated that appellant's cerebral palsy was a congenital condition that was not aggravated by his federal employment. The Board finds that Dr. Ehrenfeld provided a thorough, rationalized opinion explaining why appellant's disability was caused by his preexisting cerebral palsy and dystonia and not by his federal employment. As he was an impartial medical examiner who provided a well-rationalized opinion, his report constitutes the weight of the medical evidence[15] and establishes that residuals of appellant's accepted condition had ceased.

Following the Office's notice of proposed termination, appellant submitted a February 16, 2005 report from Dr. Wilson who stated that the "activities [appellant] has been doing on the job since the 1970s are the primary contributing factor to his dystonias and tendinitis." Specifically, Dr. Wilson noted that appellant's typing and data entry duties, as well as manipulating small tools, contributed to "causing the dystonias that he suffers from." However, while he supported causal relationship between appellant's job duties and his original injury, he did not provide sufficient reasoning, or rationale, to explain why appellant's continuing medical condition and disability was caused or aggravated by his employment and why any such conditions would not be attributable to his preexisting cerebral palsy and dystonia.[16] Accordingly, the Board finds that Dr. Wilson's report is insufficient to overcome

[15] *See supra* note 9.

[16] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

Dr. Ehrenfeld's conclusion that appellant's continuing disability was not causally related to his accepted condition.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation 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.[17]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.[18]

ANALYSIS -- ISSUE 2

The Board finds that appellant did not meet his burden of proof in establishing that he had continuing employment-related disability after March 12, 2005. Following the Office's termination of compensation benefits, appellant provided additional medical evidence. In a March 3, 2005 report, Dr. Feeman stated that appellant's injury had not resolved but that it had "improved with discontinuation of repetitive motions of his hands/arms (when he stopped working)." However, as Dr. Feeman was on one side of the medical conflict that was resolved by Dr. Ehrenfeld, Dr. Feeman's new report is, in the absence of new rationale or findings, insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.[19] Dr. Feeman did not provide sufficient new rationale for his conclusion. Appellant also provided a May 17, 2005 report from Dr. Factor, who stated that appellant's job injuries, cervical degenerative disc disease, and cerebral palsy and dystonia were interrelated. Dr. Factor's opinion was equivocal, as he both supported the proposition that appellant's cerebral palsy caused or aggravated his employment injuries and that appellant's disability was due to his cerebral palsy rather than to his employment.[20]

Accordingly, the Board finds that the medical evidence submitted by appellant was insufficient to establish an employment-related condition or disability after March 12, 2005.

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[17] *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

[18] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[19] *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

[20] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective March 12, 2005, and that appellant did not meet his burden of proof in establishing that he had a continuing employment-related condition or disability after March 12, 2005.

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 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