United States Department of Labor
Employees' Compensation Appeals Board

R.F., Appellant	)	
and	)	**Docket No. 07-945**
	)	**Issued: September 24, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Lock Haven, PA, Employer	)	

Appearances:
Thomas R. Uliase, 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 21, 2007 appellant filed a timely appeal from an August 21, 2006 merit decision of a hearing representative of the Office of Workers' Compensation Programs that affirmed the termination of appellant's compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective March 1, 2006; and (2) whether appellant met his burden of proof in establishing that he had any disability causally related to his employment injury after March 1, 2006.

FACTUAL HISTORY

On August 14, 2002 appellant, then a 48-year-old clerk, filed a traumatic injury claim stating that on August 12, 2002 he injured his lower back and experienced spasms while "unsleeving" a tray of mail. He stopped work on August 17, 2002. Appellant returned to a light-

duty assignment for four hours per day on January 14, 2003. An August 22, 2002 magnetic resonance imaging (MRI) scan report from a Dr. Stanley,[1] diagnosed multiple disc herniations from L3-4 to L5-S1. On August 28, 2002 Dr. A. Loren Amacher, a neurosurgeon, reported normal findings upon physical examination. In a November 4, 2002 report, Dr. Asif Javed, a Board-certified internist, diagnosed "multiple disc herniations, one particularly severe at L5-S1 level." Beginning with a December 30, 2002 work capacity evaluation, Dr. Javed indicated that appellant could work four hours per day with restrictions. The Office accepted appellant's claim for a herniated disc at L4-5 and paid appropriate wage-loss compensation.

In a May 22, 2003 report, Dr. Rene Rigal, a Board-certified anesthesiologist, noted appellant's history of employment injury and diagnosed "herniated disc L4-5, perhaps producing functional spinal stenosis." He noted that appellant was morbidly obese. Dr. Rigal reviewed the MRI scan results. In a June 7, 2003 work capacity evaluation, Dr. Stephen Goykovich, an osteopath and a treating physician, stated that appellant could work four hours per day in a light-duty position.

The Office referred appellant to Dr. Peter Feinstein, a Board-certified orthopedic surgeon, for a second opinion. Dr. Feinstein examined appellant and prepared a report on August 5, 2003. After reviewing the medical evidence, he noted that appellant's August 22, 2002 MRI scan report revealed disc herniations on multiple levels and stated: "My direct review of those films is consistent with that of the radiologist in terms of there being severe degenerative disc disease at L4-5 and L5-S1 with evidence of a left-sided herniated disc at L5-S1." Upon physical examination, Dr. Feinstein concluded that appellant had made a full and complete recovery -- and has today, an entirely normal examination in all respects as far as his lumbar spine is concerned. He explained that appellant had no residuals of his work injury and had returned to a baseline situation for his lumbar spine, and had no symptoms referable to the work injury. Dr. Feinstein advised that appellant had no work restrictions.

In a September 20, 2003 report, Dr. Rigal stated that he largely agreed with Dr. Feinstein's opinion. He noted that appellant had not responded to treatment with epidural steroid injections and that his last physical examination was largely normal.

In a May 21, 2004 report, Dr. Goykovich opined that appellant's condition was unlikely to improve. He indicated that appellant could only perform part time restricted duties.

On October 7, 2004 the employing establishment advised that a surveillance videotape recorded appellant performing activities allegedly beyond his capabilities on July 1 and 2, 2004. The videotape recorded images of appellant lifting and moving items including ladders, wrought iron chairs and plastic chairs and a garden hose, carrying lumber above his head, raking his lawn and decorating his house. An investigative memorandum noted that appellant was observed bending, twisting and stretching. In a July 23, 2007 interview, appellant explained that he hosted a Fourth of July party at his home but that his brother and cousin performed the majority of the set-up and most of the heavy lifting. He also stated that he could perform any activity for 20 minutes but then would have to rest. On October 25, 2004 the employing establishment placed appellant in "off-duty" status.

[1] Dr. Stanley's full name or specialty is not discernible from the record.

On March 1, 2005 the Office referred appellant to Dr. Russell N. Worobec, a Board-certified orthopedic surgeon, for a second opinion. In a March 18, 2005 report, Dr. Worobec noted appellant's complaints of lumbar pain, diagnostic test results and examination findings. He diagnosed degeneration of thoracic or lumbar intervertebral disc and intervertebral disc disorder with myelopathy in the lumbar region. Dr. Worobec reviewed the surveillance video and noted that appellant performed physical activities including mounting ladders, carrying and moving objects and "frequently bending and stooping without any difficulty." He noted: "All activities were performed in a continuous manner throughout each hour period of observation and [appellant] moved in an entirely normal manner." Dr. Worobec noted that the Office accepted that appellant sustained a herniated disc at the L4-5 levels but stated that "a positive imaging study of itself does not make a diagnosis. The prevalence of degenerative changes, bulges and herniations increase with advancing age." Dr. Worobec explained that the physical examination and appellant's previous examinations had all been within normal limits and concluded that "it would be my clinical impression that [appellant] did not have a herniated disc at L4-5 that was symptom producing." He stated that appellant's back pain was mechanical and not caused by residuals of his employment injury. The changes on his MRI scan were not produced by his injury. In a work capacity evaluation prepared on the same day, Dr. Worobec advised that appellant had reached maximum medical improvement and could perform full-duty work, with the restriction that he could not lift greater than 50 pounds.

In an April 28, 2005 report, Dr. Goykovich disagreed with Dr. Worobec's opinion that appellant was fully recovered and capable of performing full duty. He found that appellant had not completely recovered but was capable of performing a light-duty assignment. Dr. Goykovich advised that appellant could work between three and five hours per day with restrictions.

On May 19, 2005 the Office determined that there was a conflict in medical opinion between Dr. Worobec and Dr. Goykovich.

Appellant was terminated from his position with the employing establishment on June 14, 2005.

On October 5, 2005 the Office referred appellant to Dr. Charles R. Levine, a Board-certified orthopedic surgeon, for an impartial medical examination. Dr. Levine examined appellant on December 5, 2005. In a December 6, 2005 report, he reviewed the history of the employment injury and appellant's complaints of low back pain, as well as a history of back problems while serving in the military. Dr. Levine indicated that appellant did not complain of radiculopathy. He reported that previous examiners had concluded that there was nothing wrong with appellant. Dr. Levine noted that an MRI scan report showed multilevel degenerative disc disease. On a physical examination he noted that appellant was obese but nonetheless had excellent leg and calf strength, normal lateral bends and sensory examination of the lower extremities, and full range of motion in his low back and hips. Dr. Levine concluded that appellant had lumbago, based upon his reported medical history, his diagnostic testing results, and the physical examination. He stated:

> "[Appellant] has no work-related condition either direct, indirect, aggravating, perceptive, or excellerative. [He] has episodic lumbago. I do not feel that

> [appellant's] lumbago is work related. His current complaint of back pain is not related to the alleged work injury of August 12, 2002. I do feel that he is able to work his previous job … without any restrictions, full time."

In a December 5, 2005 work capacity evaluation, Dr. Levine stated that appellant could work full time without restrictions.

On December 16, 2005 the Office proposed to terminate appellant's compensation and medical benefits based on Dr. Levine's opinion that he could work full time without restrictions. Appellant disagreed with the Office's proposed termination of his benefits. In a January 17, 2002 x-ray report, Dr. Frank A. Piro, a Board-certified radiologist, diagnosed increased lumbar lordosis, spurs from L2 to S1, and disc narrowing indicating degenerative disc disease.

By decision dated March 1, 2006, the Office terminated appellant's compensation benefits effective that day.

Appellant requested an oral hearing which was held on June 8, 2006. He submitted additional evidence. In a February 24, 2006 attending physician's report, Form CA-20, Dr. Goykovich found multiple disc herniations and checked a box "yes" indicating that appellant's condition was caused or aggravated by bending over to lift a tray. In a May 26, 2006 report, Dr. Goykovich explained that appellant was essentially asymptomatic before his employment injury. He stated:

> "[Appellant] has been diagnosed with chronic back pain, degenerative disc disease, and ruptured disc lumbar spine. This is due to his work injury. It is true that the 'degeneration' could have been there to some degree before his injury, but that does not change the fact that his difficulties started after his injury."

By decision dated August 21, 2006, the hearing representative affirmed the March 1, 2006 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[2] 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 includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

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

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

[3] *Id.*

[4] *See Del K. Rykert*, 40 ECAB 284, 295-296 (1988).

examination.[5] 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 weight when based on a proper factual and medical background and sufficiently well rationalized on the issue presented.[6]

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation as the weight of the medical evidence shows that appellant's employment-related condition has resolved.

Appellant sustained injury on August 12, 2002 accepted for a herniated disc a L4-5. He worked part time and the Office paid appellant wage-loss compensation for the difference for the hours that he was unable to work due to his employment injury. The Office referred appellant to Dr. Worobec for a second opinion examination. Dr. Worobec provided a March 18, 2005 medical report concluding that appellant no longer experienced residuals from his employment injury and was capable of working full-time regular duty. In an April 28, 2005 report, Dr. Goykovich disagreed with Dr. Worobec. Based on this evidence, the Office properly determined that a conflict arose. To resolve the medical conflict, the Office referred appellant to Dr. Levine.

In a December 6, 2005 report, Dr. Levine found that appellant experienced mechanical back pain due to degenerative disc disease, not his accepted employment injury. He noted appellant's history of back problems, both in the military and at the employing establishment and reviewed the reports of prior examiners and the diagnostic testing results. Dr. Levine noted that appellant's diagnostic testing results all indicated that he had degenerative disc disease. He performed a physical examination and determined that appellant had good strength, full range of motion in his low back, and normal results of all physical tests. Dr. Levine concluded that appellant's medical history, diagnostic testing and the findings on physical examination were all consistent with a diagnosis of nonemployment-related lumbago. The Board finds that Dr. Levine provided a thorough review of the factual and medical evidence, detailed his findings on physical examination of appellant, referenced the diagnostic tests obtained and provided explanation supporting his conclusion that appellant no longer had residuals or disability related to his accepted injury. Dr. Levine explained that appellant could return to his previous position without restrictions. He found no basis on which to attribute any continuing symptoms or disability to the accepted employment injury.

The Board finds that the weight of the medical evidence rests with Dr. Levine, the impartial medical examiner, whose report is based on a proper factual and medical background and sufficiently well rationalized such that it is entitled to special weight and establishes that appellant no longer has residuals from his employment injury. Therefore, the Office met its burden of proof in terminating appellant's compensation benefits.

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

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

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.[7]

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.[8]

ANALYSIS -- ISSUE 2

The Board finds that appellant did not meet his burden of proof for reinstating his compensation benefits. In support of his claim, appellant submitted two reports from Dr. Goykovich.

In a February 24, 2006 form report, Dr. Goykovich checked a box "yes" to indicate that appellant's condition was work related. In a May 26, 2006 report, he opined that appellant's symptoms were causally related to his employment injury because he was asymptomatic before the injury. Dr. Goykovich acknowledged that appellant had degenerative disc disease but stated that appellant's problems only began after the employment injury. These reports are insufficient to meet appellant's burden of proof. Regarding the February 24, 2006 report, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value.[9] Dr. Goykovich did not provide any explanation for his opinion other than noting the history of injury provided by appellant. As to the May 26, 2006 report, the Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting medical rationale, to establish causal relationship.[10] Moreover, the Board notes that, as Dr. Goykovich was on one side of the conflict that Dr. Levine resolved, the additional reports from Dr. Goykovich, without any new findings or rationale, is insufficient to overcome the weight accorded Dr. Levine's report as the impartial medical specialist's report, or to create a new

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

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

[9] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[10] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

conflict with it.[11] Dr. Goykovich did not present any new rationale or explanation supporting his conclusion that appellant's condition was due to his employment injury.

Accordingly, the Board finds that appellant did not meet his burden of proof for reinstating his compensation and medical benefits because he did not present medical evidence establishing that his current condition was due to residuals of his employment injury and not to his nonemployment-related degenerative condition.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits and that appellant did not meet his burden of proof for reinstating his benefits.

ORDER

IT IS HEREBY ORDERED THAT the August 21 and March 1, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 24, 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

[11] *See Dorothy Sidwell*, 41 ECAB 857 (1990); *Helga Risor*, 41 ECAB 939 (1990).