United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 07-1802**
	)	**Issued: February 11, 2008**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Philadelphia, 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

JURISDICTION

On June 27, 2007 appellant filed a timely appeal from the July 19, 2006 and January 26, 2007 merit decisions of the Office of Workers' Compensation Programs which terminated his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation.

FACTUAL HISTORY

On August 18, 2004 appellant, then a 40-year-old transportation security screener, sustained an injury in the performance of duty: "While working entry position I helped an elderly wom[a]n lift her baggage from the table to the x-ray machine and pulled my back." A September 10, 2004 magnetic resonance imaging (MRI) scan of the lumbar spine revealed degenerative disc disease at L4-5 with an annular bulge narrowing the right recess. A

September 17, 2004 MRI scan of the cervical spine revealed "C6-7 paramedian to the right disc protrusion, C4-5 paramedian to the right disc protrusion with uncinate process hypertrophy, right neural foraminal encroachment at C4-5 and mild anterior-posterior (AP) spinal canal narrowing at C6-7. There was a focal posterior disc bulge at C5-6 without associated AP spinal canal narrowing. The Office accepted appellant's claim for acute cervical sprain, acute lumbosacral sprain and left shoulder sprain. Appellant received compensation for temporary total disability on the periodic rolls.

A conflict arose between Dr. D. Greg Anderson, the treating orthopedic surgeon, and Dr. E. Michael Okin, an Office referral orthopedic surgeon, on whether appellant had objective findings on examination to support continued residuals of the work injury. The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. John T. Williams, Sr., a Board-certified orthopedic surgeon, to resolve the conflict.

On March 21, 2006 Dr. Williams reviewed appellant's history and described his findings on physical examination. He reviewed imaging studies that appellant brought to the examination. It was Dr. Williams' medical opinion that, at the time of injury, appellant incurred: 1. An acute cervical sprain/strain, by history, which resolved. 2. Rule out degenerative joint disease and degenerative disc disease of the cervical spine, with stenosis. 3. An acute lumbosacral sprain/strain, by history, which resolved. 4. Rule out degenerative joint disease and degenerative disc disease of the lumbar spine. Dr. Williams commented:

> "[Appellant], by history, incurred what were considered to be soft tissue injuries. *I.e.*, there is no history of any fractures, dislocations or subluxation. Soft tissue injuries self-resolve anywhere from a few days to a couple of months. By history, [appellant] would be expected to have cervical pathology involving the nerve roots; that is, nerve root irritation versus nerve root compression of these right and left nerve roots at different levels.
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> "My review of [appellant's] MRI scan of the cervical spine confirms this. This pathology obviously preexisted the August 14, 2004 incident and the August 14, 2004 incident may have aggravated this preexisting pathology, but my opinion would be that the aggravation would be of a temporary and transitory nature, resolving and leaving [appellant] with his preexisting pathology."

Dr. Williams reviewed appellant's medical records. He noted that the January 14, 2005 electromyogram was an abnormal study reported to be compatible with a mild chronic C5-6 nerve root irritation (cervical radiculopathy). He explained:

> "Now, if it's chronic four [read five] months afterwards, this means that this has been there for some time. It preexisted the incident. Now, this one done eight months later on September 30, 2005 says it is a chronic C5-6 and C6-7 radiculopathy. I do not see that as anything being 'new.'
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> "My opinion is that this preexisted [appellant] accident of August 14, 2004 and does not correlate with reference to the incident of August 14, 2004."

* * *

"After reviewing these documents, I really do not see anything here to alter my opinion as stated in the body of my report. The basis for my opinion is that when arriving at a diagnosis of medicine, the most important contributing factor is the history. This history contributes 75 percent towards arriving at the diagnosis; the physical examination contributes 15 percent. So, on the basis of a thorough history and physical examination, 90 percent of the time, one should be able to arrive at a primary and/or differential diagnosis. The remaining 10 percent, the, *i.e.*, so-called diagnostic studies and tests, should be used to confirm the information gathered from the thorough history and physical and never be used to make a primary and/or differential diagnosis.

"To summarize my opinion based upon [appellant's] history and description of his injury (turning and twisting) is that of soft tissue injuries and sprains and strains which were the initial diagnoses. Because of [his] symptomatology, as I stated earlier, would lead me to believe that [appellant] had some cervical pathology, *i.e.*, cervical disc and cervical joint disease, possibly developing and contributing to stenosis. [T]hese preexisted the accident. I reviewed the studies that [appellant] brought with him and this confirmed what I stated. [Appellant] had preexisting pathology which may have been aggravated by the incident[,] [b]ut that aggravation, as I stated previously, would be of a temporary and transitory nature, resolving and leaving [appellant] with his pathology. I think it is evident that [appellant] as the documents have shown has previously been treated with epidurals in his neck for 'symptomatology.' Dr. Noone states that the last time he saw [appellant] [for a cervical epidural injection] was in 2000. [Appellant] has been having headaches and symptomatology prior to the August 14, 2004 incident. His degenerative joint disease and degenerative disc disease changes at L4-5 were not caused by the August 14, 2004 incident. Again, that preexisted. Once again, the mechanism of injury twisting and turning caused [appellant] to have some aggravation of this preexisting but that aggravation would be of a temporary and transitory nature. With reference to his neck, with reference to [appellant's] symptomatology, with reference to returning to work … again, I could concur with Dr. Draper and Dr. Okin[,] [n]ot on the basis of the August 14, 2004 incident, but on the basis of [appellant's] preexisting pathology which is significant."

Responding to questions posed by the Office, Dr. Williams reported that the accepted sprain/strains were resolved and that appellant had recovered from his August 14, 2004 employment injury. Appellant had problems due to preexisting degenerative disease not caused by the August 14, 2004 injury.

In a decision dated July 19, 2006, the Office terminated appellant's compensation. It found that Dr. Williams' opinion represented the weight of the medical evidence and established that appellant had fully recovered from the effects of his August 14, 2004 work injury. In a decision dated January 19, 2007, an Office hearing representative affirmed the termination of appellant's compensation.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.[1] 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 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]

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.[4] When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[5]

ANALYSIS

The Office accepted appellant's claim for acute cervical sprain, acute lumbosacral sprain and left shoulder sprain. To justify terminating compensation benefits, the Office must establish by the weight of the medical evidence that appellant no longer suffers from these soft-tissue injuries. The Board finds that the Office has met that burden.

There was disagreement between appellant's physician and the Office referral physician on whether appellant had objective findings on examination to support continued residuals of the work injury. The Office properly selected an impartial medical specialist to resolve this conflict. The Office provided Dr. Williams, a Board-certified orthopedic surgeon, with appellant's entire case record and a statement of accepted facts so he could base his opinion on a complete and accurate factual and medical background. After reporting a thorough history and physical examination, which he explained were most significant when arriving at a diagnosis of medicine, Dr. Williams explained that appellant's turning and twisting injury of August 18, 2004 was that of soft-tissue injuries, sprains and strains. He explained that it was the nature of such injuries to self-resolve anywhere from a few days to a couple of months. Dr. Williams also noted that appellant's history and symptomatology would lead one to believe that he had some cervical pathology. The studies that appellant brought to the examination confirmed this. The January 14, 2005 electromyogram, in particular, was reported to be compatible with a mild "chronic" C5-6 nerve root irritation, meaning the condition had been there for some time and

[1] 5 U.S.C. § 8102(a).

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

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

[4] 5 U.S.C. § 8123(a).

[5] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

preexisted the August 18, 2004 incident. Further supporting the preexistence of this cervical pathology, Dr. Williams noted that appellant was experiencing headaches and symptomatology prior to August 14, 2004 and previously received treatment for his symptomatology, including epidurals in his neck in 2000.

The Board finds that Dr. Williams' opinion is well reasoned. Dr. Williams started with appellant's history, considered his findings on physical examination and proceeded to a diagnosis that imaging studies confirmed. He supported his opinion with evidence and reason. The Board finds that Dr. Williams' opinion is based on a proper history and is sufficiently well reasoned that it is entitled to special weight in resolving the outstanding conflict. Dr. Williams' opinion establishes that the accepted sprain/strains are resolved.[6] The Office has therefore met its burden of proof to justify the termination of compensation for those conditions.[7]

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation. The opinion of the impartial medical specialist represents the weight of the medical evidence and establishes that the accepted sprains have resolved.

[6] Dr. Williams allowed that the August 14, 2004 incident may have aggravated appellant's preexisting cervical pathology, but it was his opinion that any such aggravation would be of a temporary and transitory nature, resolving and leaving appellant with his preexisting pathology, which was significant. Although this is couched in speculative language and not well supported, the Office did not accept appellant's claim for aggravation of his preexisting cervical pathology. So Dr. Williams' remarks on the matter are not material to whether the Office properly terminated compensation for the accepted sprains.

[7] On appeal, appellant argues that substantial medical evidence establishes that he suffered disc herniations at the time of his injury. As Dr. Williams reported: "I would question where the diagnosis of 'multiple herniated cervical discs' comes from when if you use the MRI scan of the cervical spine, dated September 17, 2004, I see no mention at all here of a herniated disc. It states that there are disc protrusions, focal posterior bulges, but I do not see herniated cervical disc."

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2007 and July 19, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 11, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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