

**United States Department of Labor
Employees' Compensation Appeals Board**

P.A., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, DETROIT)
METRO-WAYNE CO AIRPORT, Romulus, MI,)
Employer)

Docket No. 09-194
Issued: August 7, 2009

Appearances:

Alan J. Shapiro, 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 October 27, 2008 appellant filed a timely appeal from an October 6, 2008 decision of the Office of Workers' Compensation Programs' hearing representative who affirmed the termination of his compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits effective February 5, 2008.

FACTUAL HISTORY

On January 23, 2005 appellant, then a 55-year-old security screener, injured his back when the handle of the bag he was lifting broke, causing his back to wrench. The Office

accepted the claim for lumbosacral strain and a temporary aggravation of disc bulge at L4-5, lumbar radiculopathy and neuritis. Appellant stopped work on January 23, 2005 and returned to limited-duty work on March 24, 2005. His limited-duty position was eliminated effective May 4, 2005. The Office paid wage loss for total disability effective May 5, 2005 and placed appellant on the periodic compensation rolls as of November 25, 2007.

In a May 26, 2006 report, Dr. Vanitha Prabhakar, a Board-certified internist and appellant's treating physician, noted the history of injury and diagnosed back pain with evidence of foraminal stenosis, bulging disc without neural effacement at L5-S1. He advised that appellant was totally disabled due to his work injury.

In a September 4, 2006 report, Dr. Jerry Matlen, a Board-certified orthopedic surgeon and Office referral physician, reviewed the history of injury and medical record. He noted that appellant's workup and treatment revealed significant degenerative changes in the lumbar spine, particularly the facet arthropathy at multiple levels with no neural compression and no disc herniation. Dr. Matlen stated that appellant's clinical presentation was consistent with a nonemployment-related underlying degenerative process as the advanced nature of the underlying degenerative disease was not consistent with appellant's work history of three to four months. He opined that there was no aggravation, acceleration or contribution of appellant's underlying degenerative process due to his employment. Since appellant's degenerative disc disease was symptomatic, Dr. Matlen recommended restrictions on bending, lifting, walking and climbing.

In an October 5, 2006 report, Dr. Prabhakar stated that appellant had profound back pain secondary to lumbar facet syndrome. He noted that a magnetic resonance imaging (MRI) scan of the back showed evidence of degenerative arthritis, spondylosis and discopathy. There was also evidence of bilateral facet arthropathy with mild left foraminal stenosis without neural effacement at L5-S1, L4-5 and L3-4. Dr. Prabhakar found that appellant had significant pain and muscle spasms and remained totally disabled.

The Office determined that a conflict in medical opinion arose between Dr. Matlen, the Office referral physician, and Dr. Prabhakar, appellant's treating physician, as to whether appellant's disability was related to his accepted conditions. It referred him to Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in medical opinion.

In a September 4, 2007 medical report, Dr. Obianwu reviewed appellant's history, medical records and statement of accepted facts and noted findings on physical examination. He diagnosed degenerative arthritis of the lumbar spine; lumbar spondylosis, morbid obesity and symptom magnification. Dr. Obianwu stated that there were no objective findings to support continued residuals of the January 23, 2005 work injury. Examination did not reveal any acute or subacute findings. There was no tightness of the muscles of the lumbar spine and the tenderness which was noted was superficial, widespread and suggested symptom magnification. No clinical findings separate from arthritis of the lumbar spine were noted, including no reflex changes or evidence of radiculopathy. Dr. Obianwu opined that there was nothing on examination or in a review of the medical records to suggest that appellant had residuals was suffering from the effect of a superimposed trauma to the age-related changes noted in the

lumbar spine or had any degree of disability associated with the work injury. He also noted that appellant had worked only three to four months before his work injury. Dr. Obianwu stated that appellant's work had nothing to do with his current low back problems. He opined that appellant could return to his date-of-injury position without restrictions. Dr. Obianwu reviewed the accepted conditions of lumbosacral strain, thoracolumbar neuritis, radiculitis and bulging disc at L4-5. However, he stated that there were no findings that would suggest any ongoing problems as a result of any strain or soft tissue injury of the lumbar spine or that thoracic lumbar neuritis or radiculitis existed. Dr. Obianwu described the bulging disc as an age-related entity due to age-related changes in the spine. While he could not say that the bulging disc no longer existed, he felt it would exist given the amount of degenerative arthritis noted in appellant's lumbar spine. However, appellant's clinical presentation did not suggest residuals of the accepted trauma on the age-related changes noted in the lumbar spine.

Dr. Obianwu advised that several factors prevented appellant from returning to his date-of-injury job. These were appellant's obesity, lumbar spine arthritis and overt symptom magnification as noted on examination. Dr. Obianwu noted inappropriate tenderness that was superficial and widespread in the lumbar spine and pain in the back when rotating the hips, which was equivalent to a simulated axial rotation done by rotating the individual from the hips. He found excessive pain behavior such as grimacing, moaning, abnormal gait pattern and severe impairment of spinal mobility along with some overreaction during the examination. While appellant claimed that palpating the left side of the lumbar spine caused sharp spasms in the back, Dr. Obianwu did not observe or palpate any such spasm. Dr. Obianwu attributed appellant's continuing disability to his underlying degenerative disease, which was present at the time of the work injury.

On January 4, 2008 the Office issued a notice of proposed termination of appellant's compensation benefits based on Dr. Obianwu's opinion. Appellant was provided 30 days to submit additional evidence or argument. However, no additional evidence was submitted.

By decision dated February 5, 2008, the Office terminated appellant's compensation benefits effective February 5, 2008.

On February 6, 2008 appellant, through his attorney, requested an oral hearing before an Office hearing representative, which was held on July 18, 2008. At the hearing, he questioned Dr. Obianwu's findings regarding his gait and pain or spasm of the spine. Appellant's attorney argued that Dr. Obianwu never acknowledged the accepted condition of temporary aggravation of bulging disc at L4-5 or indicated whether the aggravation had ceased.

By decision dated October 6, 2008, an Office hearing representative affirmed the February 5, 2008 termination decision.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.¹ After it has determined that an

¹ Paul L. Stewart, 54 ECAB 824 (2003).

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.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁵

Section 8123(a) 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.⁶ 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.⁷

ANALYSIS

The Office accepted appellant's claim for lumbosacral strain, temporary aggravation of disc bulge at L4-5 and lumbar radiculopathy and neuritis. Appellant has not worked since May 4, 2005 when his limited-duty position was eliminated. The Office referred him for a second opinion evaluation. In a September 4, 2006 report, Dr. Matlen opined that appellant had no ongoing aggravation of his underlying degenerative disease and his confirming disability was not due to his employment or the accepted injury. Dr. Prabhakar, appellant's treating physician, opined that appellant continued to be totally disabled as a result of his accepted back condition. As there was a disagreement between appellant's treating physician and the second opinion physician over whether he had work-related residuals, the Office properly referred appellant's case to Dr. Obianwu, for an impartial medical examination.

Dr. Obianwu reviewed the record and statement of accepted facts and performed a thorough examination of appellant. In a September 4, 2007 report, he provided detailed findings on examination and opined that appellant's current back condition was not causally related to the accepted employment injury. Dr. Obianwu found no objective evidence to support that appellant had any residuals of the January 23, 2005 work injury. He noted that appellant worked only three to four months before the injury and nothing on examination or on review of the medical records suggested that he had residuals of his injury. Rather, Dr. Obianwu noted age-related changes in the lumbar spine and that there were no clinical findings separate from arthritis of the

² *Elsie L. Price*, 54 ECAB 734 (2003).

³ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁴ *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Furman G. Peake*, 41 ECAB 361 (1990).

⁵ *T.P.*, 58 ECAB ___ (Docket No. 07-60, issued May 10, 2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁶ *F.R.*, 58 ECAB ___ (Docket No. 05-15, issued July 10, 2007); *Regina T. Pellecchia*, 53 ECAB 155 (2001).

⁷ *Darlene R. Kennedy*, 57 ECAB 414 (2006).

lumbar spine. He addressed the accepted conditions of lumbosacral strain, thoracolumbar neuritis, radiculitis and bulging disc at L4-5. Dr. Obianwu found there was no evidence of any strain or soft tissue injury or of the thoracic lumbar neuritis or radiculitis. With regard to the bulging disc condition, he advised that it was age-related given the amount of degenerative arthritis noted in appellant's lumbar spine. Dr. Obianwu found no basis on which to attribute any continuing symptoms to the accepted work injury. He advised that appellant's obesity, arthritis in the lumbar spine and overt symptom magnification prevented him from returning to his date-of-injury job. Dr. Obianwu noted inappropriate tenderness that was superficial and widespread in the lumbar spine and pain in the back when rotating the hips as well as excessive pain behavior such as grimacing, moaning, abnormal gait pattern and severe impairment of spinal mobility along with some overreaction during examination. He did not observe or palpate any back spasms as asserted by appellant. Dr. Obianwu attributed appellant's continuing disability was due to his underlying degenerative disease that was present at the time of the work injury. He concluded that his work had "nothing to do" with his ongoing lower back problems.

Dr. Obianwu offered a medical opinion that is sound, rational and logical. Because the opinion of the impartial medical specialist is based on a proper history and is sufficiently rationalized, the Board finds that it must be accorded special weight in resolving the conflict. Dr. Obianwu's report addressed the issues raised by appellant and his attorney at the hearing. He did not detect any muscle spasm on palpation and stated that appellant's abnormal gait pattern represented excessive pain behavior. Dr. Obianwu further noted that, while the Office accepted a bulging disc condition, such condition was the result of age-related changes in the spine. Thus, he explained why he believed that the bulging disc was no longer causally related to the work injury. The weight of the medical opinion evidence supports that appellant's accepted back conditions have resolved.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 5, 2008.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 6, 2008 is affirmed.

Issued: August 7, 2009
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