

FACTUAL HISTORY

On the prior appeal,¹ the Board found that the Office met its burden of proof to justify termination of compensation. Appellant, a carpenter, sustained a cervical strain and concussion on November 2, 1999 when a panel coated with lead fell on his head.² On February 28, 2001 the Office terminated his compensation on the grounds that the weight of the evidence, represented by the opinion of Dr. Richard H. Bennett, a Board-certified neurologist and impartial medical specialist, established that he no longer had residuals of the accepted condition. Finding that Dr. Bennett's opinion carried special weight, the Board affirmed the Office's termination of compensation.

On September 6, 2005 appellant requested reconsideration. He submitted an August 22, 2005 report from Dr. Joseph A.W. Kozielski, a Board-certified orthopedic surgeon, who related appellant's history and complaints. Dr. Kozielski described his findings on physical examination and noted: "In view of MRI [magnetic resonance imaging] and CAT scan studies from the period following his injury, indicating that he does have discs bulging at C3-4 on the left and C6-7 central and to the right, consistent with a post[-]traumatic condition." He concluded: "Based on the above history and examination, I would have to conclude that the symptoms for which he is currently suffering are the direct result of the injuries sustained at work on November 2, 1999, since there was no preexisting history."

In a decision dated August 23, 2007, the Office reviewed the merits of appellant's case and denied modification of its prior decision. It found that Dr. Kozielski did not offer a sufficiently reasoned and detailed opinion and did not discuss why Dr. Bennett's findings were in error. The Office found that the weight of the medical opinion evidence still rested with the impartial medical specialist.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act³ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,⁴ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁵

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical

¹ Docket No. 02-972 (issued March 4, 2003).

² Appellant wishes it to be known that the lead-lined panel weighed over 100 pounds.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition is related to the injury.⁶

When a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.⁷

When the Office meets its burden of proof to justify termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.⁸

ANALYSIS

In its March 4, 2003 decision, the Board found that the weight of the medical evidence rested with the opinion of Dr. Bennett, the impartial medical specialist. Appellant continues to take issue with Dr. Bennett's selection, examination and opinion, but the Board's finding and decision in this matter became final upon the expiration of 30 days from the date of the issuance of the Board's March 4, 2003 decision and order.⁹ The matter is *res judicata* and is not subject to further consideration by the Board on this appeal.¹⁰

As the Board found that the Office met its burden of proof to terminate appellant's compensation, it is now appellant's burden to establish that his current neck condition is causally related to the November 2, 1999 work incident. At issue in the present appeal is whether the evidence appellant submitted to support his September 6, 2005 request for reconsideration is sufficient to discharge that burden.

The August 22, 2005 report from Dr. Kozielski, a Board-certified orthopedic surgeon, is generally supportive of appellant's claim. Dr. Kozielski noted that diagnostic studies from the period following the November 2, 1999 injury indicated disc bulging at C3-4 on the left and C6-7 central and to the right, which was "consistent with a post-traumatic condition." But he did not explain how this disc bulging was consistent with a post-traumatic condition, and he offered no convincing medical rationale to explain how this disc bulging was inconsistent with a preexisting age-related degenerative discogenic disease, as Dr. Bennett reported.

⁶ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁷ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

⁸ *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

⁹ 20 C.F.R. § 501.6(d).

¹⁰ *Hugo A. Mentink*, 9 ECAB 628 (1958).

Dr. Kozielski concluded that appellant's current symptoms were the direct result of the injuries sustained at work on November 2, 1999 "since there was no preexisting history." But the mere fact that diagnostic testing revealed disc bulging after the November 2, 1999 incident is no proof that particular incident caused the bulging. Noting what is, at best, a temporal relationship between the incident and a condition later seen on studies is not enough to establish a causal relationship. To establish causal relationship, Dr. Kozielski must offer sound medical reasoning to support his conclusion.

The Board finds that Dr. Kozielski's opinion, while somewhat supportive of appellant's claim, carries little evidentiary weight and is insufficient to discharge appellant's burden of proof or to create a conflict in medical opinion with the impartial medical specialist, Dr. Bennett. The Board will therefore affirm the Office's August 23, 2007 decision denying modification of the termination of appellant's compensation.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his current neck condition is causally related to the November 2, 1999 work incident.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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