



## **FACTUAL HISTORY**

On April 6, 1975 appellant, then a 54-year-old mail handler, sustained a traumatic injury to his low back while lifting sacks of mail in the performance of duty.<sup>1</sup> The Office accepted his claim for lumbosacral strain and herniated disc at L4-5. It authorized surgery for a laminectomy at L4-5 on July 11, 1975. Appellant stopped work after the surgery and did not return. He received compensation for injury-related disability for work.<sup>2</sup>

By letter dated December 18, 2003, the Office advised appellant that there was no current medical evidence to establish his entitlement to continuing compensation payments. It requested that he submit a report from his treating physician, who addressed his current complaints with objective findings and an opinion with medical reasons as to whether the accepted lumbar condition rendered him totally disabled. The Office did not receive any updated medical report.

On June 21, 2006 the Office referred appellant to Dr. Donald H. Brancato, a Board-certified orthopedic surgeon, for a second opinion examination. In an August 7, 2006 report, Dr. Brancato described appellant's history of injury and treatment and noted that he had not worked since 1975 due to his original complaints of lumbosacral strain and a herniated disc. He stated that appellant did not have "active associated lumbar-related conditions and no associated residuals that ... can be directly attributable to his work-related problems and are more likely to be associated with all of the subsequent age-related changes." Dr. Brancato conducted a physical examination and opined that appellant was "obviously unable to perform his date-of-injury position without restrictions, due to the secondary conditions." He noted that it was "questionable as to whether he would be able to perform any work, other than sedentary tasks, sitting and using his hands." Dr. Brancato was unsure of appellant's mental status, stating that appellant had all the "findings consistent with a man of 82 years of age, who sustained a stroke and fracture, with right-sided total hip replacement."

On August 16, 2006 the Office issued a notice of proposed termination of compensation. It found that the weight of the medical evidence, as represented by the report of Dr. Brancato, established that the residuals of the work injury on April 6, 1975 had ceased. The Office noted that there were no current medical reports documenting residual symptoms or treatment of the work-related injury since 1987.

In a telephone call memorandum dated August 24, 2006, appellant's daughter informed the Office that he was in the hospital and she was uncertain as to when he would be released. On

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<sup>1</sup> The record reflects that appellant has a separate claim for an injury on April 21, 1973 to his right foot, which occurred while pulling cages out of a trailer. The Office accepted the claim for contusion and fracture of the second metatarsal right foot. OWCP File No. xxxxxx007. Appellant also has nonwork-related conditions that include a subdural hematoma in 1989 and a seizure disorder. He also has peripheral neuropathy and a stroke, which impacted his left side. Additionally, appellant had a fractured hip in 1993, a hip replacement, as well as a psychiatric condition in 1992 and 1993.

<sup>2</sup> The record reflects that appellant retired on July 16, 1976.

September 20, 2006 she called the Office to advise that she would be submitting medical evidence to support appellant's claim.

By decision dated September 25, 2006, the Office terminated appellant's compensation benefits effective September 30, 2006.

The Office received a power of attorney from appellant, diagnosing his daughter, Beverly McWilliams, would act as his attorney and handle his health and financial affairs. On October 30, 2006 appellant requested reconsideration and submitted additional medical evidence.

In an October 26, 2006 report, Dr. Fred R. Duhart, an osteopath and treating physician, noted that he made a house call to see appellant.<sup>3</sup> He indicated that appellant's primary complaint was of "pain in his low back area and pain in his lower right hip and pain that continues down into the right leg and also down into his right toes." Dr. Duhart found that appellant could walk occasionally with a four-pronged cane, but that he would have sharp pain in his right hip joint and actually had difficulty stopping and standing and if bending forward, sharp pain in the lumbar and sacroiliac joint. He conducted a physical examination and concluded that appellant continued to have lumbosacral strain with spasms in the lumbar spine over the pararectus spinous muscle, radiculopathy within the lumbar spine from L3, L4 and L5 to the right lower extremities elicited by the straight leg raising test. The Ely test was indicative of further radiculopathy that appellant had from surgery and the April 6, 1975 injury. Dr. Duhart advised that appellant had right foot weakness with very poor dorsiflexion, which indicated lumbar spine weakness that caused him to use a cane and to shuffle when he walked. Appellant also had some age and osteoarthritis-related changes to his lumbar spine and right hip that was not significant and did not contribute to his walking difficulties or low back nerve root irritation. Dr. Duhart opined that appellant continued to have residuals of the work injury. He explained that the surgery on the herniated disc continued to cause lumbar spinal injury, irritation and muscle tension that caused inflammation around the nerve fiber and radiculopathy extending into the right leg which, in turn, limited dorsiflexion of the right foot. Dr. Duhart stated that the symptoms and complaints that appellant was having were "thoroughly due to the injury that he sustained on [April 6, 1975]" and that his complaints were "not due to his getting older as he is but are definitely present from his previous injury that he had in the past."

In a January 15, 2007 report, Dr. Rick Hummel, a general internist, noted that appellant had numerous disabilities such as peripheral neuropathy, seizures, disc surgery and total hip replacement. He advised that appellant was wheelchair bound due to the nerve damage caused by the neuropathy and totally disabled.

On March 2, 2007 the Office referred appellant along with a statement of accepted facts and the medical record to Dr. Michael Ralph, a Board-certified orthopedic surgeon, to resolve the medical conflict between Drs. Duhart and Brancato regarding the extent of appellant's orthopedic residuals.

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<sup>3</sup> The record reflects that Dr. Duhart also examined appellant on January 4, 1993. However, appellant did not submit any other reports prior to the October 26, 2006 examination.

In his report dated March 28, 2007, Dr. Ralph noted appellant's history of injury and treatment and noted examination findings. Regarding appellant's laminectomy, he explained that it was a simple procedure and appellant should have been able to return to work within 12 to 14 weeks. Dr. Ralph stated that appellant's failure to return was "on his own." He determined that appellant was "not competent to be making his own decisions" and opined that he did not believe that appellant was "totally aware of his surroundings." Dr. Ralph noted that appellant's daughter indicated that he was in a wheelchair because he was constantly falling. He was unable to do a full neurologic examination but was able to check the status of appellant's cerebellum. Dr. Ralph indicated that radiographs of the pelvis and the right hip revealed a "well-cemented bipolar hip replacement with no secondary changes." Appellant had an abnormal computerized tomography (CT) scan of the lumbar spine but Dr. Ralph explained that it was not abnormal for a patient of his age. He opined that appellant was "clearly disabled from any form of reasonable employment based upon a multiplicity of factors including his mental status, age [and] previous right hip surgery." A March 8, 2007 CT scan read by Dr. Toni Roth, a Board-certified diagnostic radiologist, revealed no evidence of fracture of subluxation, developmental spinal stenosis and suspicion of secondary degenerative disease with disc bulges with mild herniation with calcification in the disc margin adding to stenosis and probable thecal sac compression at both L3-4 and L4-5.

By decision dated April 12, 2007, the Office denied modification of its September 25, 2006 decision. It found that Dr. Ralph represented the weight of the medical evidence.

Appellant's representative requested reconsideration. In a letter dated May 19, 2007, she contended that appellant remained totally disabled due to arachnoiditis, which resulted from his laminectomy or an injection into his spinal cord. Appellant's representative also provided copies of documents and medical reports pertaining to appellant's claim from 1977 to 1993 together with copies of other correspondence and documents pertaining to the claim.

By decision dated June 21, 2007, the Office denied modification of its April 12, 2007 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>4</sup> Having determined that an employee has a disability causally related to his or her federal employment, it may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>5</sup>

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<sup>4</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>5</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

### **ANALYSIS -- ISSUE 1**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits, effective September 30, 2006, based on the August 7, 2006 report of Dr. Brancato, an Office referral physician.

Dr. Brancato reviewed appellant's history of treatment and his employment-related lumbosacral strain and herniated disc at L4-5 and subsequent laminectomy at L4-5 on July 11, 1975. He noted that appellant had not worked since 1975 and opined that appellant did not have any "active associated lumbar-related conditions and no associated residuals that can be directly attributable to his work-related problems and are more likely to be associated with all of the subsequent age-related changes." Dr. Brancato conducted a physical examination and opined that appellant was "obviously unable to perform his date-of-injury position without restrictions, due to the secondary conditions." He also indicated that it was "questionable as to whether he would be able to perform any work, other than sedentary tasks, sitting and using his hands." Dr. Brancato noted that appellant had all the "findings consistent with a man of 82 years of age, who sustained a stroke and fracture, with right-sided total hip replacement."

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>6</sup> Dr. Brancato reviewed the history of injury and explained that there were no objective findings from the accepted employment injury to establish that appellant had any continuing employment-related residuals or disability of the accepted employment conditions. The Board finds that his opinion represents the weight of the medical evidence and establishes that appellant no longer has any residuals or disability causally related to his employment-related injuries. At the time of the Office's termination of benefits, there was no current medical evidence supporting a continuing employment-related condition. The Office met its burden of proof to terminate compensation benefits.

### **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.<sup>7</sup>

The medical evidence required to establish a 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 the appellant's diagnosed condition and the implicated employment factors. The opinion of the

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<sup>6</sup> See *Manuel Gill*, 52 ECAB 282 (2001).

<sup>7</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

physician must be based on a complete factual and medical background of the 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 the appellant.<sup>8</sup>

The Federal Employees' Compensation Act<sup>9</sup> provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, it shall appoint a third physician who shall make an examination.<sup>10</sup> In cases where it has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

Subsequent to the Office's September 25, 2006 decision, appellant submitted an October 26, 2006 report from Dr. Duhart, an osteopath and treating physician, who provided a rationalized opinion in which he noted appellant's history of injury and treatment and conducted an examination. Dr. Duhart explained that the weakness in appellant's right foot was indicative of weakness in the lumbar spine, which caused him to require the use of a cane and shuffle. While he indicated that some of appellant's changes in the lumbar spine and right hip were due to aging and osteoarthritis, he noted that these conditions were not contributing to appellant's difficulties with walking and his low back nerve root irritation. Dr. Duhart opined that appellant continued to have residuals of the work injury and advised that the work-related low back surgery continued to cause lumbar spinal injury, irritation and muscle tension. He noted that it was also causing inflammation around the nerve fiber and radiculopathy extending down the right leg with limited dorsiflexion of the right foot which were related to the original work injury. Dr. Duhart found that the symptoms and complaints that appellant was having were "thoroughly due to the injury that he sustained on [April 6, 1975]" and that his complaints were "not due to his getting older as he is but are definitely present from his previous injury that he had in the past."

The Office determined that a conflict of medical opinion arose between Dr. Duhart, for appellant, and Dr. Brancato, regarding the nature and extent of any ongoing residuals of the work injury on April 6, 1975. It properly referred appellant to Dr. Ralph, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict. The Board finds, however, that Dr. Ralph's report is insufficient to resolve the conflict in the medical evidence regarding whether appellant has residuals or disability causally related to the April 6, 1975 employment injury.

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<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>9</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

<sup>10</sup> 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>11</sup> *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

In a March 28, 2007 report, Dr. Ralph noted appellant's history of injury and treatment. However, he noted that he was unable to do a full neurological examination because appellant was in a wheelchair. Dr. Ralph indicated that he was able to check on the status of appellant's "cerebellum" and that radiographs of the pelvis and the right hip revealed a "well-cemented bipolar hip replacement with no secondary changes." The Board notes that appellant's claim was accepted for a lumbosacral strain and a herniated disc at L4-5 and a laminectomy at L4-5 on July 11, 1975. Dr. Ralph noted an abnormal CT scan of the lumbar spine but explained that it was not abnormal for a patient of appellant's age. However, as noted, Dr. Duhart opined that appellant's present condition was related to his accepted injuries and explained that, while some of appellant's symptoms were caused by aging, they were not contributing to his difficulties with walking and having nerve root irritation in his low back. He explained that the surgery due to the herniated disc continued to cause lumbar spinal injury, irritation and muscle tension, inflammation around the nerve fiber, radiculopathy extending down into the right leg and limited dorsiflexion of the right foot. Dr. Ralph did not provide sufficient explanation or rationale as to why he concluded that appellant had a simple laminectomy and should have been able to return to work within 12 to 14 weeks. This is particularly important in light of the fact that he did not fully examine appellant.

The Board finds that Dr. Ralph's opinion is not entitled to special weight as his report is insufficiently rationalized. When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, it must secure a supplemental report from the specialist to correct the defect in his original report.<sup>12</sup> In this case, it did not seek a supplemental report from Dr. Ralph. Accordingly, the conflict in the medical evidence remains regarding appellant's work-related disability and residuals after September 30, 2006. The case will be remanded for resolution of the conflict pursuant to 5 U.S.C. § 8123(a).

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation and medical benefits effective September 30, 2006. However, the Board finds that there remains an unresolved conflict in the medical evidence regarding whether appellant had any injury-related condition or disability after September 30, 2006 causally related to the April 6, 1975 employment injury.

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<sup>12</sup> *L.R. (E.R.)*, 58 ECAB \_\_\_\_ (Docket No. 06-1942, issued February 20, 2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 21 and April 12, 2007 decisions of the Office of Workers' Compensation Programs are affirmed in part and set aside and remanded in part. The case is remanded for further proceedings consistent with this decision.

Issued: May 20, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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