



accepted a compression fracture at L1. Appellant received compensation for temporary total disability on the periodic rolls.

A conflict in medical opinion arose between Dr. Thomas M. Ward, the attending physiatrist, and Dr. Robert E. Holladay, IV, the Office referral orthopedic surgeon, on whether the injury-related conditions had resolved or continued to cause total disability. The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Jason G. Stewart, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the matter.

On May 13, 2008 Dr. Stewart reviewed appellant's medical record, including an August 2, 2001 magnetic resonance imaging (MRI) scan showing an apparently healed L1 compression fracture and a March 23, 2004 finding from a prior impartial medical specialist that appellant's L1 compression fracture was healed. He related the history of the employment injury and presented appellant's clinical chronology. Dr. Stewart described his findings on physical examination and diagnosed, among other things, L1 compression fracture, healed, chronic low back pain and left hip contusion, healed. He commented that appellant's subjective complaints were not entirely consistent with the objective findings. Symptom magnification was evident from appellant's pain diagram and his posturing throughout the examination. Dr. Stewart stated:

“Pain is something that cannot be subjectively quantified in some situations. In most cases, this type of pain should gradually subside to a very low level of pain. However, over the years [appellant's] has gradually increased. [Appellant's] opioid use would impair his ability to perform any type of work activities. I concur with Dr. Holladay's findings that [appellant] is receiving excessive opioid mediation and there is no evidence of any functional improvements, but only evidence of increasing subjective pain, but there are no objective declines noted over the years; instead, just an increasing dosage and frequency of narcotics. I concur with Dr. Holladay that there is no indication for any additional diagnostic testing, injection procedures, surgical procedures or any aggressive medical management.”

Dr. Stewart found that appellant's L1 compression fracture and left hip contusion had healed. He noted that appellant now had chronic pain in all extremities and the entire spine, which were subjective in nature. “There are no objective findings related specifically to the injury [of] January 5, 1999.” Dr. Stewart concluded that appellant should be able to return to his date-of-injury job full time and without restrictions.

In a decision dated July 28, 2008, the Office terminated appellant's compensation benefits. It found that the weight of the medical evidence rested with Dr. Stewart and established that appellant no longer had any injury-related conditions that were active or disabling.

On February 10, 2008 appellant requested reconsideration. He submitted a February 17, 2009 report of Dr. Ward, who stated that he did not agree with Dr. Stewart's findings or conclusions. Dr. Ward found that there was an L1 compression fracture that remained and there was kyphosis with marked antecolic posture also present on x-ray. Further, there were additional

findings of onset of osteoarthritis in numerous areas of appellant's lumbar spine. "In my opinion that the L1 compression fracture would have directly been a contributing factor from the standpoint of weakness in the lumbar spine and abnormality in pain as well as abnormality in postural mechanics, leading to an L2/3 compression fracture." Dr. Ward added that there continued to be a need for injections and routine follow-up and routine education benefits to prevent the rapid onset of deterioration from posture as well as from additional injuries that occur from far more routine activities and vocational pursuits.

In a decision dated April 3, 2009, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. It found that the record continued to lack sufficient evidence to support that the accepted work-related conditions persisted.

On appeal, appellant's representative argues that the Office's findings of facts and conclusions of law are not supported by the substantial evidence.

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

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>1</sup> Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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

A conflict arose between appellant's physician and the Office referral physician on whether the injury-related conditions had resolved or continued to cause total disability. The Office properly referred appellant under 5 U.S.C. § 8123(a) to Dr. Stewart, a Board-certified orthopedic surgeon, to resolve the matter. It provided Dr. Stewart with appellant's medical

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

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

<sup>4</sup> 5 U.S.C. § 8123(a).

<sup>5</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

record and a statement of accepted facts so he could base his opinion on a proper factual and medical history.

Dr. Stewart found that appellant's L1 compression fracture was healed. He noted an August 2, 2001 MRI scan, which demonstrated an L1 compression fracture involving the upper and lower end plates. There was no evidence of active edema "suggesting that this is likely an old or healed compression fracture." Dr. Stewart also noted the March 23, 2004 finding from another impartial medical specialist. X-rays obtained that date showed about a 50 percent compression fracture of L1, "which appears to be healed."

Appellant contends that he still suffers from an L1 compression fracture. Dr. Stewart has answered that question in the negative and he has supported his opinion with findings from diagnostic tests. On physical examination, he reported no objective findings related to the 1999 slip and fall. Dr. Stewart explained that appellant's subjective pain had gradually and unexpectedly increased over the years, to the point that he now complained of pain in all extremities and the entire spine. At the same time, the dosage and frequency of opioid use, which Dr. Stewart considered excessive, also increased, but with no evidence of any functional improvement. It was Dr. Stewart's opinion that this excessive opioid use impaired appellant's ability to perform any work activities.

The Board finds that Dr. Stewart's opinion is based on a proper factual and medical history and is sufficiently well rationalized that it must be accorded special weight. As the weight of the medical opinion establishes that, the accepted medical conditions have resolved, the Board further finds that the Office has met its burden of proof to justify the termination of compensation for the 1999 employment injury. The Board will affirm the Office's July 28, 2008 decision terminating compensation benefits effective that date.

### **LEGAL PRECEDENT -- ISSUE 2**

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.<sup>6</sup>

As used in the Federal Employees' Compensation Act, the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>7</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his

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<sup>6</sup> *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); *Maurice E. King*, 6 ECAB 35 (1953).

<sup>7</sup> *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>8</sup>

Causal relationship is a medical issue<sup>9</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>10</sup> must be one of reasonable medical certainty<sup>11</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>12</sup>

Medical conclusions unsupported by rationale are of little probative value.<sup>13</sup>

### ANALYSIS -- ISSUE 2

Because the weight of the medical evidence rests with the opinion of the impartial medical specialist, Dr. Stewart and was sufficient to justify the Office's termination of compensation for the 1999 work injury, the burden of proof now switches to appellant to establish that he continues to suffer from a medical condition or disability causally related to his 1999 slip and fall.

With his February 10, 2008 request for reconsideration, appellant submitted the February 17, 2009 report of Dr. Ward, who stated that he did not agree with Dr. Stewart's findings and conclusions. Dr. Ward found that there remained an L1 compression fracture. However, he did not elaborate, other than to note appellant's posture and the appearance of spinal curvature on x-ray. How this confirmed a compression fracture not yet healed from 1999 was not fully explained, nor did Dr. Ward account for the 2001 MRI scan or the x-rays obtained in 2004, which supported Dr. Stewart's opinion that the L1 compression fracture was healed. On this point the Board finds that Dr. Ward's opinion is not well reasoned and is insufficient to create a conflict with the impartial medical specialist.

Dr. Ward also addressed medical conditions the Office did not accept as causally related to the 1999 slip and fall, including osteoarthritis in numerous areas of the lumbar spine and an "L2/3" compression fracture. Appellant bears the burden of proof to establish that such medical conditions are causally related to the work incident that occurred on January 6, 1999.

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<sup>8</sup> *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

<sup>9</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>10</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>11</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>12</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>13</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

Dr. Ward did not explain how he was able to determine that osteoarthritis in numerous areas of the lumbar spine was causally related to the 1999 incident. He advised that appellant's L1 compression fracture, which the Office accepted as compensable, directly contributed to weakness in the lumbar spine and abnormality in pain as well as abnormality in postural mechanics, which led to an L2/3 compression fracture. This lends support to a consequential injury. However, Dr. Ward did not adequately explain how one-step led to the other or what objective clinical findings showed that the L2/3 compression fracture arose from such a sequence or progression and not simply from an underlying osteoarthritis of the lumbar spine. The Board finds that Dr. Ward's opinion is not sufficiently rationalized to discharge appellant's burden of proof to establish that he is entitled to continuing compensation.

### **CONCLUSION**

The Board finds that the Office has met its burden to justify the termination of appellant's compensation effective July 28, 2008. The Board also finds that appellant has not met his burden to establish that he is entitled to continuing compensation.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 3, 2009 and July 28, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 17, 2010  
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