



an L5 disc protrusion. Appellant stopped work on February 28, 1986 and received appropriate compensation from the Office for total disability.<sup>1</sup> He retired from the employing establishment on disability retirement effective October 10, 1986.

Appellant received very little medical treatment for his back condition over the years. On May 15, 1997 Dr. Kenneth E. Reesor, an attending Board-certified orthopedic surgeon, indicated that diagnostic testing showed that appellant had a disc protrusion at L5-S1. He posited that this condition did “play a part of the disease process” which restricted appellant to limited-duty work, but noted that he did not believe that “it is causing significant disability.”

On August 5, 2004 Dr. Anthony Polk, an attending osteopath, stated that appellant continued to suffer from his original low back injury along with the expected degenerative changes, including discopathy, resulting from the injury. He noted, “The condition remains disabling, and at his age will not change for the better. [Appellant] does not suffer any other disabling conditions that would preclude the original diagnosed condition.” Dr. Polk did not provide any findings on examination.

On October 22, 2007 Dr. John C. McDonald, an attending osteopath, stated that upon examination appellant had no scoliosis or paravertebral muscle spasms and that muscle strength in both legs was 4/5. X-rays of his lumbosacral spine show degenerative disease with hypertrophy changes at multiple levels in the mid and lower lumbar spine. There was a mild lumbar scoliosis which might be due to suboptimal positioning, but there was no acute fracture, sublimation or neoplasia. Dr. McDonald diagnosed degenerative joint disease of the lumbar spine with chronic low back pain, congestive heart failure, both, diastolic and systolic, coronary artery disease which was stable status post coronary artery bypass grafting, hypertension which was well controlled and cerebrovascular disease with small vessel changes. He stated that there was no way that 20 years after the event any physician could distinguish between the effects of a work-related injury occurring in 1987 and age-related degenerative joint disease of the lumbar spine. Dr. McDonald noted that appellant’s degenerative disease affected his ability to ambulate, but he could not say that any of his disability at the present time was related to his work injury given the passage of time and his advanced age. He stated:

“[T]here are no objective findings on examination that can be definitively described as work related. There is no evidence of any of his disabilities at this time, is related to his work injury; however, this cannot be expressly discarded. I do not see any evidence that the effects of his work injury prevent [him] from employing to the job performed when he was injured as I think due to his age and his other chronic medical problems, he would be unable to exert himself at that level regardless of any work injury that happened in the past. I do not anticipate that he will be able to return to full or modified work and I do not think he is a candidate for work hardening in order to return to work. I do not think he would be able to perform the job he held when injured because of his coronary artery disease, chronic obstructive pulmonary disease and degenerative joint disease.

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<sup>1</sup> Back surgery was recommended for appellant but he declined to have such surgery.

My current treatment and plan is to evaluate the patient for the possibility of peripheral arterial disease.”

In a December 3, 2008 notice, the Office advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on the report of Dr. McDonald. It provided him 30 days to submit evidence and argument challenging the termination.

In a December 15, 2008 letter, appellant stated that he was requesting a “second opinion” for the reason that Dr. McDonald was a general practitioner and had only treated him for problems associated with his congestive heart failure rather than for his back injury. He stated that he was in the process of finding an orthopedic specialist to give a second opinion, but asserted that it was hard to find such a specialist because his claim was an old workers’ compensation claim. Appellant did not submit any medical evidence within the time period allotted by the Office.

In a January 7, 2009 decision, the Office terminated appellant’s wage-loss compensation and medical benefits effective January 19, 2009. It found that the weight of the medical evidence regarding continuing work-related residuals rested with the opinion of Dr. McDonald.

In a January 16, 2009 report, Dr. Polk stated that he first treated appellant in January 1998 for the effects of his February 27, 1986 injury. He indicated that appellant presented with documents for review concerning his compensation disability status. Dr. Polk noted that appellant suffered multiple health problems over the years exclusive of his lower back condition. He continued to experience daily low back pain and neurological symptoms related to the original injury which included bilateral leg pain and numbness, frequent difficulty with ambulation and some bowel/bladder dysfunction. Dr. Polk indicated that, based on the available data he had reviewed, he did not believe these symptoms were related to any of the other illnesses he suffered from, but rather constituted a continuation of the symptoms resulting from the February 27, 1986 injury. He obtained a new CT scan and noted that its results confirmed “the continuation of degenerative changes in the lumbar soft tissue that are a direct result of the February 27, 1986 injury.”<sup>2</sup> Dr. Polk stated, “All medical literature confirms that of the various causes of degenerative joint disease, trauma is the leading cause above age, genetics or known pathogens that produce chronic inflammatory changes.”

In a February 9, 2009 decision, the Office affirmed its January 7, 2009 decision. It found that Dr. Polk’s January 16, 2009 report did not contain adequate medical rationale.

### **LEGAL PRECEDENT**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> After

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<sup>2</sup> The record contains a January 13, 2009 CT scan which shows degenerative changes at L3-4, L4-5 and L5-S1.

<sup>3</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>4</sup> *Id.*

termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.<sup>5</sup>

### ANALYSIS

The Office accepted that on February 27, 1986 appellant sustained a lumbar strain and closed dislocation of his L5-S1 disc when he twisted his back while hanging drywall at work. Appellant stopped work on February 28, 1986 and received Office compensation for total disability until the Office terminated his compensation effective January 19, 2009.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. McDonald, an attending osteopath. The October 22, 2007 report of Dr. McDonald establishes that appellant had no residuals of his February 27, 1986 employment injury after January 19, 2009.

Dr. McDonald stated that, upon examination, appellant had no scoliosis or paravertebral muscle spasms and that muscle strength in both legs was 4/5. X-rays of his lumbosacral spine show degenerative disease with hypertrophy changes at multiple levels in the mid and lower lumbar spine. There was a mild lumbar scoliosis which might be due to suboptimal positioning, but there was no acute fracture, sublimation or neoplasia. Dr. McDonald diagnosed degenerative joint disease of the lumbar spine with chronic low back pain, congestive heart failure, both diastolic and systolic, coronary artery disease which was stable status post coronary artery bypass grafting, hypertension which was well controlled and cerebrovascular disease with small vessel changes. He concluded that appellant did not have any residuals of the February 27, 1986 employment injury, a lumbar strain and closed dislocation of his L5-S1 disc.

The Board has carefully reviewed the opinion of Dr. McDonald and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. McDonald provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, he provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.<sup>6</sup> Dr. McDonald provided medical rationale for his opinion by explaining that appellant's current symptoms would be accounted for by the natural progression of his underlying degenerative disc disease, rather than the 1986 injury, given the amount of time which had passed since the 1986 injury and his advanced age. He also noted that there were no objective findings that could be related to the conditions accepted in connection with the 1986 injury. Dr. McDonald indicated that appellant could not perform his date-of-injury job but

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<sup>5</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>6</sup> *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

posited that this was due to nonwork-related factors, such as his advanced age and cardiac and pulmonary problems.<sup>7</sup>

After the Office's January 7, 2009 decision terminating appellant's compensation effective January 19, 2009, appellant submitted additional medical evidence which he felt showed that he was entitled to compensation after January 19, 2009 due to residuals of his August 27, 1986 employment injury. Given that the Board has found that the Office properly relied on the opinion of Dr. McDonald in terminating appellant's compensation effective January 19, 2009, the burden shifts to appellant to establish that he is entitled to compensation after that date.<sup>8</sup> The Board has reviewed the additional evidence submitted by appellant and notes that it does not show that appellant had work-related disability after January 19, 2009.

In a January 16, 2009 report, Dr. Polk, an attending osteopath, stated that appellant continued to experience daily low back pain and neurological symptoms related to the original injury which included bilateral leg pain and numbness, frequent difficulty with ambulation and some bowel/bladder dysfunction. He indicated that, based on the available data he had reviewed, he did not believe these symptoms were related to any of the other illnesses he suffered from, but rather constituted a continuation of the symptoms resulting from the February 27, 1986 injury.

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Polk did not provide adequate medical rationale in support of his conclusion on causal relationship.<sup>9</sup> Dr. Polk did not describe or detail the February 27, 1986 employment injury or describe the medical process through which it could have caused residuals almost 23 years later. He indicated that a CT scan he obtained confirmed "the continuation of degenerative changes in the lumbar soft tissue that are a direct result of the February 27, 1986 injury." However, Dr. Polk did not explain how the findings of the testing supported this opinion. He stated that all medical literature confirms that of the various causes of degenerative joint disease, trauma is the leading cause above age, genetics, or known pathogens, but he did not explain how the February 27, 1986 trauma caused such long-standing residuals in appellant's particular case.<sup>10</sup>

### CONCLUSION

The Board finds that appellant did not have disability after January 19, 2009 due to his February 27, 1986 employment injury.

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<sup>7</sup> The Board notes that no medical evidence was added to the record between the production of Dr. McDonald's report and January 2009 when appellant's compensation was terminated.

<sup>8</sup> See *supra* note 5.

<sup>9</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>10</sup> On appeal appellant argued that he still had problems related to his 1986 work injury. For the reasons explained above, the record does not contain medical evidence supporting this assertion.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 9 and January 7, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 13, 2010  
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