

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

J.S., Appellant)	
)	
and)	Docket No. 10-158
)	Issued: July 22, 2010
DEPARTMENT OF TRANSPORTATION,)	
FEDERAL AVIATION ADMINISTRATION,)	
Belleville, MI, Employer)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 21, 2009 appellant filed a timely appeal from an August 20, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective March 12, 2009.

FACTUAL HISTORY

On June 2, 2005 appellant, then a 61-year-old aviation safety inspector, sustained injury when he tripped and fell while in the performance of duty. The Office accepted a right knee torn medial meniscus, a right shoulder glenoid labrum tear and a left knee meniscus tear. A January 22, 2007 statement of accepted facts noted that appellant had a prior claim (OWCP File No. xxxxxx623) for an October 20, 2004 injury accepted for left collateral ligament sprain. The

Office also accepted an aggravation of left collateral ligament sprain. Appellant stopped work on the date of injury and received compensation benefits.

On April 23, 2008 the Office prepared a statement of accepted facts and referred appellant, together with medical records, to Dr. B.S. Bohra, an orthopedic surgeon, for a second opinion examination. Dr. Bohra was asked to provide an opinion regarding employment-related residuals or disability. In a report dated May 16, 2008, he reviewed a history of injury and results on examination. Dr. Bohra stated:

“From the above history, physical examination, review of medical records, this claimant’s symptoms to both knees and the right shoulder are vague. The site of pain is nonanatomical and nonorganic in nature as related to his injury at work in 2005. The claimant’s symptoms are exaggerated and at present are not related to the work injury. I have looked at the various aspects of this kind of injury. The claimant has described to me as to how the injury to the knee and shoulder was caused. All of the above examination reveals that[,] following his medial meniscectomy, which has been carried out successfully, there are not any residuals of this work injury of June 2, 2005.”

Dr. Bohra also stated that appellant did not have any employment-related disability from the June 2, 2005 injury and could return to regular work without restriction.

In a March 5, 2008 report, Dr. Ross Halpern, a clinical psychologist, stated that appellant had chronic pain from a motor vehicle accident and difficulty sleeping. By note dated October 30, 2008, he indicated that appellant was having difficulty with ordinary activities and loss of identity as an athlete. On November 6, 2008 Dr. Halpern stated that appellant was feeling increased stress and pain.

By letter dated November 18, 2008, the Office advised appellant that it found a conflict in medical opinion and he was being referred to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, for a referee examination. It did not identify the physicians who had created the conflict.

In a report dated December 5, 2008, Dr. Obianwu listed a history and results on examination. He discussed results on diagnostic testing and diagnosed mild postoperative capsulitis, right shoulder and mild degenerative arthritis of the right knee. With respect to the left knee, Dr. Obianwu stated that there were no residuals of a work-related left knee strain or meniscus tear. He noted no evidence of a continuing left knee problem. Regarding the right knee, Dr. Obianwu also found no evidence of any continuing employment-related residuals, noting that tests for persistent tears were negative. He stated that there was no instability in the right shoulder and no residuals of the accepted right shoulder condition. Dr. Obianwu concluded that, “with the exception of symptom magnification, objective evidence of ongoing problems is not seen in his right shoulder, his right knee or his left knee.”

By letter dated February 9, 2009, the Office advised appellant that it proposed to terminate his compensation benefits based on the medical evidence. In response, appellant submitted additional medical evidence regarding his condition. In an attending physician’s

report (Form CA-20) dated February 17, 2009, Dr. John Yarjanian, an osteopath, diagnosed cervical and lumbar spondylosis, disc degeneration, ulnar nerve subluxation and neuropathy. He checked a box “yes” the conditions were employment related, stating, “Possibly: [magnetic resonance imaging scan] [cervical] spine: possible signal abnormality may relate to fall on head/neck. Ulnar nerve subluxation with fall if contacted left elbow.”

By decision dated March 12, 2009, the Office terminated appellant’s compensation for wage-loss and medical benefits effective that date.

Appellant requested a hearing before an Office hearing representative, which was held on June 24, 2009. In a report dated January 20, 2009, Dr. Yarjanian diagnosed widespread myofascial pain with evidence of multilevel cervical spine degenerative disc disease, cervical facet spondylosis and central stenosis. In a CA-20 form dated March 9, 2009, a psychiatrist whose name is illegible diagnosed adjustment disorder, anxiety and depression and checked a box “yes” the conditions were employment related. In a CA-20 form dated June 9, 2009, Drs. Geoffrey Barnes and Susan Goold, internists, diagnosed right knee meniscal tear and supraspinatus tendonitis. The physicians stated that this was likely related to falls at work and appellant had been disabled from June 2, 2005.

In a report dated July 7, 2009, Dr. Yarjanian stated that musculoskeletal rehabilitation and psychological management of pain had been attempted but appellant had little success. He stated that appellant suffered from several ailments, which may lead to pain and his pain appeared genuine, despite an extensive psychodynamic presentation that required treatment.

By decision dated August 20, 2009, an Office hearing representative affirmed the March 12, 2009 termination of benefits. The hearing representative found that the weight of the medical evidence supported the termination of compensation.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.²

Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and

¹ *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

² *Furman G. Peake*, 41 ECAB 361 (1990).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.³

ANALYSIS

In this case, the second opinion examiner, Dr. Bohra, provided a rationalized medical opinion finding that appellant did not have residuals of the accepted bilateral knee and right shoulder conditions. He provided a detailed examination and explained that his findings did not establish evidence of continuing employment-related residuals.

Appellant was then referred to Dr. Obianwu. While the Office stated that there was a conflict in the medical evidence, the evidence of record does not establish a conflict. 5 U.S.C. § 8123(a) provides that when there is a disagreement between a claimant's physician and an Office physician, a third physician is chosen to make an examination. Appellant did not submit a rationalized medical report supporting continuing employment-related residuals or disability that would create a conflict with Dr. Bohra. The Office appeared to acknowledge the absence of a conflict in its February 9, 2009 preliminary notice of termination, which stated that, while the termination could have been based solely on Dr. Bohra, the claims examiner sought an "independent" medical examination to provide a comprehensive report. Since there was no conflict under 5 U.S.C. § 8123(a), Dr. Obianwu is not an impartial referee physician but a second opinion examiner.⁴ While not entitled to special weight as a referee examiner, his report can be considered probative medical evidence and can represent the weight of the medical evidence.⁵

Dr. Obianwu provided a detailed medical report that reviewed the physical examination results and the diagnostic testing of record. He discussed both knees and the right shoulder and explained that there was no objective evidence of a continuing condition causally related to the employment injuries. Dr. Obianwu explained his opinion with reference to the history, physical findings and medical evidence. He provided a rationalized medical opinion based on a complete background that supported a finding that residuals of the accepted conditions had ceased. Dr. Obianwu's opinion and findings support those of Dr. Bohra.

Appellant did not submit a rationalized medical opinion addressing whether he continued to have residuals of the accepted bilateral knee and right shoulder conditions. Prior to the March 12, 2009 termination decision, he submitted notes from a psychologist, which did not discuss the relevant issues. A February 17, 2009 form report from Dr. Yarjanian provided diagnoses which are not accepted as employment related, including cervical and lumbar spondylosis, disc degeneration, ulnar nerve subluxation and neuropathy. For these conditions, it would be appellant's burden of proof to establish causal relationship with the June 2, 2005

³ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁴ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

⁵ *Id.*

employment injury and his burden to establish continuing residuals or disability.⁶ The checking of a box “yes” in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.⁷ The probative value of Dr. Yarjanian’s report is further diminished by using speculative terms such as “possible” and “may relate” in his explanation of causal relation.⁸

The Board accordingly finds that the weight of the evidence was represented by Drs. Bohra and Obianwu, who provided rationalized medical opinions that residuals of the employment injuries had ceased. The Office accordingly met its burden of proof to terminate compensation for wage-loss and medical benefits as of March 12, 2009.

After termination or modification of 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 had employment-related disability which continued after termination of compensation benefits.⁹ Following March 12, 2009, he submitted medical evidence that included diagnoses such as degenerative disc disease as well as psychiatric conditions. As noted, it is appellant’s burden of proof to establish these conditions as causally related to the June 2, 2005 employment injuries. The form reports with a checkmark “yes” are of diminished probative value in establishing causal relationship. There is no probative narrative report on the issue of whether residuals of the accepted conditions continue to disable appellant. The July 7, 2009 report from Dr. Yarjanian, for example, indicates only that he believed that appellant’s reports of pain were genuine. He did not provide an opinion that appellant had an accepted employment-related condition or disability continuing after March 12, 2009 or provide a rationalized opinion that any additional medical condition was employment related and continued after March 12, 2009.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective March 12, 2009.

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

⁸ *Kathy A. Kelley*, 55 ECAB 206 (2004).

⁹ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 20, 2009 is affirmed.

Issued: July 22, 2010
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