United States Department of Labor
Employees' Compensation Appeals Board

W.T., Appellant	)	
and	)	**Docket No. 09-2312**
	)	**Issued: June 11, 2010**
DEPARTMENT OF THE AIR FORCE, BARKSDALE AIR FORCE BASE, LA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 17, 2009 appellant filed a timely appeal from an August 26, 2009 merit decision of the Office of Workers' Compensation Programs terminating his compensation and authorization for medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the termination decision.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective September 27, 2009 on the grounds that he had no further disability causally related to his accepted employment injuries; and (2) whether the Office properly terminated his authorization for medical treatment.

FACTUAL HISTORY

On September 6, 2006 appellant, then a 55-year-old aircraft ordinance systems mechanic, filed a claim alleging that he sustained a pulled muscle in his lower back on August 28, 2006

loading a practice bomb into position. The Office accepted his claim for lumbar sprain. Appellant worked limited duty for four weeks following his injury.

On June 28, 2007 appellant filed a recurrence of disability claim on May 9, 2007 due to his August 28, 2006 employment injury. He related that he experienced low back spasms due to lifting missiles over his shoulders.

On July 22, 2007 the Office began paying appellant compensation for total disability. It noted on the supplemental roll payment sheet that he had sustained a new injury on May 9, 2007. The Office paid appellant compensation on the periodic rolls beginning September 2, 2007.

By letter dated March 14, 2008, the Office referred appellant to Dr. Robert E. Holladay, IV, a Board-certified orthopedic surgeon, for a second opinion examination. On April 14, 2008 Dr. Holladay diagnosed a lumbar spine strain and sprain and preexisting lumbar degenerative disc disease. He opined that there were no objective residuals of the August 26, 2006 lumbar strain and sprain. Dr. Holladay stated, "The claimant has underlying, preexisting conditions of degenerative disc disease of the spine and anxiety which have contributed to his prolonged recovery." He found that, considering only his August 26, 2006 injury, appellant could perform his usual employment.

On April 29, 2008 Dr. John D. Danzell, Jr., an attending physician who is Board-certified in family practice, opined that appellant's lumbar disc problems increased after his May 9, 2007 work injury. He related that a magnetic resonance imaging (MRI) scan study obtained on June 7, 2007 showed a bulging disc at L3-4 and L4-5 probably due to the lifting injury and further maintained that the May 9, 2007 injury aggravated appellant's preexisting scoliosis and degenerative changes at L1 through S1. Dr. Danzell opined that he could not perform his usual work duties.

The Office determined that a conflict existed between Dr. Danzell and Dr. Holladay regarding appellant's ability to return to work. On December 3, 2008 it referred him to Dr. John Steele, a Board-certified orthopedic surgeon, for an impartial medical examination. The Office requested that Dr. Steele provide an opinion regarding whether appellant had any objective residuals of his August 26, 2006 work injury and the nature and extent of any work-related disability. In the accompanying statement of accepted facts, it advised that it had accepted that he sustained lumbar strain due to an August 28, 2006 employment injury. The Office further noted that appellant reinjured his back lifting missiles on May 9, 2007.

In a report dated January 19, 2009, Dr. Steele reviewed the history of injury and the medical reports of record. On examination, he found moderately limited range of motion of the back and tenderness "to deep palpation in the left greater sciatic notch as well as over the sciatic nerves in the posterior thighs bilaterally." Dr. Steele indicated that appellant had a negative Spurling's test bilaterally and a straight leg raise negative in the seated position but positive in the supine position. He found some positive Waddell's signs and a "stocking pattern of sensory disturbance and distinct disproportionate verbalization facial expression and pain behavior." Dr. Steele diagnosed a "strain/sprain of the lumbar spine, compensable, appearing to be resolved" and preexisting degenerative spondylosis and disc disease of the thoracic and lumbar spine. He determined that there were no objective findings of the accepted condition and that

appellant's residuals ceased when he "was released to regular duties without restrictions on October 11, 2006."

By decision dated August 26, 2009, the Office terminated appellant's compensation and entitlement to medical benefits effective September 27, 2009 on the grounds that the medical evidence established that he had not further disability or condition due to his August 28, 2006 work injury.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[1] The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[2]

Section 8123(a) provides that, 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.[3] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[4] In situations where 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.[5]

The Office procedure manual provides as follows:

> "When the DMA [district medical adviser], second opinion specialist or referee physician renders a medical opinion based on a SOAF [statement of accepted facts] which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether."[6]

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[1] *T.P.*, 58 ECAB 524 (2007); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[2] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[3] 5 U.S.C. § 8123(a).

[4] 20 C.F.R. § 10.321.

[5] *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

[6] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

ANALYSIS

The Office accepted that appellant sustained lumbar strain due to an August 28, 2006 work injury. It further accepted that he reinjured his back on May 9, 2007 lifting missiles. The Office paid appellant compensation beginning July 22, 2007.

The Office determined that a conflict existed between Dr. Holladay, the second opinion physician and Dr. Danzell, appellant's attending physician, regarding whether he had any continuing disability or residuals of his August 28, 2006 work injury. It referred him to Dr. Steele for an impartial medical examination. In an accompanying statement of accepted facts, the Office indicated that it had accepted that he reinjured his back on May 9, 2007. It did not provide the condition it accepted as related to the May 9, 2007 injury.

Where there exists a conflict in medical opinion 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, is entitled to special weight.[7] The Board finds, however, that Dr. Steele's opinion is of diminished probative value and thus does not represent the special weight of the medical evidence. On January 19, 2009 Dr. Steele diagnosed a resolved lumbar strain/sprain and preexisting degenerative thoracic and lumbar spondylosis and disc disease. He found that residuals of the accepted condition ceased on October 11, 2006. Based on Dr. Steele's opinion, the Office terminated appellant's compensation effective September 27, 2009. Prior to its termination, however, it paid appellant compensation for disability as a result of his May 9, 2007 work injury. The Office did not ask Dr. Steele whether appellant had any further residuals or disability due to the May 9, 2007 employment injury. The statement of accepted facts provided to Dr. Steele did not include the condition accepted by the Office due to the May 9, 2007 injury. To assure that the report of a medial specialist is based upon a proper factual background, the Office provides information to the physician through the preparation of a statement of accepted facts.[8] When a physician renders a medical opinion based on an incomplete or inaccurate statement of accepted facts, the probative value of the opinion is seriously negated or diminished altogether.[9] As Dr. Steele's opinion is based on a statement of accepted facts that does not accurately reflect the conditions accepted as employment related, his opinion is of diminished probative value and insufficient to resolve the conflict in medical opinion.

CONCLUSION

The Board finds that the Office improperly terminated appellant's compensation and authorization for medical treatment effective September 27, 2009 on the grounds that he had no further disability causally related to his accepted work injuries.

[7] *J.M.*, 58 ECAB 478 (2007); *Glen E. Shriner*, 53 ECAB 165 (2001).

[8] *Helen Casillas*, 46 ECAB 1044 (1995).

[9] *See supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2009 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 11, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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