

Appellant filed a claim for compensation and requested wage-loss compensation from February 26 through April 24, 2009. In a report dated February 26, 2009, Dr. Matthew Gornet, a Board-certified orthopedic surgeon, noted appellant's history of injury and descriptions of symptoms. He found slight restriction of motion rotating to the right with full motor strength and normal sensation. Dr. Gornet noted that appellant's symptoms began at or near the 1994 employment injury. He stated that he did not have any opinion regarding appellant's current disability or ability to work. The Office accepted appellant's claim for recurrence on February 26, 2009. Appellant requested wage-loss compensation beginning May 9, 2009 which the Office authorized.

In a report dated May 28, 2009, Dr. Gornet noted appellant's history of injury and found numbness in the C6-7 distribution as well as magnetic resonance imaging (MRI) scan results of disc protrusions at C3-4 and C4-5. He stated that appellant was temporarily totally disabled.

The Office referred appellant for a second opinion evaluation on June 2, 2009. In a report dated June 29, 2009, Dr. Donald H. Brancato, a Board-certified orthopedic surgeon, stated that he had reviewed the statement of accepted facts provided by the Office and examined appellant. He noted appellant's history of injury and found good muscle strength, hyperactive reflexes and intact pin prick. Dr. Brancato stated, "There is no objective reason that this man has any continued residual that would limit his return to his regular work activities." He noted that appellant did not appear to have a true subluxation but rather degenerative changes in the cervical facets and laxity in the supporting ligaments which were age related. Dr. Brancato stated, "It is my opinion, therefore, that his objective x-ray findings are associated with the normal degenerative change and progression of aging and not related to his work-related incident in 1994." He concluded that appellant could return to work in his date-of-injury position.

Dr. Gornet examined appellant on July 9, 2009 and found that appellant's current MRI scan demonstrated disc herniations at C3-4, C4-5 and C6-7. He noted appellant's symptoms of neck pain descending into both shoulders and arms. Dr. Gornet recommended electrodiagnostic studies on July 8, 2009. Dr. Daniel Phillips, a Board-certified neurologist, examined appellant on July 9, 2009 and testing revealed significant chronic moderate bilateral sensory motor median neuropathies across the carpal tunnels and left ulnar neuropathy. He found no active cervical radiculopathy.

Dr. Gornet examined appellant on August 24, 2009 and reviewed appellant's myelogram finding disc pathology at C3-4 and C4-5 causing mild core compression. He recommended surgery.

The Office found a conflict of medical opinion between Drs. Gornet and Brancato and referred the case, a statement of accepted facts and a list of questions to Dr. Marvin Mishkin, a Board-certified orthopedic surgeon, reviewed the statement of accepted facts and appellant's medical treatment. Dr. Mishkin examined appellant on October 26, 2009 and noted that appellant stopped work in February 2009 due to increased headaches, arm and neck pain. On physical examination, he found no evidence of swelling, induration or muscle atrophy in the neck and no localized specific area of pain on palpation or muscle spasm. Dr. Mishkin found that appellant's upper extremities were symmetrical with good motor strength, symmetrical reflexes and intact sensation. He diagnosed mild degenerative disc disease and possible psoriatic

arthritis. Dr. Mishkin stated that appellant's diagnosed degenerative disc disease was commonly associated with aging, weight and levels of activity. He stated, "I find no evidence of an objective nature to indicate that this individual is suffering from any injury or residual of injury related to or caused by the motor vehicle accident of June 6, 1994." Dr. Mishkin noted that appellant had no evidence of radiculopathy or nerve root compression of the cervical spine and stated that appellant's degenerative disc changes were not caused or aggravated by his employment injury. He opined that appellant's psoriasis was not related to his employment. Dr. Mishkin concluded that surgery was not indicated and that appellant could return to work with restrictions on rotation of the head and heavy physical activity.

In a letter dated November 17, 2009, the Office proposed to terminate appellant's compensation benefits based on Dr. Mishkin's report. It found that Dr. Mishkin concluded that appellant did not have a medical condition, disability or residuals due to his accepted employment injury. Appellant disagreed with this proposal on December 6, 2009 and stated that his current condition was due to his June 6, 1994 employment injury. He noted that his condition had persisted for 16 years.

By decision dated December 17, 2009, the Office terminated appellant's compensation benefits effective December 17, 2009. It concluded that Dr. Mishkin's report was entitled to the weight of the medical evidence. Appellant requested reconsideration on February 16, 2010. He submitted a report dated January 4, 2010 from Dr. Gornet, who stated that appellant had disc herniations and discogenic pain at C3-4 and C4-5 and that he was involved in a work-related motor vehicle accident which was consistent with producing such disc lesions. Dr. Gornet opined that appellant required surgery.

By decision dated April 6, 2010, the Office denied modification of the December 17, 2009 termination decision finding that the evidence submitted was insufficiently rationalized to establish a causal relationship between appellant's current condition and his accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment⁴ which require further medical treatment.⁵

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of the Federal Employees' Compensation Act which 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 and resolve the conflict of medical evidence.⁶ 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.⁷ In situations where there are 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 on a proper factual background, must be given special weight.⁸

ANALYSIS -- ISSUE 1

Appellant's physician, Dr. Gornet, supported appellant's continued disability for work and need for additional medical treatment including surgery due to his accepted cervical injuries resulting from his 1994 employment injury. The Office referred appellant for a second opinion evaluation with Dr. Brancato, who found that appellant's current condition was not due to his employment injury and that he could return to full duty. Due to this disagreement in the medical opinion evidence between appellant's physician and a physician selected by the Office, the Board finds that the Office properly determined that there was a conflict of medical opinion evidence which must be resolved through an impartial medical examiner.

The Office referred appellant, a statement of accepted facts and a list of specific questions to Dr. Mishkin, a physician selected to serve as the impartial medical examiner, who examined appellant on October 26, 2009, made limited objective findings and diagnosed mild degenerative disc disease and possible psoriatic arthritis. Dr. Mishkin opined that appellant's degenerative condition was due to aging, weight and levels of activity. He concluded that there was no objective evidence establishing that appellant's current condition was due to the accepted motor vehicle accident of June 6, 1994 or any condition resulting from that accident. Dr. Mishkin stated that appellant's degenerative disc changes were not caused or aggravated by appellant's employment injury, that surgery was not indicated and that he could return to work.

⁴ *Id.*

⁵ *Id.*

⁶ 5 U.S.C. §§ 8101-8193, 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

⁷ *R.C.*, 58 ECAB 238 (2006).

⁸ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

The Board finds that this report is sufficient to resolve the conflict of medical opinion and establishes that appellant has no residuals of his accepted employment injuries. Dr. Mishkin reviewed appellant's medical history as well as his medical treatment and performed a physical examination. He found that appellant had mild degenerative disc disease which would be expected given his age and occupational duties. Dr. Mishkin noted that there were no objective findings supporting that appellant's current condition was related to his employment. He offered a reasoned opinion that appellant's current condition was not due to the accepted employment injuries. As Dr. Mishkin offered the medical reasoning behind his conclusions and based his report on a proper factual history and his own findings on physical examination, the Board finds that this report is entitled to the weight of the medical evidence and meets the Office's burden of proof to terminate appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had disability causally related to his accepted employment injury.⁹ To establish a causal relationship between the condition, as well as any disability claimed, and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. 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 claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁰

ANALYSIS -- ISSUE 2

The Board has found that the Office met its burden of proof to terminate appellant's compensation benefits based on the report of Dr. Mishkin, the impartial medical examiner. Appellant now has the burden of proof to establish any continuing disability or medical residuals which he believes resulted from his accepted employment injury.

In support of his claim, appellant submitted a report dated January 4, 2010 from Dr. Gornet, his attending physician, who provided a diagnosis of disc herniations and discogenic pain at C3-4 and C4-5. Dr. Gornet noted that appellant's accepted employment injuries resulted from a motor vehicle accident and stated that such an accident was consistent with producing the disc herniations and pain. He opined that appellant required surgery as a result of residuals of his accepted employment injuries. While Dr. Gornet opined that appellant's current condition was due to his accepted employment injury and offered an opinion that the motor vehicle accident

⁹ *George Servetas*, 43 ECAB 424, 430 (1992).

¹⁰ *James Mack*, 43 ECAB 321 (1991).

could result in the type of injuries appellant exhibited, he did not offer any medical reasoning explaining how and why he felt appellant's condition was employment related rather than age-related degenerative disc disease. The Board notes that electrodiagnostic studies did not support radiculopathy from appellant's cervical spine, but instead found chronic moderate bilateral median neuropathies at the carpal tunnels as well as left ulnar neuropathy. Furthermore, as Dr. Gornet was on one side of the conflict that Dr. Mishkin resolved, the additional report from Dr. Gornet is insufficient to overcome the weight accorded Dr. Mishkin's report as the impartial medical specialist or to create a new conflict with it.¹¹ The Board finds that appellant has not met his burden of proof in establishing any continuing disability or medical residuals resulting from his June 6, 1994 employment injury.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. The Board further finds that appellant has not met his burden of proof in establishing any continuing disability due to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

¹¹ *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).