

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

T.H., Appellant

and

**U.S. COAST GUARD, ENVIRONMENTAL
LOGISTICS CENTER, Baltimore, MD,
Employer**

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**Docket No. 10-1736
Issued: May 2, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 17, 2010 appellant, through his attorney, filed a timely appeal of the April 27, 2010 merit decision of the Office of Workers' Compensation Programs terminating his compensation benefits. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation benefits effective October 2, 2009 on the grounds that he no longer had any residuals or disability causally related to his December 4, 1996 employment injury.

On appeal, counsel contends that the Office's April 27, 2010 decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The Office accepted that on December 4, 1996 appellant, then a 26-year-old supply technician, sustained cervical and lumbar strains when he slipped on a floor that was being stripped of wax and fell onto his back.² He stopped work on the date of injury. The Office paid appellant appropriate wage-loss compensation and medical benefits.

By letter dated November 15, 2007, the Office requested that appellant submit an updated medical report from an attending physician regarding his employment-related injuries.

In a December 30, 2008 medical report, Dr. Deborah A. Dorvil, an attending Board-certified family practitioner, advised that appellant had chronic back pain, muscle spasms and paresthesias in his arm from a cerebrovascular accident (CVA). These conditions were permanent and disabling. Dr. Dorvil advised that it was unlikely that appellant would be able to perform any type of vocational duties in his current medical state.

On April 10, 2009 the Office referred appellant, together with a statement of accepted facts and medical record, to Dr. James A. Maultsby, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine the nature and extent of his employment-related injuries. In an April 28, 2009 report, Dr. Maultsby found that appellant had resolved postlumbosacral and cervical sprains. Appellant also had lumbar degenerative joint disease based on previous x-ray examinations. Dr. Maultsby advised that appellant had no residuals or disability related to his December 4, 1996 employment injuries. Appellant could return to sedentary or moderate work that did not involve too much heavy activity as his health was very poor due to weight loss of unexplained etiology or a lack of teeth. He also could not return to work without restrictions due to his unfit condition resulting from inactivity, probable alcoholism and chronic illness of a pulmonary nature and not due to his December 4, 1996 employment injuries. Dr. Maultsby concluded that appellant did not require any further medical treatment.

In an addendum to his April 28, 2009 report, Dr. Maultsby reviewed the history of head injuries sustained by appellant prior to the December 4, 1996 employment incident. He also reviewed the results of an electromyogram which showed L5-S1 radiculopathies of an old nature. Dr. Maultsby advised that appellant's gait dysfunction suggested an old brain injury. He noted that a previous magnetic resonance imaging (MRI) scan revealed a brain injury. A functional capacity evaluation listed that appellant was capable of performing sedentary activity. Dr. Maultsby advised that he had no residual problems of his December 4, 1996 employment injuries. He concluded that there was no impairment to appellant's lower or upper extremities as a result of his accepted injuries.

On May 26, 2009 the Office found a conflict in the medical opinion evidence between Dr. Dorvil and Dr. Maultsby as to whether appellant had any residuals and disability causally

² Appellant filed a traumatic injury claim (Form CA-1) for his December 4, 1996 employment injuries which was assigned File No. xxxxxx745. Prior to the instant claim, he filed a Form CA-1 assigned File No. xxxxxx768 for lower back and upper chest contusions he sustained when he fell off a stack of boxes on May 20, 1996. The Office accepted appellant's claim for low back contusion. It combined the claim assigned File No. xxxxxx745 and the claim assigned File No. xxxxxx768 into a master claim assigned File No. xxxxxx745.

related to his December 4, 1996 employment injuries. On July 8, 2009 it referred appellant, together with a statement of accepted facts and medical record, to Dr. Robert W. Elkins, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a July 22, 2009 report, Dr. Elkins obtained a history of the April 30 and December 4, 1996 employment injuries and medical treatment. Appellant complained of bad migraine headaches twice a week, being most severe once a week and dizziness when he walked. He experienced low back and left leg pain radiating to his buttocks, worst on the left than right, after walking one block. Dr. Elkins felt an electricity sensation down his leg which fell dead and asleep. Appellant had a breathing problem and a possible heart problem. On physical examination, Dr. Elkins listed normal range of motion findings regarding appellant's shoulders, elbows, wrists, hands and lower extremities. Appellant had limited range of motion regarding his neck and lower back with pain. Dr. Elkins diagnosed a chronic neurologic problem with an old frontal lobe contusion; chronic neck and back pain; multiple injuries prior to December 1996; a significant injury in April 1996; mild symptom magnification and pain accentuation; and memory loss by history. He concluded that the employment-related cervical and lumbar sprains had resolved. Dr. Elkins stated that appellant's problems went way beyond the accepted conditions, with a prolonged history of neck and back pain, a frontal lobe contusion, neurologic changes such as, athetoid movements and history of memory loss, disc bulges, spondylosis, stenosis and brain injury. He advised that the resolved employment-related neck and back conditions did not prevent appellant from returning to his usual job. However, due to prior problems such as chronic neck and back pain and neurologic symptomatology, Dr. Elkins recommended that appellant perform sedentary work eight hours a day with physical restrictions. He concluded that appellant had reached maximum medical improvement and did not require any further medical treatment for his accepted neck and back conditions.

On August 25, 2009 the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the medical opinions of Dr. Maulsby and Dr. Elkins.

In a September 3, 2009 letter, appellant disagreed with the proposed action.

In reports dated December 17, 2008 and September 24, 2009, Dr. Dorvil advised that appellant sustained new conditions which included depression, CVA, hemorrhoids, back pain, muscle spasms, lipoma, migraine headaches and left arm numbness.

In an October 2, 2009 decision, the Office terminated appellant's compensation for wage-loss and medical benefits with regards to his accepted employment-related injuries, effective that date. It found that the medical evidence established that he had no employment-related residuals.

On October 11, 2009 appellant, requested a telephonic oral hearing with an Office hearing representative.

In a report dated October 29, 2009, Dr. Dorvil advised that appellant had elevated blood pressure, a new condition. Appellant's cervical spondylosis without myelopathy, spinal stenosis in the cervical region, radiculopathy, dizziness, muscular spasms, numbness of the left arm, left muscular atrophy, migraine headaches, osteoarthritis, depression and disc herniation were

unchanged. Dr. Dorvil further advised that he was totally disabled for work due to his accepted employment-related injuries and deficits from his past CVA.

In an April 27, 2010 decision, an Office hearing representative affirmed the October 2, 2009 termination decision, finding that Dr. Elkins' medical opinion constituted the weight of the medical evidence. He also found that it was unclear as to why the Office found a conflict in medical opinion as there was no medical evidence of record contrary to Dr. Maulsby's opinion that appellant no longer had any residuals or disability due to his December 4, 1996 employment injuries.

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.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.⁵

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of October 2, 2009 on the grounds that he had no residuals or disability of the accepted December 4, 1996 employment-related cervical and lumbar strains.

However, it does not appear that such a referral was appropriate and the opinions of Dr. Dorvil and Dr. Maulsby were not in conflict regarding the accepted conditions. The Board notes that the Office found a conflict in the medical opinion as to whether appellant had any residuals or disability causally related to his accepted conditions under 5 U.S.C. § 8123(a) and the referral was made as a referee examination.⁶ As Dr. Dorvil did not provide any that she did not attribute appellant's continuing conditions and disability to the December 4, 1996 employment injuries.

The Board finds that the referral to Dr. Elkins was as a second opinion physician. Even though the report of Dr. Elkins is not entitled to the special weight afforded to the opinion of

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁶ 5 U.S.C. § 8123(a). This section provides if there is a disagreement between a physician making the examination for the United States and a physician of the employee, a third physician shall be appointed to make an examination.

referee specialist resolving a conflict of medical opinion, his report can still be considered for its own intrinsic value and can still constitute the weight of the medical evidence.⁷ In this case, Dr. Elkins provided a well-rationalized medical opinion as to whether appellant had any employment-related residuals and disability. He provided an accurate history of injury and detailed essentially normal findings on physical examination with the exception of limited range of motion regarding appellant's neck and lower back. Based on his examination findings, Dr. Elkins concluded that the accepted December 4, 1996 employment conditions had resolved. He attributed appellant's current chronic neurologic problems and neck and back pain to a history of injuries that occurred prior to December 4, 1996. Dr. Elkins concluded that appellant was not totally disabled, that further medical treatment was not necessitated and that, although he could not perform his regular work duties as a supply clerk, appellant could perform sedentary work eight hours a day.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and, medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸ The Board finds that Dr. Elkins' report represents the weight of the medical evidence and the Office properly relied on his report in terminating appellant's compensation benefits on October 2, 2009. Dr. Elkins fully discussed the history of injury and related his comprehensive examination findings in support of his opinion that appellant had no residuals or disability causally related to his accepted cervical and lumbar strains.

Dr. Dorvil's October 29, 2009 report found that appellant was totally disabled for work due to his accepted employment injuries and deficits from his past CVA. As the CVA was not accepted by the Office as employment related, appellant had the burden of proof to establish causal relationship,⁹ which was not done. Moreover, Dr. Dorvil did not provide any medical rationale explaining how the accepted employment injuries caused or contributed to his total disability. Therefore, her opinion on causal relationship is not sufficient to establish that appellant's continuing disability was due to his December 4, 1996 employment-related cervical and lumbar conditions.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits effective October 2, 2009 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related cervical and lumbar strains.

⁷ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

⁸ *See Ann C. Leanza*, 48 ECAB 115 (1996).

⁹ *See Jaja K. Asaramo*, 55 ECAB 104 (2004).

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: May 2, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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