



OWCP accepted his claim for right knee contusion, left shoulder contusion, cervical sprain and postconcussion syndrome. He received compensation for temporary total disability on the periodic rolls.

Dr. David G. Carr, an osteopath and Board-certified neurosurgeon and second opinion physician, evaluated appellant in 2006. He found that appellant was a severely deconditioned gentleman with appropriate physical restrictions and appropriate degenerative conditions in his low back and lower extremities “simply as a result of aging, deconditioning and weight.” Dr. Carr found no spinal disorder or abnormality related to the 1991 motor vehicle accident. He also found no neurologic deficit or abnormality. Dr. Carr concluded that appellant was able to work full time with no restrictions with respect to any condition or injury stemming from the accident.

Dr. Kevin D. McBride, Board-certified in family medicine and appellant’s attending physician, responded that appellant had been a patient since 1999 and that his symptoms had been consistent and unrelenting since that time. Upon reviewing Dr. Carr’s report, Dr. McBride acknowledged there may be alternative explanations for appellant’s pain, as he had developed additional diseases such as osteoarthritis of his knee. “However, [appellant] tells me his symptoms began at the time of injury, they were not present prior and they have persisted since. I therefore assume the accident was at least some degree responsible for his symptoms.” It was Dr. McBride’s opinion that appellant was not able to return to work because of persistent chronic pain.

To resolve this conflict in medical opinion, OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon, who related appellant’s history and complaints. Dr. Obianwu described findings on physical examination and reviewed the medical record, including a number of diagnostic studies. He stated that Dr. McBride’s opinion -- that because appellant’s symptoms began at the time of injury, the accepted right knee contusion could be related to his ongoing knee symptoms -- was not correct. Dr. Obianwu explained that appellant did have a soft-tissue problem in his right knee after the injury, but there was no evidence of an ongoing soft-tissue problem or sprain or strain and there was nothing to suggest causation. It was Dr. Obianwu’s opinion that the accepted right knee contusion had subsided with no need for further treatment. Arthritis, he explained, was a disease of the aging process and given appellant’s weight, that was the element that played a more important role in the current condition of his knees.

As to appellant’s neck, there were no findings that would suggest an ongoing strain or sprain injury. Dr. Obianwu noted that appellant might have a mild cervical spondylosis. As he reviewed the medical record, appellant’s main difficulty over the years was his low back, which was not an accepted work injury. Dr. Obianwu also found that appellant’s left shoulder was essentially normal, with almost full range of motion and negative results on all provocative tests. Appellant’s left shoulder contusion had gotten better. “As related to the work accepted problems, [appellant] can return to his regular duties.” Dr. Obianwu explained that any restrictions were not because of the effects of the October 17, 1991 work injury: “The effects of that accident have gotten better.”

As postconcussion syndrome fell out of Dr. Obianwu's purview, OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Michael W. Grof, a Board-certified neurologist, to resolve the issue. Dr. Grof related appellant's history of injury and current complaints. He described his findings on physical and neurological examination and he reviewed appellant's medical record. "It is my opinion ... that I would totally agree with the excellent independent medical reviews and reports by Dr. David Carr and Dr. Emanuel Obianwu. They make perfect medical and physiological sense in logical fashion." Dr. Grof explained that appellant suffered acute injuries that were primarily soft-tissue injuries. Appellant also had a traumatic head injury, but postconcussion syndrome usually resolves within months. Moreover, discussion of his marked behavioral change and rage was not consistent with a closed-head injury. Appellant showed some characteristics of psychiatric abnormality that probably were not present at the time he was employed, but such abnormalities were not known to occur because of a mild closed-head injury.

It was Dr. Grof's opinion that all of appellant's injuries reached maximum medical improvement years prior and that continued complaints of severe knee pain, shoulder pain and generalized body pain, along with increased disability in his overall ability to do anything, were truly related to deconditioning, weight gain, diabetes, osteoarthritis and mainly the effects of aging. He explained that, since the injury 16 years ago, many normal aging physiological processes had occurred with hormonal changes that made appellant less fit, but this was not due to the 1991 motor vehicle accident. Appellant was not disabled by contusion of the knee or shoulder, which definitely would have healed and he should have returned to baseline from his closed-head injury within a year, as it did not appear to be very severe. Dr. Grof found that the accepted work injuries of right knee contusion, left shoulder contusion, cervical strain and postconcussion syndrome had all resolved.

In a July 23, 2008 decision, OWCP terminated appellant's compensation benefits on the grounds that the weight of the medical evidence supported that the accepted condition had all resolved.

On May 20, 2011 an OWCP hearing representative affirmed the July 23, 2008 decision. He found that the second-opinion and referee physicians had offered reasoned medical opinions based on an accurate factual history supporting that the accepted work injury had resolved and that appellant was currently suffering only from the effects of nonoccupational conditions.

On appeal, appellant's representative argued that Dr. McBride's opinion and evidence of record outweighed those of Dr. Carr and Dr. Groff.

### **LEGAL PRECEDENT**

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>3</sup> It

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

may not terminate compensation without a positive demonstration by the weight of evidence that entitlement to benefits has ceased.<sup>4</sup>

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.<sup>5</sup> When 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.<sup>6</sup>

### ANALYSIS

A conflict arose between appellant's family physician, Dr. McBride, and the second-opinion osteopath and neurosurgeon, Dr. Carr, on whether appellant continued to suffer residuals of his accepted medical conditions. Dr. Carr could find no spinal disorder, neurologic deficit or other abnormality related to the 1991 motor vehicle accident. He felt that appellant was simply suffering the effects of aging, deconditioning and weight. Dr. McBride disagreed. Appellant told Dr. McBride that his symptoms began at the time of injury, were not present earlier and had persisted ever since. Dr. McBride therefore assumed that the accident was at least some degree responsible for appellant's current symptoms.

To resolve this conflict, OWCP properly referred appellant, under section 8123(a) of FECA, to Dr. Obianwu, a Board-certified orthopedic surgeon. It provided Dr. Obianwu with appellant's medical record and a statement of accepted facts to give him a proper background. Dr. Obianwu examined appellant and could find no evidence of the contusions and sprain he sustained in 1991. All of the accepted orthopedic conditions had resolved and it was his opinion, much like Dr. Carr's, that appellant was simply suffering the effects of age and weight.

To resolve whether appellant continue to suffer from the accepted postconcussion syndrome, OWCP referred him to Dr. Grof, a Board-certified neurologist. As before, OWCP provided appellant's medical record and a statement of accepted facts so Dr. Grof could base his opinion on a solid foundation. Dr. Grof found himself agreeing with Dr. Carr and Dr. Obianwu, whose reports he described as excellent and making perfect medical and physiologic sense. He discussed the nature of postconcussion syndrome and explained that characteristics of appellant's psychiatric abnormality -- his marked behavioral change and rage -- were not consistent with a closed-head injury. Further, Dr. Grof reasoned that postconcussion syndrome usually resolves within months and appellant's head trauma appeared to be mild. He concluded therefore that appellant had reached maximum medical improvement years ago. Appellant's postconcussion syndrome, in addition to his contusions and strain, had all resolved.

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<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (March 2010).

<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

Appellant's representative argues Dr. McBride's opinion and evidence far surpasses those of Dr. Carr and Dr. Groff. Dr. McBride's reason for associating appellant's current condition to what happened in 1991, however, is not convincing. Mere temporal relationships -- appellant told Dr. McBride that he was asymptomatic before the injury and was persistently symptomatic thereafter -- do not typically establish causal relationship without additional medical reasoning. The Board has held that when a physician concludes that a condition is causally related to employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.<sup>7</sup> Nonetheless, OWCP considered Dr. McBride's opinion and record to be sufficiently supportive of continuing injury-related residuals to create a conflict with Dr. Carr requiring referral to an impartial medical specialist or in this case two impartial medical specialists. As the Board has explained, the opinions of these referee physicians are well reasoned and based on a proper background and are therefore entitled to special weight in resolving the conflict.

The Board finds that the opinions of Dr. Obianwu and Dr. Grof are based on a proper factual and medical history and are sufficiently well reasoned that they must be accorded special weight. Their opinions are consistent with their clinical findings and they have offered medical explanations that appear to be sound and logical. The Board finds that their opinions represent the weight of the medical evidence and establish that appellant no longer suffers from the right knee contusion, left shoulder contusion, cervical sprain and postconcussion syndrome he sustained on October 17, 1991. The Board thus finds that OWCP has met its burden to justify the termination of his compensation benefits. The Board will affirm OWCP's May 20, 2011 decision.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly terminated appellant's compensation benefits.

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<sup>7</sup> *Thomas D. Petrylak*, 39 ECAB 276 (1987).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2012  
Washington, DC

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

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

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