

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID J. LEVEQUE and DEPARTMENT OF THE NAVY,  
NAVAL WEAPONS SUPPORT CENTER, Crane, IN

*Docket No. 03-2139; Submitted on the Record;  
Issued January 30, 2004*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective October 5, 2002 on the grounds that he had no residuals of his accepted employment injuries; (2) whether the Office properly terminated his authorization for medical treatment; and (3) whether appellant has established that he has any continuing employment-related disability.

On February 3, 1988 appellant, then a 43-year-old electrical technician, filed a claim for a traumatic injury occurring on that date when he slipped on steps. The Office accepted his claim for low back muscle spasms and paid him compensation for total disability beginning July 24, 1988.

In a report dated December 20, 1999, Dr. Lee McKinley, a Board-certified internist and appellant's attending physician, in response to a request for information regarding appellant's condition from the Office, discussed appellant's history of the 1988 employment injury with subsequent pain and low back spasms.<sup>1</sup> He diagnosed chronic mechanical low back pain with intermittent spasms and noted that appellant "feels [that] he has been disabled for many years."

By letter dated August 7, 2001, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. James B. Rickert, a Board-certified orthopedic surgeon, for a second opinion evaluation. In the statement of accepted facts, the Office noted that appellant had a prior employment-related back injury on May 11, 1971, which was assigned file number 09-119778 and accepted for a herniated lumbar disc and aggravation of lumbar disc disease. The Office requested that Dr. Rickert address whether appellant was disabled from his regular employment due to either his May 11, 1971 or February 3, 1988 injuries.

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<sup>1</sup> In a report dated August 5, 1999, Dr. R.C. Childress, a Board-certified internist and appellant's prior attending physician, opined that appellant was unable to work due to L4-5 neuropathy. A magnetic resonance imaging (MRI) scan obtained on September 28, 1999, showed L3-4 and L4-5 spondylosis and disc protrusions at L4-5.

In a report dated August 23, 2001, Dr. Rickert discussed appellant's May 11, 1971 and February 3, 1988 employment injuries. He reviewed the medical evidence of record and listed findings on physical examination. Dr. Rickert stated:

“At this time, therefore, [appellant's] accepted work injuries are hernia[ted] lumbar disc in L4-5, aggravation of lumbar disc disease particularly in L3-4 and L4-5 and low back muscle spasms. At [t]his time, [appellant] no longer has any muscle spasms. This problem has resolved itself completely. I based this on the fact that on examination of his back, he had no muscle spasm. [Appellant] has essentially no residual left from either his hernia[ted] lumbar disc or his aggravation of lumbar disc disease. [Appellant] has no focal findings regarding either diagnoses. [Appellant's] strength, sensation and reflexes are all normal. [He] has no point tenderness over his back and a negative straight leg raise bilaterally. Therefore, I do not believe either of these diagnoses are disabling. However, he does carry the diagnoses yet and this is verified by his MRI [scan] in 1999.

“At this time, I do believe that [appellant] is currently capable of doing his regular work without restrictions. I believe that he could do the work that he was capable of performing at the time of his injuries and I do not believe that limitations are required. The bases for this opinion are the fact that [appellant] has no physical findings. [He] does have good strength in all of his muscle groups tested. [Appellant] has no limp. He has a full range of motion of his back and he is neurovascularly intact in both lower extremities.”

In a letter dated August 30, 2001, the Office requested that Dr. McKinley review and comment on Dr. Rickert's report and appellant's current condition and disability. In a response dated September 10, 2001, Dr. McKinley diagnosed chronic mechanical low back pain due to degenerative joint disease and mild spinal stenosis and intermittent muscle spasm. He also diagnosed peripheral arterial disease with pseudoclaudication of the lower extremities. Dr. McKinley stated, “[t]his is probably not related to his previous injuries but is the result of the spinal stenosis, which is the result of degenerative disc disease and hypertrophic changes in the spine as a reaction to the initial injury.” He further diagnosed true claudication of the lower extremities and diabetes mellitus. Dr. McKinley stated:

“[Appellant] is disabled by chronic back pain, however, I cannot demonstrate any objective weakness or loss of function other than the limitation of motion of the lower back and the limited ability to walk distances because of pseudo-claudication relating to the spinal stenosis.”

Dr. McKinley found that appellant should not lift more than 20 pounds, repetitively bend or walk long distances.

By letter dated July 9, 2002, the Office referred appellant to Dr. Otto W. Wickstrom, a Board-certified orthopedic surgeon, to resolve the conflict in opinion regarding whether appellant continued to have residuals of his accepted employment-related conditions. In a report dated July 24, 2002, Dr. Wickstrom discussed appellant's medical history and his current

complaints. On physical examination, Dr. Wickstrom noted that appellant had no atrophy or loss of strength of the lower extremities and a full range of motion of the spine. He stated:

“I did not find objective evidence of remaining residuals of the accepted work-related herniated disc, degenerative disc disease and muscle spasms. Concerning the diagnoses; I do not feel each diagnosis is still active and disabling. I feel [that] [appellant] is stable and quiescent and I feel [that] he has reached maximum medical improvement. I estimate that the diagnoses may have ceased in a time frame greater than the past five years. I state this because [appellant] presents with no objective evidence of impairment. No studies have disclosed new diagnoses related to his back.”

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“I do not feel that [appellant] has incurred any other diagnoses as a result of his work injuries of 1971 and/or 1988. His MRI [scan] of 1999 disclosed degenerative changes in his lumbar spine which have been present for years. [Appellant’s] spinal stenosis is part of the degenerative process and changes very minimally over a great number of years. His disc desiccation and mild bulges are stationary. No recent evidence of change was recorded.”

Dr. Wickstrom concluded that appellant was “currently capable of performing his date of injury job without restrictions.” In an accompanying work restriction evaluation, he found that appellant could work eight hours per day with a “30[-]pound or so” weight restriction.

On August 26, 2002 the Office notified appellant that it proposed to terminate his compensation benefits on the grounds that the weight of the medical evidence established that he had no further residual condition or disability due to his accepted employment injuries. The Office provided appellant 30 days within which to respond to the proposed termination of compensation.

Appellant submitted a report dated September 24, 2002, received by the Office on September 27, 2002, from Dr. Todd R. Rowland, a Board-certified physiatrist, who discussed his treatment of appellant beginning in September 1999. He diagnosed chronic multifactorial low back pain and opined that appellant could perform sedentary employment. Dr. Rowland indicated that he disagreed with Drs. Rickert and Wickstrom that appellant no longer had back pain or restrictions.

By decision dated September 30, 2002, the Office terminated appellant’s compensation and authorization for medical treatment effective October 5, 2002. In a letter dated October 1, 2002, the Office indicated that it had reviewed Dr. Rowland’s September 27, 2002 report and found it insufficient to outweigh the opinion of the impartial medical examiner.

In a letter dated October 11, 2002, appellant requested a hearing. He submitted office visit notes dated September to December 1999 from Dr. Rowland. By letter dated December 22, 2002, appellant requested a review of the written record in lieu of a hearing. By decision dated July 11, 2003, the hearing representative affirmed the Office’s September 30, 2002 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective October 5, 2002.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

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.<sup>5</sup> The Board finds that Dr. Wickstrom's opinion, which is based on a proper factual and medical history, is well rationalized and supports that appellant's muscle spasms, herniated lumbar disc and aggravation of lumbar disc disease ceased by October 5, 2002, the date the Office terminated his compensation. Dr. Wickstrom accurately summarized the relevant medical evidence, provided findings on examination and reached conclusions regarding appellant's condition which comported with his findings.<sup>6</sup> He provided medical rationale for his opinion by explaining that he had found no objective residuals of appellant's employment injuries, which he estimated had resolved more than five years prior. Dr. Wickstrom concluded that appellant could perform his regular employment without restrictions. As he provided a detailed and rationalized report based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner.

The remaining evidence of record submitted by appellant, subsequent to Dr. Wickstrom's report and prior to the Office's termination of compensation, is insufficient to outweigh the special weight accorded to Dr. Wickstrom's opinion as the impartial medical examiner. Appellant submitted a report dated September 24, 2002 from Dr. Rowland, who discussed his treatment of appellant beginning in September 1999. He diagnosed "chronic stable low back pain that was multifactorial with disc abnormalities on MRI [scans]." Dr. Rowland opined that appellant could perform sedentary employment. Dr. Rowland, however, did not specifically attribute appellant's limitations to his accepted employment injury or provide rationale for his findings. To be of probative value, a physician's opinion 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 established employment incident or injury.<sup>7</sup> As Dr. Rowland did not provide rationale for his opinion, his report is insufficient to overcome the special weight

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<sup>2</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>3</sup> *Id.*

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

<sup>5</sup> *Leanne E. Maynard*, 43 ECAB 482 (1992).

<sup>6</sup> *See Melvina Jackson*, 38 ECAB 443 (1987).

<sup>7</sup> *Lee R. Haywood*, 48 ECAB 145 (1996).

accorded Dr. Wickstrom as the impartial medical examiner. Accordingly, the Board finds that the Office discharged its burden of proof to justify termination of appellant's compensation after October 5, 2002.

The Board further finds that the Office properly terminated appellant's authorization for medical benefits effective October 5, 2002.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>8</sup> 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. The Office met this burden through the report of Dr. Wickstrom, who found that appellant had no residual condition or disability due to his accepted employment injuries of muscle spasms, herniated lumbar disc and an aggravation of degenerative disc disease and provided rationale in support of that conclusion.

The Board further finds that appellant has not established that he has any continuing employment-related disability.

Given that the Board has found that the Office properly relied upon the opinion of Dr. Wickstrom, the impartial medical specialist, in terminating compensation, the burden of proof shifts to appellant to establish that he remains entitled to compensation after that date.<sup>9</sup> To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.<sup>10</sup>

Appellant submitted office visit notes dated September to December 1999 from Dr. Rowland. In his office visit notes, he listed his findings on examination and diagnosed low back pain. Dr. Rowland, however, did not address causation other than to note that appellant's low back pain "is apparently a service-connected problem." Further, pain is a symptom rather than a specific diagnosis and does not constitute the basis for payment of compensation.<sup>11</sup> It is appellant's burden of proof to establish continuing disability after October 5, 2002. As these reports, which were submitted subsequent to the termination of compensation, were written years prior to October 5, 2002, their probative value regarding appellant's disability status as of October 5, 2002 is limited. These reports do not address appellant's disability status as of October 5, 2002. Appellant, therefore, has not met his burden of proof to show that he had any continuing employment-related disability subsequent to October 5, 2002.

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<sup>8</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>9</sup> *George Servetas*, 43 ECAB 424 (1992).

<sup>10</sup> *John M. Tornello*, 35 ECAB 234 (1983).

<sup>11</sup> *See John L. Clark*, 32 ECAB 1618 (1981).

The decisions of the Office of Workers' Compensation Programs dated July 11, 2003 and September 30, 2002 are affirmed.

Dated, Washington, DC  
January 30, 2004

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member