

accepted the claim for a lumbar strain and paid appropriate compensation benefits.¹ Appellant returned to work on January 28, 1976.

On December 20, 1979 appellant filed a traumatic injury claim alleging that he injured his lower back while “pushing a wagner out of street” on December 19, 1979.² The Office accepted the claim for a low back strain and paid appropriate compensation. Appellant returned to work on January 15, 1980. By letter dated March 24, 1985, the Office placed him on the periodic rolls for temporary total disability effective July 18, 1981.³

In a letter dated May 4, 2004, the Office informed appellant that the record contained no current medical evidence establishing his entitlement to benefits since no medical evidence had been received in seven years. He was advised as to the type of medical evidence he should submit. The Office informed appellant that he was required to submit periodic medical reports and allowed him 60 days to provide the requested information.

In a letter dated July 23, 2004, the Office again requested updated medical evidence and informed appellant that he had 60 days to respond. No response was received.

On October 20, 2004 the Office referred appellant, together with a statement of accepted facts, medical record and list of questions, to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion on his condition, disability and treatment.

In a report dated November 12, 2004, Dr. Swartz reported that appellant stated that he could not “remember the last time he saw a doctor for his low back.” A physical examination revealed 75 degrees lumbar flexion, 10 degrees of extension, 20 degrees right and left lateral flexion and 30 degrees right and left rotation. Dr. Swartz reported appellant was “tender to light touch in the lumbosacral region” and “no actual spasm encountered.” He concluded that he no longer had any residuals or disability due to his accepted employment injuries. In support of his conclusion that appellant had no disability due to either the 1976 or 1979 employment injuries, Dr. Swartz referred “to the record dated June 15, 1976, by Dr. Haugen of Kaiser noting the claimant had resolved his low back strain.” He addressed medical reports dated from 1980 to 1997, which reported a normal physical examination. Based upon Dr. Swartz review of appellant’s medical records and physical examination, he concluded that both of his accepted injuries resolved within six months. He opined that appellant’s current subjective complaints “would be related to his preexisting degenerative disc disease” and other nonemployment related health problems. Dr. Swartz concluded that he had no injury-related residuals or disability remaining, nor have there been since June 19, 1980.

On January 7, 2005 the Office issued a notice of proposed termination of benefits, finding that appellant had no disability or residuals causally related to the January 21, 1976 and December 19, 1979 employment injuries. The Office relied upon the opinion of Dr. Swartz as

¹ This was assigned claim number A13-0469457.

² This was assigned claim number A13-600933.

³ Appellant retired on disability effective July 18, 1981. On June 12, 1985 he elected to receive benefits under the Act.

there was no contrary medical evidence and he had not submitted any medical evidence in seven years.

By decision dated March 25, 2005, the Office finalized the termination of appellant's compensation benefits effective that date.⁴

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.⁵ After it has determined that an employee has disability causally related to his 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.⁶ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

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 appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁸

ANALYSIS

In terminating appellant's compensation, the Office relied on the November 12, 2004 report of Dr. Swartz, a referral specialist. He provided an accurate factual and medical background. He conducted a thorough medical examination and provided a detailed review of appellant's medical records. Dr. Swartz opined that appellant did not have any residuals due to his January 21, 1976 and December 19, 1979 employment injuries accepted for lumbar strains. He explained that there were no objective findings to support any continuing residuals or disability due to appellant's accepted lumbar sprains and that these conditions should have resolved within six months of each injury. Dr. Swartz pointed out that a June 15, 1976 report noted appellant's low back strain had resolved. He also noted that medical reports dated from 1980 through 1997 had listed a normal examination. Dr. Swartz opined current subjective complaints "would be related to his preexisting degenerative disc disease" and other nonemployment related health problems.

⁴ Subsequent to the March 25, 2005 decision the Office received additional medical evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c).

⁵ *Cary S. Brenner*, 55 ECAB ____ (Docket No. 04-1117, issued September 30, 2004); *Paul L. Stewart*, 54 ECAB ____ (Docket No. 03-1107, issued September 23, 2003).

⁶ *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004); *Elsie L. Price*, 54 ECAB ____ (Docket No. 02-755, issued July 23, 2003).

⁷ See *Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004); *Del K. Rykert*, 40 ECAB 284 (1988).

⁸ *Roger G. Payne*, 55 ECAB ____ (Docket No. 03-1719, issued May 7, 2004); *James F. Weikel*, 54 ECAB ____ (Docket No. 01-1661, issued June 30, 2003).

The Board finds that Dr. Swartz's opinion constitutes the weight of the medical evidence in finding that appellant no longer has any residuals or disability due to his January 21, 1976 and December 19, 1979 employment injuries as it is sufficiently rationalized and based on a proper factual and medical background. The Office informed him of the need to submit updated medical reports in letters dated May 4 and July 23, 2004, which he failed to do. The record contains no contemporaneous contradictory evidence establishing that appellant has ongoing residuals due to his accepted January 21, 1976 and December 19, 1979 employment injuries.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective March 25, 2005 on the grounds that he no longer had any residuals or disability causally related to his January 21, 1976 and December 19, 1979 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 25, 2005 is affirmed.

Issued: September 15, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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