

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY SPURGEON and DEPARTMENT OF THE ARMY,
ARMY AMMUNITION ACTIVITY, Crane, IN

*Docket No. 00-102; Submitted on the Record;
Issued February 24, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
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 10, 1998; and (2) whether appellant met his burden of proof to establish that he had any disability after October 10, 1998 causally related to his employment injury.

On April 10, 1978 appellant, then a 38-year-old ordnance worker, sustained employment-related low back muscle spasms, recurrent lumbar strain and a protruded intervertebral disc at L4-5. He sustained a recurrence of disability on June 11, 1979 and returned to limited duty but was "sent home" on September 19, 1979 as no light work was available. He has not worked since. The Office continued to develop the claim and on February 17, 1998 referred appellant, along with the medical record, a set of questions and a statement of accepted facts, to Dr. Robert F. Baker, a Board-certified orthopedic surgeon, for a second opinion evaluation.¹ By letter dated August 13, 1998, the Office informed appellant that it proposed to terminate his compensation, based on the opinion of Dr. Baker. In a September 11, 1998 letter, appellant

¹ The procedural history also indicates that, by letter dated August 21, 1996, the Office requested that Dr. Robert W. Maitlen, appellant's treating Board-certified family practitioner, provide an updated report. The Office noted that, in an April 26, 1994 report, he had indicated normal findings on examination and asked if appellant continued to be disabled from his former position due to the employment injury. The Office also inquired regarding the feasibility of vocational rehabilitation. In a September 4, 1996 report, Dr. Maitlen noted findings of decreased range of motion of the spine and a somewhat stiff gait on examination, which he advised were due to a low grade strain appellant had recently developed or were due to weather changes. He advised that appellant could no longer perform the physical requirements of his former position because he had an easily strained lower back, chronic, ongoing pain and secondary muscle spasm on an intermittent basis which would increase his risk of being injured on the job. Dr. Maitlen opined that appellant could work for short periods of time using his upper extremities only with no extended sitting or standing and no pushing, pulling, bending, lifting, or driving. He concluded that vocational rehabilitation would not be feasible for appellant because an increased level of activity would place him at risk of increased risk for reinjury or worsening of his chronic back condition. In an attached work capacity evaluation, Dr. Maitlen advised that appellant's condition was permanent and he could not work.

disagreed with the proposed termination.² By decision dated September 30, 1998, the Office terminated his benefits, effective October 10, 1998, on the grounds that he no longer experienced residuals of the employment injury. On March 20, 1999 appellant requested reconsideration and submitted additional evidence. By decision dated June 22, 1999, the Office denied reconsideration of the prior decision, finding the evidence submitted either duplicative or irrelevant. The instant appeal follows.

The Board finds that the Office met its burden of proof to terminate appellant's compensation.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.³

The medical evidence relevant to the termination of appellant's compensation includes a March 12, 1998 report, in which Dr. Baker diagnosed chronic lumbar sprain by history with no symptoms of nerve root irritation or herniated disc. He advised that appellant appeared to be somewhat disabled due to acoustic neuroma surgery⁴ but noted that appellant played golf. Dr. Baker stated that he could not confirm the diagnosis of protruded L5 disc, noting that x-ray of the lumbar spine demonstrated progression of degenerative arthritic changes that did not appear to be out of the ordinary for a man of appellant's age. He concluded that appellant could be employed in a light-duty position after a work-hardening program. In an attached work capacity evaluation, Dr. Baker advised that appellant could work eight hours per day with restrictions. Following an Office request for further explanation, in an April 10, 1998 report, Dr. Baker stated:

“If the accepted medical condition is that of lumbar strain and low back spasm, the overwhelming majority of such injuries do improve and get back to normal life activities. Therefore, it would follow that his present condition and x-ray changes are overwhelmingly a product of his normal aging. There is an acceptance of the fact of a ‘protruded intervertebral disc at L5.’ In my review of the situation, there has been no objective medical evidence that this condition actually exists. If it indeed does exist, then certainly the work injury could be playing a significant part in his alleged continuing symptoms. However, again, I do not see any objective evidence that this was actually part of his original injury.”

² He did not submit additional medical evidence.

³ See *Patricia A. Keller*, 45 ECAB 278 (1993).

⁴ The record indicates that this condition is not employment related.

The Office again asked for further clarification and in a May 6, 1998 report Dr. Baker stated:

“Since I do not see any objective evidence that [appellant] has or had a protruded intervertebral L5 disc, then I would logically conclude that it was most likely a lumbar sprain. It then follows within a degree of reasonable probability that the average patient gets over quite satisfactorily a lumbar sprain. Therefore, it would further be necessary for me to say that I do not see any significant evidence of residuals of his lumbar sprain of April 10, 1978. It does show evidence on x-rays of normal aging of the lumbar spine.”

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors which enter in such an evaluation include 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 the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁵ The Board finds that the weight of the medical evidence regarding the termination of appellant’s compensation rests with the opinion of Dr. Baker as he provided comprehensive, well-rationalized reports in which he explained his findings and conclusions. The Board, therefore, finds that appellant had no employment-related disability on or after October 10, 1998 and the Office met its burden of proof to terminate his compensation benefits on that date.

The Board further finds that appellant failed to establish that he had an employment-related disability after October 10, 1998.

As the Office met its burden of proof to terminate appellant’s compensation benefits, the burden shifted to him to establish that he had disability causally related to his accepted injury.⁶ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁷ Causal relationship is a medical issue,⁸ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician’s rationalized medical 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.⁹

⁵ *Gary R. Sieber*, 46 ECAB 215 (1994).

⁶ *See George Servetas*, 43 ECAB 424 (1992).

⁷ *See* 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, 45 ECAB 383 (1994).

⁸ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁹ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The evidence submitted by appellant subsequent to the September 30, 1998 Office decision, terminating his compensation includes a March 3, 1999 report, in which Dr. Ronald W. Sowa, a Board-certified orthopedic surgeon, diagnosed degenerative disc disease of the lumbar spine. Magnetic resonance imaging (MRI) of the lumbar spine on March 8, 1999 demonstrated advanced osteoarthritis of the lumbar spine with degenerative disc disease at L3-4 and L4-5, hypertrophic changes at L1-2 and L3-4 and no evidence of disc herniation.

In this case, after the Office properly terminated appellant's compensation benefits, he submitted additional medical evidence. Dr. Sowa, however, did not provide an opinion regarding the cause of appellant's condition and, while the MRI demonstrated degenerative disc disease, the scan failed to address the relationship of the reported findings to the 1978 work injury. As the record contains no evidence that appellant continued to be disabled after October 10, 1998 due to the April 10, 1978 employment injury, the Office properly determined that he was not entitled to compensation benefits after that date.

The decisions of the Office of Workers' Compensation Programs dated June 22, 1999 and September 30, 1998 are hereby affirmed.

Dated, Washington, D.C.
February 24, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member