

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN STARACE and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Westbury, NY

*Docket No. 99-1627; Submitted on the Record;
Issued February 16, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant had disability on or after March 13, 1998 due to his April 9, 1996 employment injury.

The Board finds that appellant did not have disability on or after March 13, 1998 due to his April 9, 1996 employment injury.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.³ Once the Office of Workers' Compensation Programs has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

In the present case, the Office accepted that appellant sustained an employment-related aggravation of lumbar arthritis on April 9, 1996 and paid compensation for periods of disability.⁷ By decision dated March 13, 1998, the Office terminated appellant's compensation effective March 29, 1998 on the grounds that he had no disability due to his April 9, 1996 employment injury after that date. The Office based its termination on the opinion of an impartial medical examiner. By decision dated April 6, 1999, the Office denied modification of its March 13, 1998 decision.

The Office had determined that there was a conflict in the medical opinion between Dr. Richard S. Goodman, appellant's attending Board-certified orthopedic surgeon and Dr. Richard A. Pearl, a Board-certified neurologist acting as an Office referral physician, on the issue of whether appellant continued to have residuals of the April 9, 1996 employment injury.⁸ In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Noah Finkel, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.⁹ In situations where 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.¹⁰

The Office met its burden of proof to terminate appellant's compensation effective March 29, 1998 by determining that the weight of the medical evidence rested with the well-rationalized opinion of the impartial medical examiner, Dr. Finkel. The December 26, 1996 report of Dr. Finkel establishes that appellant had no disability due to his April 9, 1996 employment injury after March 29, 1998.

The Board has carefully reviewed the opinion of Dr. Finkel and notes that it has reliable, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Finkel's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Finkel provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.¹¹ Dr. Finkel provided

⁷ Appellant had sustained prior back injuries in 1987 and 1992. He retired from the employing establishment in August 1996.

⁸ In a report dated April 15, 1996, Dr. Goodman diagnosed traumatic aggravation of preexisting lumbosacral arthritis and indicated that appellant was totally disabled. In a report dated August 2, 1996, Dr. Pearl indicated that appellant did not have any disability on a neurological basis.

⁹ Section 8123(a) of the Act provides in pertinent part: "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." 5 U.S.C. § 8123(a).

¹⁰ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹¹ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

medical rationale for his opinion by explaining that appellant's April 9, 1996 employment injury was of such a nature that it would have resolved itself. He explained appellant's continuing problems by indicating that they were due to preexisting conditions including underlying arthritis and degenerative disc disease.¹²

After the Office's March 13, 1998 decision, terminating appellant's compensation effective March 29, 1998, appellant submitted additional medical evidence which he felt showed that he was entitled to compensation after March 29, 1998 due to residuals of his April 9, 1996 employment injury. Given that the Board has found that the Office properly relied on the opinion of the impartial medical examiner, Dr. Finkel, in terminating appellant's compensation effective March 29, 1998 the burden shifts to appellant to establish that he is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that he had residuals of his April 9, 1996 employment injury after March 29, 1998.¹³

Appellant submitted a May 26, 1998 report in which Dr. Richard Weiss, an attending Board-certified orthopedic surgeon, diagnosed "degenerative disc disease, lumbar spine with retrolisthesis and kyphosis" and indicated that these conditions were due to the April 9, 1996 employment injury. Dr. Weiss noted that appellant was disabled from his former work at the employing establishment. In a report dated January 18, 1999, Dr. Weiss stated that appellant's disability was due both to his preexisting condition and the April 9, 1996 employment injury. These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain adequate medical rationale in support of their conclusions on causal relationship.¹⁴ Dr. Weiss did not adequately explain how the accepted employment injury, temporary aggravation of lumbar arthritis, could cause disability more than two years after the fact. Nor did he explain why appellant's continuing problems were not solely due to his preexisting condition.

The decision of the Office of Workers' Compensation Programs dated April 6, 1999 is affirmed.¹⁵

Dated, Washington, D.C.

¹² Appellant claimed that Dr. Finkel did not adequately evaluate the medical evidence, including diagnostic testing obtained in November 1996, but a review of his report shows that he gave sufficient consideration to the relevant medical evidence. Appellant also alleged that Dr. Finkel did not consider his knee and upper extremity conditions, but these conditions have not been accepted as employment related and the medical evidence does not otherwise support such a finding.

¹³ Appellant alleged that the Office applied an improper standard of review in its April 6, 1999 decision. Although the Office made reference to "clear evidence of error," the Board notes that the content of the decision, when read in whole, shows that the Office applied the proper standard of review.

¹⁴ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁵ The record also contains a March 24, 1999 Office decision concerning attorney's fees. Appellant has not requested reconsideration of this decision and the matter is not currently before the Board.

February 16, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member