

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD D. FRANKHOUSER and DEPARTMENT OF THE ARMY,
ARMY CORPS OF ENGINEERS, Pittsburgh, PA

*Docket No. 00-56; Submitted on the Record;
Issued May 1, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs discharged its burden of proof to terminate appellant's compensation benefits effective April 25, 1999; and (2) whether appellant has established that he has any continuing disability causally related to his accepted employment injuries.

The Board has duly reviewed appellant's claim on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

On February 8, 1991 appellant, then a 49-year-old survey technician, slipped in the performance of duty jarring his back. The Office accepted appellant's claim for L4-5 lumbar disc syndrome and thoracic and lumbar dislocation. Appellant stopped work on February 12, 1991 and has not returned. The Office issued a notice of proposed termination of compensation on February 16, 1999. By decision dated April 14, 1999, the Office terminated appellant's benefits. Appellant requested an oral hearing but subsequently withdrew his request and requested reconsideration instead. In a decision dated July 20, 1999, the Office found the evidence submitted on reconsideration to be insufficient to warrant modification of the prior decision.¹

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² 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

¹ Following the Office's July 20, 1999 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching its final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.⁵

In this case, appellant's attending physician, Dr. Fred C. Edge, a physiatrist, continued to support appellant's disability and need for medical treatment. In a report dated June 23, 1997, he diagnosed chronic lumbar disc herniation and chronic myofascial pain syndrome with associated fibromyofascitis. Dr. Edge stated that appellant would never be able to return to regular work duties due to the severity and instability of his condition, which causes severe exacerbations with increased activities and added that recent functional capacity evaluation revealed severe low back dysfunction in all planes and ranges of motion. He stated that appellant's treatment consisted of active and passive modalities and trigger point injections to treat his persistent bilateral lumbar spasms, palpable trigger points and fibrous adhesions. In a report dated July 2, 1998, Dr. Edge stated that appellant's prognosis was poor due to the severity of the original injury, poor response to treatment and his history of frequent exacerbation. He concluded that appellant was totally disabled and unable to engage in any work-related activities on a regular basis.

The Office referred appellant for a second opinion evaluation. In a report dated July 29, 1997, Dr. Robert M. Yanchus, a Board-certified orthopedic surgeon, noted appellant's history of injury, reviewed the medical evidence of record and performed a physical examination. He noted that appellant had sustained an L4-5 disc herniation, which was not considered severe enough to warrant surgery, as the only true indication for disc surgery is a Cauda Equina syndrome. Dr. Yanchus stated that appellant had recovered from his work injury and could perform medium work, consisting of occasional lifting of 50 pounds and frequent lifting of 20 pounds. He concluded that appellant needed no further treatment beyond weight loss, daily home back exercises and the use of a lumbosacral support. On an accompanying work capacity evaluation form, Dr. Yanchus indicated that appellant could perform medium work, 8 hours a day, with limitations on lifting more than 50 pounds occasionally and 20 pounds frequently.

Section 8123(a) of the Federal Employees' Compensation Act⁶ provides, "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." In this case, in accordance with the Act, the Office referred appellant for an impartial medical evaluation by Dr. W. Scott Nettrour, a Board-certified orthopedic surgeon. In a report dated December 17, 1998, Dr. Nettrour reviewed appellant's history of injury, the statement of accepted facts and the medical evidence of record and performed a physical examination. He noted the presence on x-ray of mild degenerative lumbar disc disease

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).

consistent with appellant's age and stated his impression as one of persistent low back pain of undetermined etiology with normal physical and neurological examination of the lower extremities and nothing to suggest any degree of impairment of function of his low back. Dr. Nettrour opined that appellant would be capable of returning to his usual work as a survey technician, 8 hours a day, 40 hours a week and was unlikely to require significant medical care in the future management of his low back complaints. He explained his conclusions, stating that the degree of back impairment described by appellant was not supported by hard physical findings on examination, or by the imaging studies which he had reviewed and that there were gross inconsistencies in the physical examination results which could not be explained on a musculoskeletal basis. Dr. Nettrour concluded that appellant had sustained a mild, at moderate most, musculoligamentous soft tissue strain of the lumbosacral spine, which would have been expected to resolve over a period of four to six weeks and that appellant had fully recovered from any and all injuries sustained at work on February 8, 1991.

Upon receipt of Dr. Nettrour's report, the Office issued a notice of proposed termination of benefits and allowed appellant time to submit additional medical evidence. Appellant submitted a detailed March 12, 1999 report and accompanying work capacity evaluation form from Dr. Edge, in which the physician disagreed with the conclusions of Dr. Nettrour and reiterated his earlier opinion that appellant is totally disabled from his current job classification and continues to require medical treatment. In situations where there are 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 on a proper factual background, must be given special weight.⁷ As Dr. Nettrour's report was based on a proper factual background and based on objective physical findings in support of his conclusion that appellant was no longer disabled and had no residuals of his accepted employment injury, his report is entitled to the weight of the medical evidence and the Office properly relied on this report in determining that appellant was no longer entitled to compensation, effective April 25, 1999. The additional reports submitted from Dr. Edge are not sufficient to overcome the weight accorded Dr. Nettrour's medical opinion as an impartial medical specialist.⁸

The Board further finds that appellant did not meet his burden to establish that he has any continuing disability causally related to his accepted employment conditions.

Following the termination of his compensation benefits, the burden of proof shifted back to appellant to support his claim of employment-related continuing disability with probative medical evidence. The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized 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

⁷ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

⁸ *See Dorothy Sidwell*, 41 ECAB 857 (1990).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹ In this regard, appellant submitted several additional reports from Dr. Edge, which offer no new opinion or findings with regard to appellant's accepted back condition and are, therefore, repetitious of his earlier reports and thus of limited probative value.¹⁰ Appellant additionally submitted a March 30, 1999 report from Dr. William W. Frost, a Board-certified physiatrist, to whom he was referred by Dr. Edge. In his report, Dr. Frost stated that appellant had undergone a functional capacity isometric disability evaluation using Dynatron 2000 equipment. After reviewing appellant's medical records and performing his physical examination and testing, he diagnosed: (1) chronic cauda-equine-like syndrome with a chronic lumbar strain and sprain and pelvic ring instability featured by a right posterior innominate with right-on-left sacral torsion, a complex pelvic ring instability, related to the February 8, 1991 injury; (2) secondary bilateral sacroilitis with sclerosis, left greater than right and a secondary sacroiliac ligamentous dysfunction with confirmatory bilateral gluteus medius syndrome, also related to the accepted employment injury; (3) interspinous ligamentous deficit and dysfunction secondary to the L4-5 herniation and degeneration with less severe dysfunction at L3-4 and L5-S1, also causally related to the employment injury; (4) fibromyositis; and (5) chronic pain syndrome. Dr. Frost concluded that appellant was totally disabled from his regular job duties and required ligamentous reconstruction therapy in addition to the treatment previously prescribed by Dr. Edge. The Board finds that, as Dr. Frost did not explain why he concluded the diagnosed conditions were causally related to appellant's accepted 1991 back injuries, his report is not sufficiently rationalized on the issue. Therefore, appellant failed to meet his burden of proof to establish that he has any continuing disability causally related to his accepted employment injuries.

⁹ *Joe L. Wilkerson*, 47 ECAB 604 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996).

¹⁰ *Kathy P. Roberts*, 45 ECAB 548 (1994).

The July 20 and April 14, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 1, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member