

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS C. ALBERT and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 02-1476; Submitted on the Record;
Issued May 15, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated compensation on the basis that he no longer continued to have any residual disability due to his accepted September 26, 1998 employment injury; and (2) whether appellant's degenerative back condition was aggravated by work factors.

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

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁴ 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.⁵

On September 30, 1998 appellant, then a 44-year-old distribution clerk, filed a traumatic injury claim (Form CA-1), alleging that he injured his back on September 26, 1998, while doing

¹ *Gloria J. Godfrey*, 52 ECAB ____ (Docket No. 00-502, issued August 27, 2001).

² *Lynda J. Olson*, 52 ECAB ____ (Docket No. 00-2085, issued July 11, 2001).

³ *Manuel Gill*, 52 ECAB ____ (Docket No. 99-915, issued March 2, 2001).

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

⁵ *Franklin D. Haislah*, 52 ECAB ____ (Docket No. 01-208, issued August 1, 2001).

mail preparation.⁶ The Office accepted the claim for lumbar sprain. Appellant stopped work on September 30, 1998 and returned to limited-duty work four hours a day on January 6, 1999 and to eight hours on May 13, 1999.

In order to determine whether appellant remained disabled, the Office requested medical evidence from appellant. Based on the evidence submitted from Dr. Sofjan Lamid, appellant's attending physician, and Dr. Ralph P. Ratz, an Office referral physician, the Office found a conflict in the medical opinion evidence, and referred appellant to Dr. Gary R. Glynn, a Board-certified physiatrist, to resolve whether appellant's September 26, 1998 employment injury aggravated his preexisting right knee condition and whether he had any residuals of his accepted employment injury.

In a June 2, 2000 report, Dr. Glynn reviewed appellant's history of injury and medical treatment. He reviewed diagnostic studies and listed his findings on examination. He concluded that there was no electrodiagnostic or clinical evidence supporting a worsening in appellant's condition since January 1998. Dr. Glynn noted that "Clinically, he does appear to be neurologically intact without any evidence of active radiculopathy." Regarding appellant's back problems, he opined that "the fact that the symptoms are overwhelmingly in the back suggests that the degenerative changes and some soft tissue issues are more likely to be the etiology of the pain, with the minimal L5-S1 disc involvement probably not being a very important issue." Dr. Glynn opined that he doubted that appellant's September 26, 1998 employment injury "had a significant impact on the status of his degenerative disc or aggravated a bulging disc and almost certainly did not aggravate radiculopathy."

Dr. Glynn was asked by the Office by letter dated July 6, 2000, to clarify whether appellant's September 6, 1998 injury caused a temporary or permanent aggravation of appellant's preexisting back condition. The Office requested clarification on the actual date of when the temporary aggravation of the preexisting condition would have ceased. Dr. Glynn, in supplemental reports dated July 15 and 31, 2000, stated that appellant's temporary aggravation would have resolved by September 1999, one-year postinjury. He reiterated that appellant's accepted injury had caused a temporary aggravation of appellant's preexisting degenerative disc disease.

On August 31, 2000 the Office issued a notice of proposed termination of medical and wage-loss compensation benefits for appellant's September 30, 1998 employment injury. In response, appellant submitted an April 14, 2000 report from Dr. Windsor S. Dennis, an attending physician, and a July 28, 2000 report from Dr. S. Kewalramani, an attending Board-certified physiatrist.

In an April 14, 2000 report, Dr. Dennis concluded:

"The problem at this point is that even though [appellant] suffered the incident on September 26, 1998 and that case was accepted for a lumbar strain, the fact is he had confirmed deep degenerative disc disease at Tulane University Hospital as early as March 23, 1998. His activities had been limited and he had received a

⁶ This was assigned claim number 16-0323145.

partial disability from March 23, 1998 through and (sic) indefinite period. Even preceding the March 23, 1998 studies [appellant] had and (sic) MRI [magnetic resonance imaging] of the lumbar spine on March 5, 1998. That test demonstrated degenerative disc at L5-S1 with circumferential type one annular bulge and hypertrophic osteophyte formation. An MRI of the lumbar spine the same year by West Jefferson Imaging Center revealed moderate dessication (sic) compatible with disc degeneration at L5-S1. There was abnormal posterior penetration of the disc material through the annulus at L5-S1. This resulted in posterior broad based L5-S1 disc protrusion disc deformity.”

The Office finalized the termination of appellant’s compensation benefits by decision dated October 4, 2000 relying upon the weight of the impartial medical examiner.

A request for reconsideration of the termination was filed by appellant but that was not properly discovered until May 1, 2001. Evidence submitted in support of his request for reconsideration consisted of MRI tests dated March 5 and 27, 1998, a March 28, 1998 electromyographic summary, clinic notes dated October 7, 1999, January 10 and 12, and April 20, May 1, June 8 and July 24, 2000 from the Anesthesia Pain Clinic, a physical therapy prescription dated November 24, 1999, a March 23, 2000 report by Dr. Lamid, an attending Board-certified psychiatrist and an April 4, 2000 rescheduling note.

By decision dated December 19, 2001, the Office denied modification of the October 4, 2000 decision.

Section 8123(a) of the Federal Employees’ Compensation Act provides: “[i]f 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.”⁷ Because of the conflict in medical opinion evidence between Drs. Lamid and Katz, the Office referred appellant to an impartial medical examiner, Dr. Glynn, a Board-certified psychiatrist.

Where there exists a conflict of medical opinion and the case is referred to an impartial 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.⁸

In order to resolve the conflict regarding the issue of whether appellant had any residuals due to his accepted September 26, 1998 employment injury, the Office referred appellant to Dr. Glynn, a Board-certified orthopedic surgeon, for an independent medical examination. In his reports, dated June 2 and July 31, 2000, Dr. Glynn noted the history of injury and provided physical examination findings. He stated that there was no electrodiagnostic or clinical evidence supporting a worsening in appellant’s condition since 1998. Dr. Glynn opined that he doubted that appellant’s employment injury “had a significant impact on the status of his degenerative disc or aggravated a bulging disc.” In a supplemental report, he opined that the temporary

⁷ 5 U.S.C. § 8123(a); see *Fred Simpson*, 53 ECAB ____ (Docket No. 02-802, issued August 27, 2002).

⁸ *James M. Frasher*, 53 ECAB ____ (Docket No. 01-362, issued September 25, 2002).

aggravation of appellant's condition would have resolved by September 1999. These reports were sufficiently probative, rationalized and based upon a proper factual background to support the termination of appellant's compensation benefits. Therefore, the Office acted correctly in according the opinion of Dr. Glynn the special weight of an impartial medical examiner and properly terminated compensation on the basis that appellant no longer continued to have any residual disability due to his accepted September 26, 1998 employment injury.⁹

The Board finds appellant has failed to establish that his degenerative back condition was aggravated by work factors.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹⁰

To establish that an injury was sustained in the performance of duty in on occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹¹ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.

On October 13, 2000 appellant filed an occupational disease claim alleging that his lower back degenerative joint disease was employment related.¹²

In a November 3, 2000 letter, the Office informed appellant that the evidence of record was insufficient to establish his claim for lumbar degenerative disc disease and advised him as to the type of information to submit.

By letter dated December 15, 2000, the employing establishment responded to appellant's occupational disease claim contesting that his current job involved heavy lifting,

⁹ *Gary R. Seiber*, 46 ECAB 215 (1994).

¹⁰ *Doyle W. Richetts*, 48 ECAB 167 (1996).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *Ruth Seuell*, 48 ECAB 188 (1996).

¹² This was assigned claim number 16-2007040.

twisting, stooping and bending. The employing establishment stated that appellant had been reassigned to a light-duty position from March 1988 to the present.

Appellant submitted medical reports to support his claim.

In a July 26, 1999 report, Dr. Dennis opined:

“If [appellant] were engaged in lifting and were not able to stoop to bend his knees as required in proper body mechanics to keep the strain off his lower back, then such activity would cause sufficient force on his back that would result in the degenerative changes that have occurred over time.”

Now that these additional studies are in, I can say that this is clear and convincing evidence that the injury [appellant] had in 1998 did not resolve over a short-term basis because it involved the aggravation of the preexisting conditions of the degenerative joint disease, protruding disc disease and radicular pain, all with the ability to cause significant pain and for which [appellant's] work has been a contributing factor and for which he should receive and (sic) adequate award for the disability of the more significant back problems of the disc and the DJD rather than limited only to lumbar strain.”

In a July 28, 2000 report, Dr. Laxman S. Kewalramani, an attending Board-certified physiatrist, based upon a physical examination, reported that appellant “had ongoing lumbar pain problems for a long period of time, probably associated with spondylo arthropathy” and his repeated pivoting, lifting and bending activities at work “probably had continued to cause increase in his lumbar pain.”

In a report dated November 17, 2000, Dr. Lamid diagnosed aggravation of appellant's degenerative lumbar disc disease. He concluded that appellant's employment had aggravated his condition by noting that “the type of work he was doing such as heavy weight lifting, pushing and pulling parcels weight 70 pounds or more, aggravated his degenerative lumbar disc disease.” Dr. Lamid concluded that the aggravation by his employment duties “resulted in moderate to severe back pain.”

By decision dated February 5, 2001, the Office found the evidence of record insufficient to establish a causal relationship between his employment duties and aggravation of his preexisting degenerative lumbar disc disease.

Appellant requested an oral hearing on the denial of his occupational disease claim in a letter dated February 11, 2001.

By decision dated May 9, 2001, a hearing representative remanded the case for further development on appellant's occupational disease claim.

In a November 30, 2001 report, Dr. Frederick L. Keppel, a second opinion Board-certified orthopedic surgeon, opined that appellant's lumbar condition had not been aggravated or caused by his employment duties. Regarding appellant's September 26, 1998 employment injury, Dr. Keppel opined that he appeared “to have sustained a soft tissue lower back injury,

which should have resolved within six to eight weeks. Any residuals from this second injury on September 26, 1998 should have been resolved in at least two months.”

By decision dated February 27, 2002, the Office found the evidence insufficient to establish a causal relationship between his degenerative disc disease and his employment duties.

In this case, the medical reports are insufficient to meet appellant’s burden. Drs. Dennis, Kewalramani and Lamid, appellant’s attending physicians, opined in their reports that appellant’s work activities of lifting and bending aggravated his preexisting degenerative disc disease. Dr. Dennis based his opinion on inaccurate facts. He thought appellant was doing heavy lifting in his position when appellant had been on light duty since March 1988. Thus, Dr. Dennis’ opinion on causal relationship is thus severely diminished due to his reliance on an inaccurate factual history.¹³ Furthermore, his opinion is also of diminished probative value as it is unrationalized. In his July 26, 1999 and April 14, 2000 reports, Dr. Dennis opined that appellant’s work activities had aggravated his degenerative disc disease without providing any supporting rationale. Such a speculative opinion has little probative value.¹⁴ Dr. Kewalramani, in his July 28, 2000 report, concluded that appellant’s lumbar pains were probably due to his repeated pivoting, lifting and bending activities. His opinion, however, is speculative and ambiguous since he stated that appellant’s lumbar pains were probably due to his employment duties. The Board has held that a medical opinion which is speculative and equivocal is of little probative value.¹⁵ Dr. Lamid stated that appellant’s work activities had aggravated his preexisting degenerative lumbar disc disease in his November 17, 2000 report. He, however, did not provide a rationalized medical opinion on the cause of appellant’s degenerative disc disease.¹⁶ In addition Dr. Lamid’s opinion was based on an inaccurate factual history, *i.e.*, that appellant’s employment duties included repeated lifting, pivoting and bending and, thus, is of diminished probative value. Moreover, Dr. Keppel, a second opinion Board-certified orthopedic surgeon physician, while diagnosing degenerative disc disease, concluded that it was consistent with chronic degeneration rather than work activities. Thus, appellant has failed to meet his burden of proof as he has failed to submit any medical rationalized medical evidence explaining how and why his degenerative disc disease was aggravated by his employment duties.

¹³ *Thomas A. Faber*, 50 ECAB 566 (1999).

¹⁴ *See Samuel Senkow*, 50 ECAB 370, 377 (1999) (finding that, because a physician’s diagnosis of legionnaires’ disease was not definite and was unsupported by medical rationale, his report was insufficient to establish a causal relationship).

¹⁵ *See Wendell D. Harrell*, 49 ECAB 289-91 (1998).

¹⁶ *Annie L. Billingsley*, 50 ECAB 210, 213 (1998).

The decisions of the Office of Workers' Compensation Programs dated February 27, 2002 and December 19, 2001 are hereby affirmed.

Dated, Washington, DC
May 15, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member