United States Department of Labor
Employees' Compensation Appeals Board

ALFONSO C. AVILA, Appellant	)	
and	)	**Docket No. 05-504**
	)	**Issued: June 3, 2005**
DEPARTMENT OF THE INTERIOR, U.S. FISH & WILDLIFE SERVICE, Alamo, TX, Employer	)	

Appearances:
Alfonso C. Avila, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 22, 2004 appellant filed a timely appeal of the December 7, 2004 merit decision of the Office of Workers' Compensation Programs, which terminated his compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office properly terminated appellant's compensation and medical benefits effective November 27, 2004 on the basis that he recovered from his January 20, 1987 employment injury.

FACTUAL HISTORY

On January 20, 1987 appellant, then a 37-year-old laborer, injured his low back when he slipped in mud while pushing a wheel barrow full of concrete mix. He stopped working on January 21, 1987. The Office accepted appellant's claim for lumbar strain and he received appropriate wage-loss compensation. Although appellant was capable of performing light-duty

work, the employing establishment was unable to accommodate his work restrictions. The Office placed appellant on the periodic compensation rolls effective August 2, 1987. Appellant's temporary appointment with the employing establishment expired January 18, 1988.

Appellant participated in an Office-sponsored vocational rehabilitation program and he obtained certification as an automotive mechanic in August 1990. In January 1991, appellant obtained full-time employment as a mechanic's helper with a private aviation firm in McAllen, Texas. However, because of unfavorable business conditions, the firm's maintenance section closed and appellant was laid off on June 3, 1991. In an August 7, 1991 decision, the Office reduced appellant's compensation benefits effective June 3, 1991 based upon his ability to perform the duties of a mechanic's helper. For the next several years the Office continued to pay monthly compensation benefits based on appellant's loss of wage-earning capacity.[1]

As recently as March 23, 2004, Dr. Roberto Gonzalez, a treating physician, continued to diagnose employment-related acute lumbar strain.[2] He also found appellant capable of performing only light work with restrictions of no lifting in excess of 15 pounds and no stooping, bending or digging holes.

Dr. Jorge E. Tijmes, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on July 22, 2004 and diagnosed low back pain, low back strain and acquired lumbar spondylolysis at L5-S1. Physical examination revealed decreased range of motion in the lumbar spine with forward flexion and left and right side bending. A recently obtained x-ray revealed acquired spondylolysis at L5-S1. Dr. Tijmes stated that the residuals of appellant's January 20, 1987 injury had ceased in 1991 and appellant did not require further medical treatment for his employment injury. He attributed appellant's current complaints to spinal spondylolysis, which was not employment related.

The Office found a conflict in medical opinion between Dr. Tijmes and Dr. Gonzalez. Accordingly, the Office referred appellant for an impartial medical evaluation. In a report dated September 18, 2004, Dr. Steven J. Cyr, a Board-certified orthopedic surgeon and impartial medical examiner, noted that physical examination of the lumbar spine was essentially normal and there was no tenderness to palpation of the spinous process or the paraspinal musculature. Dr. Cyr also noted that appellant's x-ray revealed a Par's defect with no listhesis. He found that appellant's lumbar strain had resolved most likely around 1991. Appellant's current diagnosis was chronic L5-S1 spondylolysis without listhesis. Dr. Cyr concluded that appellant had returned to his preinjury baseline condition and was not currently disabled in any way. While appellant reported intermittent exacerbations of lumbar pain, Dr. Cyr stated that it did not limit him sufficiently to make him disabled. Additionally, Dr. Cyr noted that appellant was able to work relatively well with minimal restrictions despite his preexisting lumbar spondylosis and spondylolysis. He also indicated that appellant did not require further medical treatment.

[1] Appellant also earned a modest income from various employers and through self-employment. Beginning February 27, 1997 appellant obtained work as a pin chaser in a bowling alley earning $200.00 per week. As of December 8, 2003 appellant reported weekly earnings of $270.00.

[2] Dr. Gonzalez is a family practitioner who began treating appellant for his employment-related back injury on January 21, 1987.

On October 18, 2004 the Office issued a notice of proposed termination of compensation and medical benefits. The Office found that the impartial medical examiner's September 18, 2004 report represented the weight of the medical evidence of record. Appellant was afforded 30 days to submit any additional evidence or argument. He did not respond. By decision dated December 7, 2004, the Office terminated his medical benefits and wage-loss compensation effective November 27, 2004.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[3] Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[4] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[5] 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.[6]

ANALYSIS

The Office determined that a conflict of medical opinion existed based on the opinions of Drs. Gonzalez and Tijmes. Therefore, the Office properly referred appellant to an impartial medical examiner.[7] Dr. Cyr, the impartial medical examiner, reported that appellant's January 20, 1987 lumbar strain had resolved around 1991 and he returned to a preinjury baseline condition requiring no further medical treatment. The impartial medical examiner further noted that appellant's unrelated lumbar spondylosis and spondylolysis posed only minimal restrictions and did not render him disabled.

The Board finds that the Office properly relied on the impartial medical examiner's September 18, 2004 report in determining that appellant's January 20, 1987 employment injury had resolved. Dr. Cyr's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. Cyr also reported accurate medical and employment histories. Dr. Cyr found that appellant's accepted lumbar strain had resolved without residual and that he required no additional medical treatment. Accordingly, the Office properly accorded determinative weight to the impartial

[3] *Curtis Hall*, 45 ECAB 316 (1994).

[4] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[5] *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

[6] *Calvin S. Mays*, 39 ECAB 993 (1988).

[7] The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

medical examiner's findings.[8] As the weight of the medical evidence establishes that appellant's January 20, 1987 employment injury has resolved, the Office properly terminated appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective November 27, 2004.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[8] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).