United States Department of Labor
Employees' Compensation Appeals Board

JOHN T. LEE, Appellant	)	
and	)	**Docket No. 05-1517**
	)	**Issued: November 1, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 12, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 10, 2005 merit decision terminating his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation effective June 10, 2005 on the grounds that he had no residuals of his May 7, 2003 employment injury after that date.

FACTUAL HISTORY

On May 7, 2003 appellant, then a 57-year-old tractor trailer operator, filed a traumatic injury claim alleging that he sustained injury to his left hip, left leg and back, on that date when his right leg fell between the loading dock and a truck he was unloading. Appellant stopped work on May 9, 2003. The Office accepted that he sustained a low back strain and sciatica and paid appropriate compensation for periods of disability.

Appellant initially sought treatment from Dr. Michael T. Archdeacon, an attending Board-certified orthopedic surgeon. In a report dated May 29, 2003, Dr. Archdeacon indicated that x-ray testing of the low back and left lower extremity revealed no fracture or dislocation. He noted that appellant reported pain from the left buttock down the lateral side of the left leg to the knee along with some sciatic notch tenderness.[1]

Appellant returned to light-duty work on June 2, 2003 and stopped work again on August 23, 2003. Based on the reports of Dr. David W. Chow, an attending physician Board-certified in physical medicine and rehabilitation, the Office accepted that appellant had sustained a lumbosacral radiculopathy due to his May 7, 2003 employment injury.

The results of October 30, 2003 magnetic resonance imaging (MRI) scan testing of the low back showed mild to moderate disc bulges at L3-4 to L5-S1 with an annular tear at L3-4 but no significant nerve root compression or canal compromise. The results of March 15, 2004 MRI scan testing of the left hip showed very mild left-sided trochanteric bursitis without signs of facture, marrow edema or myositis. The findings of January 22, 2004 electromyogram (EMG) and nerve conduction testing yielded normal results with no evidence of a left lower extremity radiculopathy or other form of neuropathy.

Appellant returned to light-duty work for the employing establishment on May 4, 2004 based on the recommendations of Dr. Mark Goddard, an attending physician Board-certified in physical medicine and rehabilitation. Appellant also received treatment during this period, including low back steroid injections, from Dr. Lawrence A. Zeff, an attending Board-certified orthopedic surgeon.

In a report dated July 26, 2004, Dr. Rajbir S. Minhas, an attending Board-certified orthopedic surgeon, reported that examination of the low back revealed normal gross motor coordination with tenderness of the facet joints and iliac crest region. Dr. Minhas noted that workers' compensation allowed for the diagnosis of lumbar sprain and indicated that he would amend appellant's claim to include facet joint syndrome and possible ileac crest syndrome.[2]

The Office referred appellant to Richard T. Sheridan, a Board-certified orthopedic surgeon, for a second opinion examination regarding whether he continued to have residuals of his May 7, 2003 employment injury.

In a report dated September 29, 2004, Dr. Sheridan determined that appellant no longer had residuals of his May 7, 2003 employment injury. He indicated that on examination appellant exhibited no abnormal rotation or flexion of the trunk, that he complained of nondermatomal hypesthesia in the left lower extremity and that he had no alopecia or pedal edema in his left lower extremity. Dr. Sheridan stated that appellant did not have employment-related facet joint syndrome or ileac crest syndrome and indicated that his lumbosacral radiculopathy, low back

[1] Dr. Archdeacon noted that appellant had some mild arthrosis of the hips and left knee, which did not appear to be employment related.

[2] Dr. Minhas later produced reports with similar findings, including a report dated November 16, 2004.

strain and sciatica had resolved. He posited that appellant's May 7, 2003 injury would not prevent him from performing his regular duties.

The Office asked Dr. Goddard and Dr. Zeff to comment on the opinion of Dr. Sheridan.

In a report dated November 8, 2004, Dr. Goddard stated that he agreed with Dr. Sheridan that appellant's lumbosacral radiculopathy had resolved, but that as of May 27, 2004 he still had restrictions in his lumbosacral flexion, which indicated that his lumbar strain had not resolved. He indicated that he did feel comfortable with liberalizing appellant's work restrictions.

In a report dated December 3, 2004, Dr. Zeff stated that he completely disagreed with Dr. Sheridan's opinion and indicated that the absence of physical findings on examination did not rule out the presence of a disc lesion causing low back pain. He stated that appellant's pain was identified by a positive discography and noted that he could return to work.[3]

The Office determined that there was a conflict in the medical evidence between appellant's attending physicians and Dr. Sheridan regarding whether appellant continued to have residuals of his May 7, 2003 employment injury. It referred appellant to Dr. Alan R. Kohlhaus, a Board-certified orthopedic surgeon, for examination and an opinion on this matter.

In a report dated March 11, 2005, Dr. Kohlhaus described appellant's May 7, 2003 injury and his history of medical treatment and diagnostic testing. He noted that appellant complained of discomfort starting in the upper back area into his left hip with numbness in the front of both legs. Dr. Kohlhaus stated that on examination appellant exhibited straight leg raising to 80 degrees without discomfort and that he had full range of motion of his ankles. He indicated that appellant had nondermatomal decreased sensation in the front of both thighs and left calf area and indicated that there was no tenderness about either ileac crest. Dr. Kohlhaus indicated that appellant had no objective findings on examination related to the May 7, 2003 injury but that he had degenerative disc disease of the low back, which was due to the natural aging process rather than the May 7, 2003 injury. He indicated that appellant sustained lumbosacral radiculopathy, low back strain and sciatica, due to the May 7, 2003 injury on a temporary basis in that these conditions had since resolved. Dr. Kohlhaus concluded that appellant did not require any work restrictions due to residuals of his May 7, 2003 employment injury.[4]

By letter dated May 10, 2005, the Office advised appellant of its proposed termination of his compensation. It noted that the weight of the medical opinion regarding whether he had continuing employment-related residuals rested with the opinion of Dr. Kohlhaus.

In a letter dated May 19, 2005, appellant argued that he still had disabling residuals of the May 7, 2003 injury and alleged that Dr. Sheridan and Dr. Kohlhaus did not perform adequate examinations. He submitted a May 3, 2005 report in which Dr. Minhas stated that workers' compensation allowed for the diagnosis of lumbar sprain and indicated that appellant's claim was pending the acceptance of facet joint syndrome and ileac crest syndrome.

[3] The record contains a September 8, 2004 discography test with positive results between L3-4 and L5-S1.

[4] Appellant stopped working for the employing establishment on March 10, 2005.

By decision dated June 10, 2005, the Office terminated appellant's compensation effective June 10, 2005 on the grounds that he had no residuals of his May 7, 2003 employment injury after that date.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,[5] once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[6] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[7] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[8]

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."[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]

ANALYSIS

The Office properly determined that there was a conflict in the medical opinion between Dr. Sheridan, a Board-certified orthopedic surgeon acting as an Office referral physician and appellant's attending physicians and on the issue of whether he continued to have residuals of the May 7, 2003 employment injury -- lumbosacral radiculopathy, low back strain and sciatica.

In a report dated September 29, 2004, Dr. Sheridan noted that appellant had limited findings on examination and determined that he no longer had residuals of his May 7, 2003 employment injury. He also stated that appellant did not have employment-related facet joint syndrome or ileac crest syndrome. In contrast, Dr. Zeff, an attending Board-certified orthopedic surgeon, indicated in a December 3, 2004 report that he completely disagreed with Dr. Sheridan's opinion and asserted that appellant's continuing employment-related residuals were identified by a positive discography. On November 8, 2004 Dr. Goddard, an attending physician Board-certified in physical medicine and rehabilitation, indicated that he agreed that appellant's lumbosacral radiculopathy had resolved. He felt that appellant still had restrictions in

[5] 5 U.S.C. §§ 8101-8193.

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

[7] *Id.*

[8] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[9] 5 U.S.C. § 8123(a).

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

his lumbosacral flexion which indicated that his lumbar strain had not resolved. In a report dated November 16, 2004, Dr. Minhas, an attending Board-certified orthopedic surgeon, suggested that appellant had an employment-related lumbar sprain, facet joint syndrome and ileac crest syndrome.

In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Kohlhaus, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.[11]

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Kohlhaus, the impartial medical specialist selected to resolve the conflict in the medical opinion.[12] The March 11, 2005 report of Dr. Kohlhaus establishes that appellant had no disability due to his May 7, 2003 employment injury after June 10, 2005. In his report, Dr. Kohlhaus determined that appellant sustained lumbosacral radiculopathy, low back strain and sciatica due to the May 7, 2003 injury only on a temporary basis in that these conditions had since resolved.

The Board has carefully reviewed the opinion of Dr. Kohlhaus and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Kohlhaus' 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.[13] Dr. Kohlhaus provided medical rationale for his opinion by explaining that appellant had no objective findings on examination related to the May 7, 2003 injury.[14] He accounted for appellant's continuing medical problems by noting that these problems were caused by degenerative disc disease of the low back which was due to the natural aging process rather than the May 7, 2003 injury. Dr. Kohlhaus indicated that the injuries that appellant sustained on May 7, 2003 were the type of injuries that would have long since resolved and that there were no examination or diagnostic testing results which showed that they continued to exist.[15] Therefore, the Office properly relied on the opinion of Dr. Kohlhaus to terminate appellant's compensation.

[11] *See supra* note 9 and accompanying text.

[12] *See supra* note 10 and accompanying text.

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

[14] For example, Dr. Kohlhaus noted that on examination appellant exhibited straight leg raising to 80 degrees without discomfort, that he had full range of motion of his ankles and that he had nondermatomal decreased sensation in the front of both thighs and left calf area with no tenderness about either ileac crest.

[15] For example, the findings of January 22, 2004 EMG and nerve conduction testing yielded normal results with no evidence of a left lower extremity radiculopathy or other form of neuropathy. Appellant submitted a May 3, 2005 report in which Dr. Minhas suggested that he sustained employment-related facet joint syndrome and ileac crest syndrome. The Board notes that these conditions have not been accepted by the Office and the evidence of record does not support the existence of such conditions.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective June 10, 2005 on the grounds that he had no residuals of his May 7, 2003 employment injury after that date.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2005 decision of the Office of Workers' Compensation Programs' is affirmed.

Issued: November 1, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board