

**United States Department of Labor
Employees' Compensation Appeals Board**

W.W., Appellant

and

**DEPARTMENT OF COMMERCE, CENSUS
BUREAU, Washington, DC, Employer**

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**Docket No. 06-1333
Issued: November 21, 2006**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 10, 2006 appellant filed a timely appeal from a February 13, 2006 merit decision of a hearing representative of the Office of Workers' Compensation Programs affirming the termination of his compensation and authorization for medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective March 20, 2005 on the grounds that he had no further disability causally related to his October 29, 2000 employment injury; (2) whether the Office properly terminated authorization for medical treatment; and (3) whether appellant has established that he had continuing employment-related disability after March 20, 2005.

FACTUAL HISTORY

On November 2, 2000 appellant, then a 48-year-old field representative filed a claim for an October 29, 2000 traumatic injury to his wrists, left leg, left shoulder and back which

occurred when he was struck by a motor vehicle while riding a bicycle. He stopped work on October 29, 2000 and did not return. The Office accepted appellant's claim for lumbar and cervical strain and placed him on the periodic rolls effective December 30, 2001.¹

On August 12, 2003 the Office requested that appellant submit an updated medical report from his attending physician addressing his current medical condition and its relationship to his employment injury. In a progress report dated September 26, 2003, Dr. Jeffrey D. Sabloff, a Board-certified orthopedic surgeon, related:

“[Appellant is] here basically because a letter was sent to him to come here to be reevaluated. I have [not] seen him since May of 2001. He tells me since that time he has had an automobile accident and is being treated by Dr. Salter for basically the same area, so I told him I do [not] really know what I can tell him.”

Dr. Sabloff noted that, when he last treated appellant, his condition had not resolved. However, he could not comment on appellant's current condition and noted that the automobile accident would have “some pertinence in his continued symptomatology.” Dr. Sabloff recommended that Dr. Salter address any work restrictions and indicated that he could only say that it was “another injury superimposed on his old injury.”

By letter dated August 27, 2004, the Office requested that Dr. Sabloff provide a detailed report discussing appellant's current condition and work restrictions. In a progress note dated August 27, 2004, Dr. Sabloff noted that appellant related that Dr. Salter did not want to treat him for his automobile accident due to his preexisting employment-related neck and back condition. He stated:

“So [appellant] presents today, still on compensation, still having problems with his neck and low back and still not feeling any better. Again we have not done anything in treatments since September 2003 and actually at that time we were just evaluating it. The last time we actually gave [appellant] any definite treatment was in May 2001.”

Dr. Sabloff recommended a magnetic resonance imaging (MRI) scan of appellant's neck and back.

By letter dated September 29, 2004, the Office referred appellant to Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated October 27, 2004, Dr. Draper discussed the October 2000 employment injury. Dr. Draper noted that an MRI scan of the cervical spine dated January 2, 2002 revealed “mild to moderate degenerative changes in the cervical spine, worse at C4-5 where a mild central disc protrusion slightly impresses the cord.”² An MRI scan of the cervical spine dated October 4, 2004 showed mild reversal of the cervical lordosis possibly due to muscle spasm, central disc herniation at C3-

¹ In a decision dated January 11, 2001, the Office denied appellant's claim after finding that he did not establish fact of injury. By decision dated April 17, 2001, an Office hearing representative reversed the January 11, 2001 decision and accepted the claim for cervical and lumbar strain.

² The date of the MRI scan is January 2, 2001 rather than January 2, 2002.

4, C4-5 and C5-6 and a disc osteophytes complex at C6-7 with right foraminal stenosis. Dr. Draper also reviewed an MRI scan of the lumbar spine performed on June 4, 2001 which revealed mild degenerative disc disease and a lumbar MRI scan dated October 14, 2004 which showed mild disc bulges at L3-4 and L5-S1 with facet arthropathy. On examination, he found no evidence of muscle spasm of the cervical spine and normal cervical lordosis. Dr. Draper diagnosed cervical strain, lumbosacral strain, preexisting degenerative disease of the cervical and lumbar spine, not work related and bilateral carpal tunnel syndrome, also not work related. He opined that appellant sustained soft tissue injuries due to his employment injury which were no longer active and that his “complaints now are associated with the preexisting degenerative disc disease and not associated with the accident.” Dr. Draper found that he could work full time with restrictions on lifting over 60 pounds. He specified that the restrictions resulted from the nonemployment-related condition of degenerative disc disease of the neck and back.

In a progress report dated October 29, 2004, Dr. Sabloff noted that an MRI scan of appellant’s neck showed central disc herniation at C3-4, C4-5 and C5-6 and “some reversible cervical lordosis.” Appellant attributed the majority of his problems to his neck rather than low back. Dr. Sabloff stated, “[t]he problem at this point is what we are going to do as again we have only seen [appellant] twice in the last two or three years.”

By letter dated November 8, 2004, the Office requested that Dr. Sabloff review and comment on Dr. Draper’s report.

On December 22, 2004 the Office notified appellant that it proposed to terminate his compensation and authorization for medical treatment on the grounds that he had no further employment-related disability or condition.

In a report dated November 19, 2004, received by the Office on January 26, 2006,³ Dr. Sabloff noted that appellant continued to complain of problems with his neck and low back. Regarding the second opinion examination, he stated that he did not “understand how [Dr. Draper] can indicate that the ensuing problems that some one has post injury cannot be related to the injury. It is obvious that [appellant] had preexisting degenerative changes, but there are a very few people in their 40’s and 50’s, who do not.” He continued:

“So, my question always is to just rule out an injury to the neck and back in any one who beyond the age of 45, might have preexisting degenerative changes. The obvious answer should be, in my 20 some years experience, it is consistent with [appellant’s] history and we feel that his symptoms are related to the accident and he is still in need of treatment.... There was a long period of time that we did not see him from September 2003 until August 2004, almost a year. At that time, [appellant] did injure his knee and was seen for his back as well. There is a question of some exacerbation at that time from the car accident. The question is basically whether one believes [appellant’s] story as to the symptomatology. He feels that the back pain did not get significantly worse post auto[mobile] accident.”

³ The Office received page one of Dr. Sabloff’s November 19, 2004 report on December 13, 2004.

“As a matter of fact, the treatment was mostly on [appellant’s] knee and he did have an arthroscopy of his right knee, so it is at least apparent to us that the back and neck were significantly injured at the time of the injury [on] October 29, 2000. There may have been a period of time when the back was somewhat worse post auto[mobile] accident, but the residuals at least as far as we can see appear to be related to his injury and we are stating that because he has been fairly consistent at the times we have seen him.”

By letter dated January 20, 2005, appellant disagreed with the proposed termination of his compensation, arguing that Dr. Sabloff attributed his condition to his employment injury.⁴ He indicated that he obtained treatment at a Veterans Administration (VA) Medical Center for his employment injury and for a new injury.

In a response dated February 16, 2005, the Office noted that appellant had not submitted any records from the VA concerning his motor vehicle accident.⁵

By decision dated March 21, 2005, the Office terminated appellant’s compensation and authorization for medical treatment effective March 20, 2005. It found that he had no further disability or condition due to his accepted employment injury.

Appellant requested an oral hearing. At the hearing, held on December 8, 2005, the hearing representative requested copies of any VA reports and a narrative report addressing causation.

In a report dated May 2, 2005, Dr. Mitchell Wallin, Board-certified in neurology and preventative medicine, noted that he initially treated appellant in 1999 for a hand injury. Appellant received medication for low back and neck pain subsequent to October 29, 2000 and treatment at the VA for diabetes mellitus, conjunctivitis, epididymitis and increased bilateral wrist pain. Dr. Wallin stated:

“It is with a reasonable degree of medical certainty that [appellant’s] injury in October 2000 may have exacerbated his underlying cervical and lumbar spondylosis. The injuries that were sustained produced nociceptive pain from soft tissue damage. [Appellant] also had increased pain in both wrists after this bicycle injury.”

Dr. Wallin noted that appellant had increased neck pain after a closed head injury in September 2002 and a knee injury and increased low back pain after an April 25, 2003 motor vehicle accident. He stated, “This accident may have confounded the effects of the October 2000 accident on the low back.” Dr. Wallin found that appellant should limit lifting to under 25 pounds and recommended against bending, crawling and climbing due to his “underlying neck, back and wrist conditions.”

⁴ In a progress report dated January 21, 2005, Dr. Sabloff recommended that appellant receive treatment from a physiatrist.

⁵ The Office further indicated that it was unclear why Dr. Sabloff evaluated appellant’s hand when it was not an accepted condition, but noted that the method of examination was within his discretion.

By decision dated February 13, 2006, the Office hearing representative affirmed the March 21, 2005 termination decision.⁶

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. 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 in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. In a progress report dated September 23, 2003, Dr. Sabloff, appellant's attending physician, indicated that he had not treated appellant since May 2001 and that he was under the care of another physician for a subsequent automobile accident. He asserted that he was unable to render findings on appellant's current condition. In a progress report dated August 27, 2004, Dr. Salter again noted that he provided no treatment to appellant since May 2001. In a progress report dated October 29, 2004, Dr. Draper related that an MRI scan revealed reversible cervical lordosis and central disc herniation at C3-4, C4-5 and C5-6. Dr. Salter again noted that he had only treated appellant twice in the last few years and recommended epidural injections.

The Office referred appellant to Dr. Draper for a second opinion evaluation. In a report dated October 27, 2004, Draper discussed the history of injury and the results of MRI scans. He found no evidence of muscle spasm of the cervical spine on physical examination. Dr. Draper opined that appellant sustained soft tissue injuries due to his employment injury which had resolved and attributed appellant's current complaints to "preexisting degenerative disc disease" unrelated to his work injury. He asserted that he could work full time with restrictions on lifting over 60 pounds due to his preexisting degenerative disc disease of the neck and back. The Board has carefully reviewed Dr. Draper's opinion and finds that it has reliability, probative value and convincing quality with respect to the conclusion reached regarding whether appellant has any further disability due to his accepted employment injury of lumbar and cervical strain. Dr. Draper provided a thorough review of the factual and medical background of appellant's claim and accurately summarized the relevant medical evidence. Moreover, he provided a proper analysis of the factual and medical evidence and findings on examination and reached conclusions regarding his condition which comported with this analysis.⁹

⁶ The Office hearing representative indicated that she was affirming a decision dated March 31, 2005; however, it is apparent that this is a typographical error.

⁷ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁸ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁹ *Pamela K. Guesford*, 53 ECAB 726 (2002).

The remaining evidence submitted prior to the Office's termination of compensation is insufficient to establish that appellant had any further disability due to his October 29, 2000 employment injury. In a report dated November 19, 2004, Dr. Sabloff questioned Dr. Draper's findings given the problems experienced by appellant subsequent to his injury. He noted that the majority of people appellant's age had preexisting degenerative changes to the back. Dr. Sabloff opined that appellant continued to have problems due to his employment injury which required treatment. He noted that he was injured in a motor vehicle accident but maintained that his back was not significantly worse after the accident. Dr. Sabloff attributed his back condition to his employment injury. In order to be of probative value, however, the opinion of a physician must be based on a complete and accurate factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the relationship between the diagnosed condition and appellant's employment.¹⁰ In his November 19, 2004 report, Dr. Sabloff did not list any findings on physical examination, provide a diagnosis or find appellant disabled from employment and thus, his opinion is of diminished probative value on the issue of whether appellant remains disabled due to his accepted employment injury of lumbar and cervical strain.¹¹ Accordingly, the Office met its burden of proof to terminate his compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹² 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.¹³

ANALYSIS -- ISSUE 2

The Office met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Draper, the Office referral physician, who found that appellant had no active condition due to his accepted employment injury and concluded that his current complaints were due to his preexisting nonemployment-related degenerative disc disease of the cervical and lumbar spine. While Dr. Sabloff opined in a report dated November 19, 2004 that appellant required additional medical treatment, his opinion is of little probative value as he did not provide a diagnosis or list findings on examination supporting his conclusion.¹⁴ The Board thus, finds that the weight of the evidence establishes that appellant had no further residual condition due to his accepted employment injury of a lumbar and cervical strain effective March 20, 2005, the date the Office terminated his authorization for medical treatment.

¹⁰ *Allen C. Hundley*, 53 ECAB 551 (2002); *John F. Glynn*, 53 ECAB 562 (2002).

¹¹ *Id.*

¹² *Pamela K. Guesford*, 53 ECAB 727 (2002).

¹³ *Id.*

¹⁴ *See Gewin C. Hawkins*, *supra* note 8.

LEGAL PRECEDENT -- ISSUE 3

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden of proof shifts to appellant to establish that he has disability causally related to his accepted employment injury.¹⁵ In order to establish a causal relationship between the claimed disability and the employment injury, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.¹⁶

ANALYSIS -- ISSUE 3

Given the Board's finding that the Office properly relied upon the opinion of Dr. Draper in terminating compensation, the burden of proof shifts to appellant to establish that he remains entitled to compensation after that date.¹⁷ Subsequent to the Office's termination of compensation, appellant submitted a report dated May 2, 2005 from Dr. Wallin, who noted that he received medication for pain in his neck and lower back after October 29, 2000. Dr. Wallin opined that, with reasonable medical certainty, appellant's October 2000 injury "may have exacerbated his underlying cervical and lumbar spondylosis." He also indicated that appellant experienced a closed head injury in September 2002 which caused increased neck pain and a motor vehicle accident on April 25, 2003 which caused a knee injury and increased pain in his lower back. He listed work restrictions due to appellant's "underlying neck, back and wrist conditions." Dr. Wallin did not, however, specifically attribute his work restrictions to his employment-related conditions of lumbar and cervical strain. Additionally, his finding that appellant's employment injury "may have exacerbated" his preexisting cervical and lumbar spondylosis is speculative in nature and unsupported by medical rationale.¹⁸ Further, Dr. Wallin did not list any objective signs of disability due to the accepted employment injury and, thus, his report is insufficient to support the payment of compensation.¹⁹ Appellant, consequently, has not met his burden of proof to establish any continuing employment-related disability.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation and authorization for medical treatment effective March 20, 2005 on the grounds that he had no further disability causally related to his October 29, 2000 employment injury. The Board further finds that appellant has not established that he had continuing employment-related disability after March 20, 2005.

¹⁵ *Manuel Gill*, 52 ECAB 282 (2001).

¹⁶ *Id.*

¹⁷ See *John F. Glynn*, *supra* note 10.

¹⁸ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002) (the opinion of a physician must be one of reasonable medical certainty and must be supported by medical rationale explaining causal relationship).

¹⁹ *Barry C. Peterson*, 52 ECAB 120 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 13, 2006 is affirmed.

Issued: November 21, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board