

FACTUAL HISTORY

This is the third appeal in this case.¹ By decision dated July 20, 2006, the Board set aside an October 4, 2005 decision that denied appellant's claim for compensation benefits from October 28, 1999 to January 30, 2004 and remanded the case for further development of the medical evidence.² By decision dated March 7, 2003, the Board set aside an October 23, 2001 decision that denied appellant's claim for a back injury on October 28, 1999. The law and the facts of the previous Board decisions are incorporated herein by reference.

On remand, the Office requested a supplemental report from Dr. Edward J. Resnick, a Board-certified orthopedic surgeon and impartial medical specialist, addressing whether appellant had any disability causally related to his October 28, 1999 accepted back strain and, if so, the dates of disability. In an October 30, 2006 supplemental report, Dr. Resnick stated:

“Please note that in [my October 28, 2003 report] I stated that [appellant] had not had any active treatment since the early part of 2000 except for prescription of pain medication. This statement implied that my opinion with reasonable medical certainty was that [he] had improved sufficiently from any injuries sustained on October 28, 1999 not to require any further treatment.

“My examination, my review of the records and my review of the additional file of medical records you have sent me confirms this opinion.

“Therefore, in answer to your question as to whether [appellant] had any disability causally related to his October 28, 1999 work-related low back strain, my answer is that he had only temporary disability, which lasted for approximately [six] months. Following that, it is my opinion that he had recovered from the effects of any injury sustained on October 28, 1999. It is my further opinion that the only residuals objectively noted were those of the previous lower lumbar spine fusion. That consisted primarily on an objective basis of limitation of forward flexion of the lumbar spine. I did not feel that there was any objective basis for [appellant's] complaints of numbness of his left leg and I did not feel that that complaint was related to the October 28, 1999 incident.

“Finally, the question of an L-2 fracture appears to have been resolved satisfactorily and it does not appear that [appellant] sustained an L-2 fracture at

¹ See Docket No. 06-685 (issued July 20, 2006); Docket No. 03-61 (issued March 7, 2003). On October 29, 1999 appellant, then a 48-year-old mail handler, filed a traumatic injury claim alleging that the previous day he injured his lower back and right leg when he bent down to pick up mail from the floor, his right leg went out and he almost fell. He indicated that he had an accepted June 4, 1986 back injury and had returned to work on October 8, 1999 in light-duty status. By decision dated December 19, 2003, the Office accepted appellant's claim for a low back strain on October 28, 1999, resolved. Appellant filed a claim for compensation benefits for October 28, 1999 to January 30, 2004.

² The Board remanded the case for the Office to obtain a supplemental report from the impartial medical specialist selected to resolve a conflict in the medical opinion evidence, explaining whether appellant had any disability causally related to his October 28, 1999 accepted back strain and, if so, the dates of disability.

that time. On the other hand, the evidence indicates that he had previously had x-rays showing an unrelated L-2 fracture, which had healed.³ Thus, I do not feel that any L-2 problem, x-ray or otherwise, was related.

“Thus, my diagnoses remain low back strain sustained October 28, 1999, from history and records and status post L4-4, L5-S1 spine fusion.⁴ It is my opinion that the objective residuals are those of the previous unrelated lumbar spine fusion and that there are no objective residuals of the [October 28, 1999] back strain....”

By decision dated February 16, 2007, the Office determined that appellant was entitled to compensation for disability from December 16, 1999 to April 28, 2000 due to his October 28, 1999 accepted back strain.⁵

On February 27, 2007 appellant requested an oral hearing that was held on June 5, 2007. By decision dated August 20, 2007, an Office hearing representative affirmed the February 16, 2007 decision, finding no work-related disability after April 28, 2000.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁶ has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.⁷ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁸ Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁹

Section 8123(a) of the Act provides that, “if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination.”¹⁰ Where a case is

³ A November 21, 1997 report of a lumbar spine x-ray, prior to appellant's October 28, 1999 employment injury, revealed a healed L2 fracture and status post spinal fusion at L4 to S1.

⁴ Appellant underwent an L4-5 spinal fusion on June 2, 1992. He also underwent two earlier back surgeries.

⁵ The Office inadvertently indicated that appellant's entitlement to compensation was for the period December 16, 1999 to April 28, 1999. Clearly, it meant April 28, 2000. He received continuation of pay from November 1 to December 15, 1999.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Thomas M. Petroski*, 53 ECAB 484 (2002).

⁸ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁹ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹¹

ANALYSIS

As noted in the Board's July 20, 2006 decision, the Office referred appellant to Dr. Resnick to resolve a conflict in the medical opinion evidence as to whether he had any periods of disability causally related to his October 28, 1999 accepted low back strain. Dr. Resnick submitted an October 28, 2003 report in which he reviewed the history of appellant's condition, course of treatment, medical records and he provided detailed findings on physical examination. He diagnosed a low back strain sustained on October 28, 1999 and status post L4 to S1 spine fusion. Dr. Resnick noted that appellant underwent three months of physical therapy but did not require any further significant treatment for his back strain after that time. Aside from taking prescription pain medication, appellant had no active treatment of his back strain since the early part of 2000. Dr. Resnick indicated that appellant's back problems at the time of the October 28, 2003 examination were caused by his 1992 lumbar spine fusion.

In a supplemental report dated October 30, 2006, Dr. Resnick opined that appellant sustained only a temporary disability due to his October 28, 1999 employment injury which lasted approximately six months. He noted that appellant had not had any active medical treatment for his October 28, 1999 accepted back strain since the early part of 2000, except for the prescription of pain medication. This fact, along with his physical examination of appellant on October 28, 2003 and his review of the medical evidence of record, led to Dr. Resnick's determination that appellant had improved sufficiently from his injury sustained on October 28, 1999 such that he did not require any further treatment for his accepted back strain after April 28, 2000, six months after his back strain, and had no residual disability. Dr. Resnick indicated that appellant's continuing back problems were caused by preexisting work-related spinal conditions which are included in a separate compensation claim.

The Board finds that the impartial medical opinion of Dr. Resnick is based on a complete and accurate factual and medical background and provide a rationalized explanation for his opinion that appellant had no work-related disability or medical condition after April 28, 2000 causally related to his October 28, 1999 employment injury. Dr. Resnick noted that appellant had no active treatment of his accepted back strain after April 28, 2000 and there were no objective physical findings supporting residuals from his October 28, 1999 back strain. The Board finds that the reports of Dr. Resnick carry the weight of the medical opinion evidence and establish that he had no work-related disability after April 28, 2000.

CONCLUSION

The Board finds that the opinion of Dr. Resnick, the impartial orthopedist, establishes that appellant had no disability between April 29, 2000 and January 30, 2004 causally related to his October 28, 1999 accepted back strain.

¹¹ See *Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 20 and February 16, 2007 are affirmed.

Issued: July 16, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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