

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RODNEY S. CROSSLIN, SR. and DEPARTMENT OF VETERANS
AFFAIRS, MEDICAL CENTER, Dublin, OH

*Docket No. 00-2410; Submitted on the Record;
Issued April 2, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation for wage loss effective January 2, 1999.

On September 24, 1992 appellant filed a claim alleging that he sustained a back injury when he fell while attempting to sit on his chair. The Office accepted that appellant sustained a low back contusion and herniated nucleus pulposus at L4-5 and L5-S1. He returned to a light-duty position and then stopped working in July 1995.

By letter dated November 19, 1998, the Office advised appellant that it proposed to terminate his compensation for wage loss based on the weight of the medical evidence. In a decision dated December 30, 1998, the Office terminated wage-loss compensation effective January 2, 1999.

In a decision dated April 8, 1999, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim. By decision dated August 23, 1999, the Office reviewed the case on its merits and denied modification of its termination decision. By decisions dated March 15 and June 22, 2000, the Office denied modification.

The Board finds that the Office met its burden of proof to terminate compensation for wage loss as of January 2, 1999.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

In the present case, there was a conflict in the medical evidence with respect to a continuing employment-related condition. An attending physician, Dr. Peter Holliday III, a Board-certified neurosurgeon, opined in a March 30, 1998 report that appellant had also sustained a cervical stenosis at C6-7 causally related to his September 24, 1992 employment injury. He indicated that appellant needed surgery.

In a report dated June 29, 1998, Dr. Gary Loveless, an orthopedic surgeon, provided a history, results on examination and reviewed medical reports. He opined that appellant's cervical stenosis was not caused, aggravated or precipitated by the employment injury. Dr. Loveless noted the absence of medical evidence contemporaneous to the employment injury with respect to a cervical injury and he opined that the condition was congenital and preexisting. In a report dated July 2, 1998, Dr. Loveless stated that residuals of the employment-related lumbar condition would not disable appellant for his date-of-injury position; the disability for work was related to the cervical condition.

Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.² When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.³

To resolve the conflict in the medical evidence, the Office referred appellant to Dr. Fred Laun, a Board-certified orthopedic surgeon. In a report dated November 9, 1998, Dr. Laun provided a history and results on examination. With respect to a cervical condition, Dr. Laun stated: "I do not find that [appellant's] cervical condition was either caused, aggravated or precipitated by the September 24, 1992 work injury. I feel that the abnormalities in his neck were mainly congenital and possibly a minimal portion degenerative on an age-related rather than an injury-related cause." Dr. Laun opined that appellant could work at his date-of-injury position as a supply management officer.

It is well established that when a case is 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.⁴ The Board finds that Dr. Laun's report is entitled to special weight in this case. He provided an unequivocal opinion, based on a complete background, that appellant's cervical condition was not causally related to employment and that any residuals of the accepted lumbar conditions did not disable appellant for his date-of-injury position. Based on the weight of the evidence, the Office properly terminated compensation for wage loss effective January 2, 1999.

² *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

³ *William C. Bush*, 40 ECAB 1064 (1989).

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability that continued after termination of compensation benefits.⁵

Following the December 30, 1998 decision, appellant submitted additional medical evidence. The attending physician, Dr. Holliday, again opined in a June 15, 1999 report that he believed that appellant's cervical condition and disability were employment related. Dr. Holliday also submitted reports dated November 12, 1999 and April 17, 2000. Additional reports from a physician on one side of the conflict that is properly resolved by an impartial specialist are generally insufficient to overcome the weight accorded the impartial specialist's report or create a new conflict.⁶

Appellant also submitted reports from Dr. Charles A. Cannizzaro, a neurosurgeon, opining that appellant was totally disabled. In a September 9, 1999 report, for example, Dr. Cannizzaro indicated that appellant had continuing back pain, with weakness and numbness in the left leg and was totally disabled. Dr. Cannizzaro does not provide a history describing the September 24, 1992 employment incident, nor a reasoned medical opinion on causal relationship between the employment injuries and a continuing disability. The Board finds that the medical evidence is not sufficient to meet appellant's burden of proof to establish a continuing employment-related disability after January 2, 1999.

⁵ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

⁶ *See Harrison Combs, Jr.*, 45 ECAB 716 (1994); *Dorothy Sidwell*, 41 ECAB 857 (1990).

The decisions of the Office of Workers' Compensation Programs dated June 22 and March 15, 2000 and August 23, 1999 are affirmed.

Dated, Washington, DC
April 2, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member