

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMAN F. KHOURY and DEPARTMENT OF THE ARMY,
PICATINNY ARSENAL, Dover, NJ

*Docket No. 00-1576; Submitted on the Record;
Issued March 5, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has any continuing residuals due to his accepted cervical and lumbar back condition due to his April 8, 1996 employment injury.

On April 9, 1996 appellant, then a 34-year-old mechanical engineer, filed a traumatic injury claim alleging that he sustained injuries to his knee and thumb in an automobile accident on April 8, 1996. The Office of Workers' Compensation Programs accepted the claim for right knee fracture and left finger fracture and authorized an ulnar nerve release. By letter dated November 26, 1996, the Office authorized right electromyography, right nerve conduction study and physical therapy for the period November 29, 1996 through February 28, 1997. Appellant returned to a limited-duty position working four hours a day, three days a week on February 12, 1997, which subsequently was increased to six hours a day effective July 24, 1997.

On June 24, 1998 the Office referred appellant to Dr. Charles R. Carozza, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Robert C. Petrucelli, an attending Board-certified orthopedic surgeon, and Dr. Richard D. Jabobs, a second opinion Board-certified orthopedic surgeon, on the issue of whether appellant sustained an aggravation of his preexisting neck and back problems due to his accepted April 8, 1996 employment injury and if so whether there was any continuing disability due to this aggravation.

In a report dated July 15, 1998, Dr. Carozza concluded that appellant sustained no permanent disability in his neck or back due to the accepted employment injury and that he could not "state if there was any residual (sic) from the previous accidents." A physical examination revealed:

“[F]ull range of motion with pain in the left side of his neck on extremes of motion, especially on right lateral tilt and left rotation. There is full range of motion of his left back with pain on extremes, especially on extension of the low back. There is no trapezius spasm and there is no paraspinal muscle spasm.

Other than showing a round back, [appellant] shows no gross changes in standing posture. The glutei muscles are not atrophic. The shoulder girdle muscles are not atrophic. Reflexes in the upper extremities and the lower extremities are equal bilaterally. There are no sensory motor or sensory deficits noted in either the upper or lower extremities.”

Dr. Carozza stated that appellant “does not have any neurological deficits nor does he have any [orthopedic] deficits as far as objective findings to correspond to his subjective complaints.” He also noted that he believed “that [appellant] has had previous injuries to his neck and his back, he has had previous surgery and I cannot believe it is possible that with two previous motor vehicle accidents he would not be having occasional symptomatology.” In concluding, Dr. Carozza opined that appellant had reached maximum medical improvement and that he “sustained no permanent residual disability as far as his neck or his back is concerned with this particular accident.”

By decision dated January 25, 1999, the Office terminated appellant’s medical compensation for his cervical and back condition as they were preexisting and unrelated to any employment factors.

In a letter dated January 29, 1999, appellant’s counsel requested a written review of the record.

By decision dated June 24, 1999, the hearing representative found that appellant had sustained a cervical and lumbar condition due to his accepted employment injury, but that any residuals due to this injury had resolved by January 7, 1998, the date of the second opinion evaluation. The hearing representative, however, remanded the case for further development of whether appellant’s elbow condition was causally related to the accepted employment injury.

The Board finds that the Office met its burden of proof to terminate appellant’s entitlement to medical benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.² The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁴ To terminate authorization for medical treatment, the Office must

¹ *Gloria J. Godfrey*, 52 ECAB ____ (Docket No. 00-502, issued August 27, 2001).

² *Lynda J. Olson*, 52 ECAB ____ (Docket No. 00-2085, issued July 11, 2001).

³ *Manuel Gill*, 52 ECAB ____ (Docket No. 99-915, issued March 2, 2001).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

In this case, the Office determined that a conflict existed between Dr. Robert C. Petrucelli, an attending Board-certified orthopedic surgeon, who found that appellant's preexisting cervical and lumbar condition was related to his April 8, 1996 employment injury and that he had continuing residuals and limitations due to his employment injury and Dr. Jacobs, who opined that appellant sustained cervical and lumbosacral sprains due to the April 8, 1996 employment injury but that there was no objective evidence to support any continuing disability. The Office referred appellant to Dr. Charles R. Carozza, a Board-certified orthopedic surgeon, for resolution of the conflict. In a June 24, 1999 decision, the hearing representative accepted that appellant's preexisting cervical and lumbar condition had been aggravated by his April 8, 1996 employment injury, but found that the weight of the medical record, represented by the opinion of Dr. Carozza, the impartial medical specialist, established that appellant had no continuing disability of his cervical and lumbar spines related to his April 8, 1996 employment injury and that any aggravation had ceased by January 7, 1998, the date of Dr. Jacob's examination.

Where there exist a conflict of medical opinion, the case is referred to an impartial medical specialist for the purpose of resolving the conflict. If the opinion of the impartial medical specialist is sufficiently well rationalized and based upon a proper factual background, it must be given special weight.⁶

Pursuant to section 8123(a) of the Federal Employees' Compensation Act,⁷ the Office referred appellant to a third physician for an impartial medical examination.⁸ Dr. Carozza provided an accurate and comprehensive review of appellant's medical history and performed a thorough orthopedic examination. Based on this review and examination, he found no objective evidence of any disability. Specifically, he found no objective evidence supporting any permanent injury to appellant's lumbar or cervical spine, noting that appellant had full range of motion in his neck and left back. Dr. Carozza concluded that appellant had "sustained no permanent disability as far as his neck or his back" due to the April 8, 1996 employment injury and that he had reached maximum medical improvement.

The Board finds that Dr. Carozza's opinion is well rationalized, based on a meticulous and thorough clinical examination and relies on a complete medical and factual background. Therefore, his opinion must be accorded special weight on the issue of whether appellant had any residuals or disability resulting from the accepted aggravation of his cervical and lumbar spine

⁵ *Franklin D. Haislah*, 52 ECAB ____ (Docket No. 01-208, issued August 1, 2001).

⁶ *Irene M. Williams*, 47 ECAB 619, 622 (1996); *Roger Dingess*, 47 ECAB 123, 126 (1995); *Carl Epstein*, 38 ECAB 539 (1987).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ Section 8123(a) of the Act provides: "[I]f there is disagreement between the physician making the examination for the United States and the physician for employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

condition as the result of the April 8, 1996 employment injury. As the weight of the medical opinion evidence on this issue, Dr. Carozza's report justifies the Office's termination of appellant's compensation benefits effective January 7, 1998.

The June 24, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 5, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member