

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

CECIL D. HUTCHINGS, Appellant)	
)	
and)	Docket No. 05-750
)	Issued: September 9, 2005
DEPARTMENT OF THE INTERIOR, BUREAU)	
OF RECLAMATION, Sacramento, CA,)	
Employer)	
)	

Appearances:
Norman F. Nivens, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 10, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated January 20, 2005 and June 9, 2004, terminating his wage loss and medical benefits effective June 12, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the termination decision.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective June 12, 2004; and (2) whether appellant established that he had a continuing medical condition causally related to his May 25, 1978 employment injury after June 12, 2004. On appeal, appellant's attorney argues that a conflict in medical opinion evidence has been created.

FACTUAL HISTORY

On May 25, 1978 appellant, then a 37-year-old driller, sustained a work-related injury when he slipped on wet steps while coming out of a trailer. The Office accepted the claim for aggravation of a lumbar strain superimposed on a transitional first sacral segment and aggravation of degenerative disc disease of the lumbar spine. Appellant stopped work on May 25, 1978 and was placed on the periodic rolls for total disability. Although appellant attempted rehabilitation services, the record reflects that he was not employed in any gainful capacity since the accident.

In a July 19, 2001 report, Dr. Martin F. Welsh, a Board-certified family practitioner, advised that appellant had chronic degenerative disc disease with diffuse osteoarthritis and chronic pain and a diffuse poly sensory neuropathy. He stated that appellant was treated by a neurologist at various times in recent years and had attempted various medications to control his pain, but these were mostly unsuccessful. Dr. Welsh stated that appellant's condition started after an accident on the job 23 years earlier and opined that appellant was completely disabled from gainful employment. He also provided a July 19, 2001 work capacity evaluation form, OWCP-5(c), in which he opined that appellant was totally disabled. In a December 18, 2003 chart note, Dr. Welsh noted that appellant was in a motor vehicle accident and diagnosed postconcussion syndrome. In a December 23, 2003 OWCP-5(c) form, he reiterated that appellant was totally disabled from his usual employment, but noted that appellant was able to work six hours with limitations on sitting, standing and walking.

In a February 12, 2004 letter, the Office advised appellant that a second opinion examination was in order to obtain an assessment of his work-related condition. He was referred, together with a copy of the record, a statement of accepted facts and a list of questions, to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon.

In an April 7, 2004 report, Dr. Swartz reviewed the statement of accepted facts, history of injury and noted appellant's medical treatment. This included a back problem in 1974 and; three motor vehicle accidents in 2003; in which he primarily injured his low back and neck in the first accident, injured his neck and was knocked unconscious in the second accident and reported no injuries in the third accident. He fell in December 2003 and injured his head and aggravated his back. Dr. Swartz provided his examination findings and summarized his review of the medical file. He stated that the work injury of May 25, 1978 appeared to be a significant aggravation of appellant's injury of 1974 and cited various medical reports and diagnostic tests which included myelogram, bone scan and electrodiagnostic studies. These indicated that appellant had no neurologic findings and, thus, no neurologic injury resulting from the May 25, 1978 injury. Dr. Swartz also pointed out that a physician of record, Dr. George Rab, had found chronic degenerative disc disease with no herniated disc on January 15, 1979 and had opined on April 16, 1979 that appellant's degenerative disc disease was not the cause of the May 1978 injury but rather appeared to be an exacerbation of a preexisting condition. Dr. Swartz opined that appellant's cervical spine symptoms and right upper extremity conditions were not related to the May 25, 1978 injury and referenced various objective studies, which noted that his symptoms had developed years after the work injury. He opined that appellant no longer had residuals of the May 25, 1978 injury. Dr. Swartz stated that appellant initially injured his low back in 1974 and temporarily aggravated it on May 25, 1978. He opined that the temporary aggravation

ceased on May 3, 1982 when Dr. George Sutherland, a physician of record, noted no objective findings to document the cause of his back pain and reported a normal neurologic examination. Dr. Swartz found that appellant required no additional treatment for the effects of the May 25, 1978 injury as the temporary aggravation subsided as of May 3, 1982. Dr. Swartz also opined that appellant had no physical limitations due to the work injury and that any continuing restrictions were due to appellant's preexisting degenerative disc disease. In an April 7, 2004 OWCP-5c form, Dr. Swartz listed appellant's orthopedic restrictions, but opined that appellant was unable to work due to other substantial medical and neurological problems.

On May 11, 2004 the Office issued a notice of proposed termination of compensation based on the opinion of Dr. Swartz.

In a May 26, 2004 letter, appellant took issue with Dr. Swartz's characterization that his May 25, 1978 work injury was a reinjury of a back strain from 1974. He contended that Dr. Swartz's opinion was based upon half truths as Dr. Joy had stated that he remained disabled from gainful employment.¹ No medical evidence was submitted.

By decision dated June 9, 2004, the Office finalized the termination of appellant's compensation benefits effective June 12, 2004.

In a December 15, 2004 letter, appellant's attorney, requested reconsideration and submitted reports from Dr. Anthony Bellomo, a Board-certified orthopedic surgeon. In a September 2, 2004 report, he noted appellant's history and his current complaints involving the cervical spine, both shoulders and low back extending into the gluteal region and right leg. Dr. Bellomo presented his examination findings and the results of diagnostic testing. He diagnosed chronic low back pain with lumbar degenerative disc disease and advised that he would like to obtain films of the lumbar spine prior to determining appellant's disability status. In a September 7, 2004 report, Dr. Bellomo noted that September 6, 2004 x-ray films showed degenerative disc disease with disc space narrowing at L5-S1 and osteophyte formation. He reviewed appellant's medical records and advised that there were several inconsistencies in Dr. Swartz's April 7, 2004 report. Dr. Bellomo stated that he did not see evidence of any significant history of a prior injury or any medical records to indicate any ongoing difficulties regarding appellant's lumbar spine resulting from any injury prior to May 25, 1978. He opined that, assuming the accuracy of appellant's history and the medical records, appellant's disability resulted from the May 25, 1978 injury. Dr. Bellomo disagreed with Dr. Swartz's opinion that appellant's temporary aggravation ceased on May 3, 1982. He noted that Dr. Swartz based his opinion on a report from Dr. Sutherland, who was only a resident at that time. Dr. Swartz further advised that the medical evidence demonstrated an increase in appellant's symptomatology. He stated that it was not unusual for a patient to have symptomatic degenerative disc disease without significant neurologic findings. Although appellant's degenerative disc disease may have predated the May 25, 1978 injury, Dr. Bellomo opined that many patients remain asymptomatic for years or never become symptomatic absent a specific injury. Dr. Bellomo noted that appellant's pain level returned to baseline after his motor vehicle accident of January 2003. Based on subjective and objective findings, Dr. Bellomo opined that appellant had residuals of

¹ The record reflects that Dr. Gregory A. Joy, a Board-certified internist, was appellant's physician from 1985 until his retirement in 1997 or 1998.

the May 25, 1978 work injury but could perform restricted duties. He recommended a discography to rule out intradiscal disc pathology.

By decision dated January 20, 2005, the Office denied modification of the June 9, 2004 decision, finding that the weight of the medical evidence remained with Dr. Swartz. The Office accepted as factual that appellant returned to his work on the drilling rigs prior to the 1978 injury and that he had recovered from the 1974 injury.

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.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁴

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS -- ISSUE 1

The Board notes that the Office had accepted the conditions of aggravation of a lumbar strain and aggravation of degenerative disc disease of the lumbar spine. Dr. Swartz reviewed appellant's history and noted that the medical records from May 25, 1979 until May 3, 1982 were devoid of neurological findings or objective findings to document the cause of appellant's back pain. He further noted that Dr. Rab had found that appellant had chronic degenerative disc disease with no herniated disc on January 15, 1979 and subsequently opined on April 16, 1979 that appellant's condition appeared to be an exacerbation of a preexisting condition. Based on appellant's medical history documenting the lack of neurological and objective findings for appellant's back pain and his own examination findings, Dr. Swartz opined that appellant's temporary aggravation ceased on May 3, 1982 when Dr. Sutherland found that appellant presented with a normal neurological examination and had no objective findings. He further opined that appellant's cervical spine symptoms and right upper extremity conditions were not related to the May 25, 1978 injury by noting that his symptoms did not appear near or around the

² *Paul L. Stewart*, 54 ECAB ____ (Docket No. 03-1107, issued September 23, 2003).

³ *Elsie L. Price*, 54 ECAB ____ (Docket No. 02-755, issued July 23, 2003).

⁴ *James F. Weikel*, 54 ECAB ____ (Docket No. 01-1661, issued June 30, 2003).

⁵ *Anna M. Delaney*, 53 ECAB 384 (2002).

time of the May 25, 1978 injury. Dr. Swartz's April 7, 2004 report is well rationalized and based on a proper medical history.

Although Dr. Welsh opined that appellant was totally disabled from his usual employment due to residuals of his work injury, he did not provide any medical reasoning to support his conclusion that appellant continued with disabling residuals of the May 25, 1978 work injury.⁶ The Board finds that Dr. Swartz's opinion is sufficiently well rationalized and based upon a proper factual background to be entitled to the weight of the medical opinion evidence. Accordingly, the Office properly accorded determinative weight to Dr. Swartz's opinion that appellant no longer had employment-related residuals and this opinion justified the Office's termination of benefits. For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he had disability causally related to his accepted injury.⁷ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.⁸ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

⁶ See *Patricia J. Glenn*, 53 ECAB 159 (2001); *Connie Johns*, 44 ECAB 560 (1993) (holding that a physician's opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background).

⁷ *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Id.*

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *Ernest St. Pierre*, 51 ECAB 623 (2000).

ANALYSIS -- ISSUE 2

Dr. Bellomo submitted reports generally supporting the continuation of an employment-related condition due to the May 25, 1978 work injury. Dr. Bellomo critiqued Dr. Swartz's reliance on Dr. Sutherland's May 3, 1982 report of no objective findings in determining that appellant's temporary aggravation ceased on May 3, 1982. Dr. Bellomo dismissed Dr. Sutherland's findings based on his credentials in 1982. He further stated that the medical evidence demonstrated an increase in appellant's symptomatology and opined that it was not unusual to have symptomatic degenerative disc disease without significant neurologic findings. Dr. Bellomo, however, did not fully explain how or why appellant's symptomatic degenerative disc disease, without neurologic findings, had continued more than 26 years after the accepted injury. He did not explain why Dr. Swartz could not rely on findings made by Dr. Sutherland nor did he point to any objective findings in the medical record on or about May 3, 1982 that suggested a continuation of employment-related residuals. The Board has held that medical reports not containing rationale on causal relation are entitled to little probative value.¹² The Board, thus, finds Dr. Bellomo's reports insufficient to meet appellant's burden of proof or to create a conflict with Dr. Swartz.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective June 12, 2004 and that, thereafter, appellant failed to establish that he had a continuing employment-related condition.

¹² *Jimmie H. Duckett*, 52 ECAB 332 (2001).

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2005 and June 9, 2004 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Issued: September 9, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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