

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et seq. of  
Claimant; Employed by the , Fort  
Case File No. .

Merit consideration of the case file was completed in Washington, D C Based on this  
review, the decision of the district office dated | is vacated for the  
reason set forth below.

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The claimant, (date of birth - ), was employed as a  
meat cutter by the at He filed written  
notice of injury on stating that he sustained injury at work on  
when he slipped on ice and fell. The claimant stopped work on  
and did not return.

The Office initially accepted the claim for L5 fracture and lumbar strain. The Office paid  
the claimant compensation for disability for work.

X-rays of the claimant's back taken at the emergency room on had  
been interpreted as showing a fracture of the spinous process at L5 on the right.  
However, an MRI of the claimant's lumbar spine performed on 5 was  
described in the radiology report as showing no fracture, but rather prominent facet  
hypertrophy on the right at L5-S1, possibly posttraumatic in nature. The MRI was also  
described as showing mild annular bulging at L4-L5-S1 without central stenosis or focal  
disc herniation.

Dr. , who is an orthopedic surgeon, wrote in a chart note dated  
that the MRI did not show a fracture of the claimant's L5 vertebral body as had  
originally been diagnosed. He wrote that the claimant had no evidence of significant  
herniation of the disc.

Beginning , the claimant came under the care of Dr. Dr.  
is an anesthesiologist who specializes in pain management. In his report, Dr.  
noted the history of the claimant's slip and fall on ice on He  
described the current physical examination findings, and wrote that the claimant's MRI  
showed L3-4 degenerative disk disease as well as L4-5 right lateral herniation with  
some encroachment into the L4-5 neural foramen on the right. He gave a diagnosis of  
right L4 radiculopathy.

Dr. [redacted] in a letter dated [redacted] opined that the L4 lumbar radiculopathy diagnosed by Dr. [redacted] was directly related to the lumbar strain injury sustained by the claimant on [redacted]. In a letter dated [redacted] Dr. [redacted] wrote that the prominent facet hypertrophy shown on the MRI of [redacted] was a chronic condition. He opined that it was doubtful it occurred from the injury on [redacted]. He opined that the MRI findings did not demonstrate the need for orthopedic surgery intervention. Dr. [redacted] wrote that he had referred the claimant to the pain specialist for ongoing medical care.

Dr. [redacted], in a report dated [redacted], wrote that the L4-5 far lateral herniation shown on the MRI was very mild. He wrote that the MRI showed arthrosis of the right L5-L6 facet joint. In his report of an examination of the claimant on [redacted], Dr. [redacted] opined that the claimant had right L5-L6 lumbar facet arthrosis from the traumatic fall.

The Office referred the claimant to Dr. [redacted] for a second opinion medical evaluation. Dr. [redacted] who is a Board-certified orthopedic surgeon, examined the claimant on [redacted]. In his initial report, Dr. [redacted] described the relevant history, and summarized findings from the medical records he had been provided by the Office. He described the current physical examination findings. With respect to the claimant's back condition, Dr. [redacted] listed the diagnoses as:

- 1) Chronic lumbosacral sprain;
  - a) Findings consistent with right L4-5 or L5-S1 facet fracture or derangement.
  - b) Initial x-rays consistent with an incomplete L5 right pars interarticularis fracture
  - c) Plain x-ray findings consistent with facet tropism L5-S1.

Dr. [redacted] opined that the claimant's lumbar sprain had been caused by the work incident of [redacted]. With respect to other conditions of the claimant's lumbar spine, Dr. [redacted] wrote:

The examinee has findings suggestive of an antecedent minor anomaly of the lumbar spine or a facet tropism of the lumbar spine. His treating pain management specialist, Dr. [redacted] stated that the examinee has six lumbar vertebrae. The plain x-ray films taken initially after the accident are consistent with a pars interarticularis fracture at L5 on the right but this was not seen on subsequent films, nor was it demonstrated by MRI scan. More probably than not, the examinee has at least facet tropism or asymmetrical facets at the most caudal spinal functional unit which was aggravated. This facet tropism typically is asymptomatic unless an injury is superimposed in which case one of the tropic facets may become symptomatic. Further data is needed to answer this

question.

Dr. [redacted] described further diagnostic testing that he felt the claimant should undergo. He opined that the claimant was currently not physically capable of performing his job as a meat cutter, pending the results of the additional testing. Dr. [redacted] also felt that there was a significant emotional component to the claimant's pain complaints.

The claimant underwent further diagnostic testing on [redacted]. A CT scan of the claimant's lumbar spine performed on that date was described in the radiology report as showing asymmetric facet degeneration on the right at L5-S1. An MRI of the claimant's lumbar spine performed on that same date was described as showing L5-S1 facet degeneration.

Dr. [redacted], in the report of an examination performed on [redacted] again opined that the claimant has lumbar facet arthrosis from a traumatic fall. He wrote: "I think that he certainly will have difficulty returning to heavy lifting or the type of work that he used to be doing, and our plan is to assess his response to radiofrequency ablation if so is warranted and then evaluate to see if he can be returned to light duty after that if his response is adequate."

In a supplemental report dated [redacted] Dr. [redacted] reviewed the recent MRI and CT scan findings. He concluded that the additional studies showed right L5-S1 facet degeneration, but no fracture or spondylolysis. Based on the additional test results and the findings at the time he examined the claimant, Dr. [redacted] opined that the claimant was capable of returning to work as a meat cutter without restrictions.

The Office issued the claimant a notice of proposed termination of compensation on [redacted]. The Office proposed to terminate the claimant's wage loss compensation on the basis that the residuals of the work injury of [redacted] no longer disabled the claimant for his date-of-injury job.

The Office subsequently received the report of an examination the claimant underwent with Dr. [redacted] on [redacted]. In that report, Dr. [redacted] opined that the claimant remained unable to work due to the L5-6 traumatic facet arthrosis.

By decision dated [redacted], the Office terminated the claimant's wage loss compensation effective that date.

The claimant disagreed with the decision and requested a hearing.

I find that the case is not in posture for a hearing, as there is an unresolved conflict in the medical opinion on the issue of whether the claimant's injury-related disability for work had ceased.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has 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.<sup>1</sup>

In the present case, the Office did not meet its burden of proof to terminate wage loss compensation, as there was an unresolved conflict in medical opinion between Dr. [redacted] and Dr. [redacted] regarding the claimant's ability to work. Dr. [redacted] concluded in his supplemental report that the claimant was capable of returning to work without restrictions. Dr. [redacted] in his reports dated [redacted] and [redacted] opined that the claimant remained unable to work due to his back condition. In their reports, both physicians described specific examination findings and/or diagnostic test results. I find that the opinions of Dr. [redacted] and Dr. [redacted] are of essentially equal weight and rationale, and that a conflict in medical opinion therefore exists.

On remand, the Office shall prepare an amended Statement of Accepted Facts that includes a description of the duties and physical requirements of the claimant's position as a meat cutter. The Office shall refer the claimant, amended Statement of Accepted Facts, and the entire case record to a Board-certified orthopedic surgeon for an impartial medical evaluation to resolve the conflict in medical opinion. In addition to addressing the issue of whether residuals of the work injury of [redacted] continue to disable the claimant from performing his date-of-injury job, the impartial specialist should also be asked to provide a reasoned opinion as to whether the fall at work caused, aggravated, precipitated or accelerated the right-sided L5-S1 facet degeneration shown on the diagnostic studies.

The decision of the Office dated [redacted] is set aside, and the case is remanded for referral of the claimant for an impartial medical evaluation. As the Office did not meet its burden of proof to terminate the claimant's wage loss compensation, the claimant is entitled to reinstatement of wage loss compensation retroactive to the date of termination.

DATED: MAY 4 2006  
WASHINGTON, D C

Hearing Representative  
for  
Director, Office of  
Workers' Compensation Programs

<sup>1</sup> David Lee Dawley, 30 ECAB 530.