

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 _____, Case file no:
The hearing was held on _____ in Atlanta, Georgia.

The issue is whether the Office properly terminated entitlement to medical treatment benefits for the claimant's cervical and lumbar spine.

The factual and medical evidence of record is discussed in the prior decisions of the hearing representatives dated _____ and _____, which are incorporated into the present decision by reference.

In brief, on _____ the claimant sustained an injury in the performance of his duties as a liquid fuel mechanic with the _____ when he lost his balance and fell from a stand approximately three to five feet onto some piping valves. Notice of traumatic injury was filed and the Office accepted the claim for cervical sprain, lumbar sprain, left knee sprain and left wrist contusion. On _____ and _____ the Office issued decisions terminating entitlement to compensation benefits based on reports from _____, M.D., a board-certified orthopedic surgeon who conducted two second opinion examinations at the request of the Office. The aforementioned decisions of the hearing representatives reversed the termination decisions on the grounds that the reports from Dr. _____ were not sufficient to constitute the weight of the medical evidence. In his decision of _____ the hearing representative indicated that on remand the Office should obtain a supplemental report from Dr. _____ "with a rationalized opinion, based upon his review of the SOAF and medical records as well as two previous physical exams, whether the cervical and lumbar sprains have resolved or remain active, whether a pre-existing degenerative condition of the cervical or lumbar spine was affected by the _____ injury and, if so, whether such an aggravation remains active."

On _____ the Office referred the claimant, together with a revised Statement of Accepted Facts and the medical evidence of record to _____, M.D., a board-certified orthopedic surgeon, for a second opinion examination.

Dr. _____ examined the claimant on _____ and submitted a report of that date in which reviewed the factual and medical evidence of record, described his findings on examination, and provided responses to questions posed by the Office. Dr. _____ opined that the cervical strain and lumbar strain due to the _____ work injury have resolved. He further opined that the work injury aggravated the claimant's preexisting cervical and lumbar disc degeneration. However, Dr. _____ opined that the injury

caused a temporary aggravation, the claimant has returned to baseline from the injury, and his current problems are due to the natural progression of the preexisting condition.

The Office determined that there was now a conflict in medical opinion between the treating physician and Dr. [redacted] as to whether the claimant had continuing residuals and disability due to the accepted injury. In order to resolve the conflict, the Office referred the claimant to [redacted], M.D., a board-certified orthopedic surgeon, for a referee medical exam.

Dr. [redacted] examined the claimant on [redacted] and submitted a report submitted a report of that date in which reviewed the factual and medical evidence of record and described his finding on examination. Dr. [redacted] then provided the following opinion regarding the claimant's cervical and lumbar disc conditions:

The cervical strain of 5-2-00 has resolved. There are no signs of acute injury at this time. There was an underlying cervical degenerative condition at the time of the injury. This pre-existing condition was temporarily aggravated by the accident. According to commonly accepted medical guidelines, the pre-existing degenerative condition of the cervical spine would have returned to baseline at three to four months post injury. It is more medically probable than not that the cervical injury has resolved and his current cervical problem is the result of the natural progression of his pre-existing cervical disorder. This is stated because the acute aggravation would have subsided after three to four months. After that period of time continued symptoms would be on the basis, more likely than not, of his prior existing disorder.

The lumbar strain due to the 5-2-00 injury has resolved. There are no objective findings of an acute lumbar strain.

There was a pre-existing lumbar degenerative condition. The injury of 5-2-00 caused a temporary aggravation of the preexisting lumbar condition. This temporary condition would have lasted three to four months based upon commonly accepted guidelines. At that time it would have returned to baseline.

It is more medically probable than not that his lumbar injury has resolved and his current lumbar problem is the result of the natural progression of his pre-existing lumbar degenerative disc disease. The rationale for that would be the same reason as noted above.

On [redacted] the Office issued a notice proposing termination of medical treatment benefits for the claimant's cervical and lumbar conditions on the basis that the weight of the medical evidence established that the claimant no longer has any residuals of these conditions related to the work injury.

Evidence received consisted of progress notes pertaining to the claimant's left knee condition.

On [redacted] the Office issued a decision finalizing the proposed termination of medical treatment benefits for the claimant's cervical lumbar spine conditions.

An oral hearing was requested and held on [redacted] in Atlanta, Georgia. At the hearing the claimant was represented by Paul H. Felser, attorney at law.

Mr. Felser noted that the Office failed to follow the instructions of the prior hearing representative in requesting a supplemental report from Dr. [redacted]. He contended that the Office's explanation for this, that it had been some time since the claimant saw the doctor, is inadequate. Mr. Felser argued that in scheduling a new second opinion with another doctor the Office deviated from the hearing decision and failed to follow established procedures.

Mr. Felser discussed pre and post-injury MRI reports and contended that the studies presented objective evidence showing that the claimant's condition had worsened following his injury. He noted that the post-injury MRI showed significant changes, including a bulge at L5-S1, which did not exist on the pre-injury MRI.

Mr. Felser contended that Dr. [redacted] provided no rationale as to why he attributed the worsening of the claimant's condition to the natural progression of the preexisting condition rather than to the work injury. He argued that the report from Dr. [redacted] was therefore not sufficient to create a conflict in medical opinion with [redacted] V.D., the treating physician, who in a report of [redacted] provided a reasoned opinion that it is a known fact that to some degree trauma will accelerate and exacerbate a preexisting joint and disc condition and it was his feeling that this to some degree has occurred in the present case.

Mr. Felser contended that Dr. [redacted] also failed to provide any rationale as to why he attributed the worsening of the claimant's condition to the natural progression of the preexisting condition rather than to the work injury. He indicated that Dr. [redacted] basis his opinion on an unidentified medical guideline that is of general application. He noted that Dr. [redacted] does not explain what the guidelines are or how they have been applied in the present case.

Mr. Felser requested that the case be held open for at least 30 days for submission of additional evidence; and possibly for additional time due to disruption caused by a recent hurricane in the claimant's area. The claimant testified as to the effects of the hurricane in his area.

The [redacted] report from Dr. [redacted] referenced by Mr. Felser at the hearing was received as an attachment to an office report from Dr. [redacted] dated [redacted]. Several other medical reports have been received; however, these pertain to continuing treatment and do not address the issue of causal relation.

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 or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹

In the present case, a distinction must be made between the accepted cervical and lumbar conditions, cervical and lumbar sprain, and the claimed but unaccepted conditions of aggravation of the claimant's preexisting cervical and lumbar disc degeneration. I find that the Office properly terminated entitlement to medical treatment benefits for the accepted conditions of cervical and lumbar sprain, but that further development is needed as to whether to what extent the work injury aggravate the claimant's preexisting cervical and lumbar disc degeneration.

In situations where there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.²

When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, the Office must secure a supplemental report from the specialist to correct the defect in his original report.³ However, when the impartial specialist is unable to clarify or elaborate on his original report, or if his supplemental report is also vague, speculative, or lacking in rationale, the Office must submit the case record and a detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue.⁴

In his decision of _____, the hearing representative indicated that on remand the Office should obtain a supplemental report from Dr. _____ clarifying his opinion as to whether the cervical and lumbar sprains due to the work injury have resolved or and whether a preexisting degenerative condition of the cervical or lumbar spine was aggravated by the work injury and, if so, whether such an aggravation remains active. However, the Office referred the claimant Dr. _____, another board-certified orthopedic surgeon, for a new second opinion examination. Mr. Felser contends that in scheduling a new second opinion with another doctor the Office deviated from the hearing decision and failed to follow established procedures.

In the cite quoted above, the Board's general rule with regard to inadequate reports from an impartial medical specialist is to request one supplemental report from the specialist to correct the defect in the original report, but if the supplemental report is also inadequate, the Office must refer the claimant to a new specialist for a second impartial

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

² James P. Roberts, 31 ECAB 1010 (1980).

³ April Ann Erickson, 28 ECAB 336 (1977).

⁴ Harold Travis, 30 ECAB 1071 (1979).

examination. I find that the same general rule should apply to second opinion physicians. In the instant case, Dr. [redacted] conducted two examinations and submitted two original and two supplemental reports; a total of four reports that were deemed inadequate. In view of this, I find that the Office did not act unreasonably in scheduling a new examination with Dr. [redacted] instead of requesting a fifth report from Dr. [redacted].

Dr. [redacted] opines: that the cervical strain and lumbar strain due to the work injury have resolved; that the work injury aggravated the claimant's preexisting cervical and lumbar disc degeneration; but that the injury caused a temporary aggravation, with the claimant having returned to baseline from the injury and his current problems being due to the natural progression of the preexisting condition.

Mr. Felser contends that Dr. [redacted] failed to provide medical rationale in support of his opinion and that his report was therefore not sufficient to create a conflict in medical opinion with the report of Dr. [redacted] the treating physician, dated [redacted]. However, Dr. [redacted] does in fact provide rationale in support of his opinion, stating that there was "no objective material worsening" due to work injury as indicated by full range of motion of the cervical and lumbar spine, no palpable spasm, and being neurologically intact in the upper and lower extremities. Further, Dr. [redacted] reference to a general "known fact" that trauma will accelerate and exacerbate a preexisting disc condition and that it was his "feeling" that this "to some degree has occurred in the present case" is vague and does not constitute a fully rationalized medical opinion. Thus, there was a conflict in medical opinion of virtually equal weight and rationale between the reports of Dr. [redacted] and Dr. [redacted].

To resolve the conflict in medical opinion, the Office referred the claimant to Dr. [redacted] a board-certified orthopedic surgeon, for a referee medical exam. Dr. [redacted] examined the claimant and submitted a report in which he indicates that the cervical strain and the lumbar strain due to the [redacted] work injury have resolved as there are no objective signs or findings of acute cervical or lumbar strain at this time. Dr. [redacted] opines that the work injury caused a temporary aggravation of the claimant's underlying cervical and lumbar degenerative conditions. He states that according to commonly accepted medical guidelines, the preexisting degenerative condition of the cervical and lumbar spine would have returned to baseline at three to four months post injury. Dr. [redacted] opines that it is more medically probable than not that the cervical and lumbar injuries have resolved and the claimant's current cervical and lumbar problems are the result of the natural progression of his preexisting cervical and lumbar degenerative disc disease.

Dr. [redacted] opinion that the cervical strain and the lumbar strain due to the work injury have resolved as there are no objective signs or findings of acute cervical or lumbar strain is sufficient to establish that the accepted conditions of cervical sprain and lumbar sprain have resolved.⁵

⁵ ICD classifies the conditions as cervical sprain/strain (847.0) and lumbar sprain/strain (847.2).

It is noted, however, that Dr. [redacted] opinion that the work injury caused a temporary aggravation of the claimant's underlying cervical and lumbar degenerative conditions that would have returned to baseline at three to four months "according to commonly accepted medical guidelines" is of general application rather than addressed to the particular circumstances of the case,⁶ is not supported by rationale⁷ or by reference to any particular evidence in the case record,⁸ and is therefore not sufficient to resolve the conflict in medical opinion and constitute the weight of the medical evidence⁹ with regard to the extent that the work injury aggravated the claimant's preexisting cervical and lumbar degenerative conditions.

On remand, the Office should request that Dr. [redacted] review the SOAF and the medical evidence of record and provide a supplemental report clarifying his opinion. A new examination should be scheduled only if Dr. Rohan deems it necessary. Dr. [redacted] should be advised that in order to resolve the issue, the Office requires a reasoned medical opinion beyond a general reference to unidentified medical guidelines. Dr. [redacted] may identify the referenced guidelines and explain how they apply in the instant case; however, in doing so he must provide a reasoned medical explanation, with reference to objective clinical and diagnostic findings, to support his opinion that the work injury caused a temporary aggravation of the claimant's preexisting cervical and lumbar degenerative conditions that would have returned to baseline at three to four months and his opinion that the claimant's current cervical and lumbar problems are the result of the natural progression of the preexisting degenerative condition.

After this and any further development deemed necessary, the Office should issue a de novo decision as to what extent the work injury aggravated the claimant's preexisting cervical and lumbar degenerative conditions.

The decision dated [redacted] is hereby affirmed with regard to termination of entitlement to medical treatment benefits for the accepted conditions of cervical and lumbar sprain; however, the decision is set aside and remanded for further development as indicated with regard to what extent the work injury aggravated the claimant's preexisting cervical and lumbar degenerative conditions.

DATED: JAN 7 2005
WASHINGTON, D.C.

Hearing Representative
For
Director, Office of Workers'
Compensation Programs

⁶ William J. Murray, 35 ECAB 606 (1984).

⁷ Lillian M. Jones, 34 ECAB 379 (1982).

⁸ Albert C. Weiss, Docket 87-942, issued July 28, 1987.

⁹ Beda M. Kendall, Docket 87-1251, issued May 24, 1988.