

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEM L. FORD and DEPARTMENT OF THE ARMY,
TRANSPORTATION DIVISION, Fort Benning, Ga.

*Docket No. 97-179; Submitted on the Record;
Issued October 23, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective February 4, 1996 on the grounds that he had no further condition or disability causally related to his April 1978 employment injury; and (2) whether the Office properly terminated authorization for medical treatment.

The Board has duly reviewed the case record in the present appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 4, 1996 on the grounds that he had no further condition or disability causally related to his April 1978 employment injury.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.³ Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

In the present case, the Office accepted that appellant sustained lumbosacral sprain and a chronic aggravation of spinal stenosis due to an April 1978 employment injury. On April 8, 1994 the Office notified appellant that it proposed to terminate his compensation benefits. By decision dated January 19, 1996, the Office terminated appellant's compensation on the grounds that he had no disability causally related to his accepted employment injury.

Following his employment injury, appellant received treatment from Dr. J.C. Serrato, Jr. In a report dated June 19, 1978, Dr. Serrato noted his treatment of appellant for an April 11, 1978 employment injury and diagnosed an acute strain/sprain of the lumbosacral spine and aggravation of a preexisting spinal condition.⁶

By letter dated July 2, 1986, the Office referred appellant to Dr. Sidney H. Yarbrough, III, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated September 21, 1987, Dr. Yarbrough discussed appellant's history of injury, medical treatment received, and the results of objective studies. He further noted findings on physical examination. He diagnosed spinal stenosis with multiple level degenerative disease. Dr. Yarbrough stated, "At this particular time I feel that [appellant] has a natural problem. I cannot see that he has any specific injuries situation, though he has had chronic disability for many, many, years." He further noted that based on appellant's personality profile his symptoms "will be considerably more outstanding than his signs."

In a report dated May 7, 1990, Dr. Yarbrough treated appellant for complaints of weakness in his left foot and leg and pain in his right shoulder radiating in to his back. Dr. Yarbrough found that appellant was totally disabled due to spinal stenosis.

In a report dated March 6, 1995, Dr. Serato, in response to the Office's proposed termination of benefits related:

"...[I]t is correct that [appellant's] present rating of impairment and disabilities are related to the known progression of conditions of his spine and that his aggravation of circumstances from the accident of April 11, 1978 has now cleared. [Appellant] is not being treated at the present time as a workman's compensation case but strictly as a private patient."

The Board finds that the medical evidence establishes that appellant had no employment-related disability or residuals on or after February 4, 1996. The record reflects that Dr. Serrato treated appellant following his April 1978 employment injury and, based on his diagnosis, the Office accepted appellant's claim for lumbar strain and chronic aggravation of spinal stenosis. In response to the Office's proposed termination of benefits, Dr. Serrato, in a report dated March 6, 1995, opined that appellant had no further aggravation of his back condition due to the April 1978 employment injury. The record contains no medical evidence supporting any continuing disability due to appellant's accepted employment injury.

⁶ The record contains office visit notes from 1987 to 1994 documenting appellant's treatment for back problems arising from three motor vehicle accidents in June 1987, June 1989 and January 1990.

The Board further finds that the Office properly terminated appellant's authorization for medical treatment.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment. The Office met this burden through the report of Dr. Serrato, who found that appellant had no residual condition caused by his employment injury.

The decision of the Office of Workers' Compensation Programs dated January 19, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 23, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Furman G. Peake*, 41 ECAB 361, 364 (1990).