

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE M. GARCIA and DEPARTMENT OF THE ARMY,
PUEBLO ARMY DEPOT, Pueblo, CO

*Docket No. 97-2830; Submitted on the Record;
Issued August 4, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective July 19, 1997.

On March 30, 1976 appellant, then a 54-year-old ordnance equipment worker foreman, filed a notice of traumatic injury and claim, alleging that he sustained injury to his back while removing a container lid. Appellant stopped work on April 2, 1976. The Office accepted appellant's claim for lumber strain and aggravation of a preexisting arthritic condition. Appellant's claim for disability retirement was accepted by the United States Civil Service Commission on September 21, 1977 and appellant separated from the employing establishment on February 23, 1978. In a letter dated June 13, 1997, the Office notified appellant that it proposed termination of his compensation on the grounds that any continuing disability was not causally related to the accepted employment injury. By decision dated July 14, 1997, the Office terminated appellant's compensation effective July 19, 1997.

The Board has duly reviewed the entire case record on appeal and finds that the Office properly terminated appellant's compensation benefits effective July 19, 1997.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original

¹ 5 U.S.C. § 8101 *et seq.*

² *William Kandel*, 43 ECAB 1011 (1992).

determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after July 19, 1997, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In the present case, the Office terminated appellant's compensation benefits based on the report of Dr. David L. Crosson, a Board-certified orthopedic surgeon and Office referral physician. In a report dated May 30, 1997, Dr. Crosson reviewed appellant's medical files and provided his results from a May 17, 1997 medical examination of appellant. He noted that appellant sustained a lumber strain that permanently aggravated his preexisting spinal arthritis. Dr. Crosson also noted that appellant suffered from hypertension, peptic ulcer and diverticulosis which appellant claimed were aggravated by his employment injury. He noted that there were no current findings of any active or disabling residuals of the lumber strain and that appellant's physical findings were typical for a 75-year-old male. Dr. Crosson indicated that appellant's major problems regarding his back and knee complaints were due to the general aging process of any 75-year-old male. He concluded that appellant's subjective complaints were not commensurate with the objective findings and test results and were not substantiated by any clinical findings. Dr. Crosson concluded that although appellant was disabled at the present time, it was not due to his accepted employment injury of 1976. The record also contains a report dated March 31, 1997 by Dr. Anthony Ortegon, an internist, in which he noted that appellant was examined on January 21, 1997 and complained of lower back pain. Dr. Ortegon treated appellant for his lower back pain and indicated that the diagnosed condition corresponded to his work-related injury. The physician concluded that appellant's employment injury was active and disabling.

The Board finds that Dr. Ortegon's report does not contain a complete history of the injury, does not contain any objective findings and does not provide a sufficient rationale in support of his conclusion that the conditions diagnosed on January 21, 1997 were causally related to appellants accepted employment injury. On the other hand, the report by Dr. Crosson contains a complete medical history, a complete listing of objective and physical findings and a well-reasoned medical rationale for his conclusion that appellant's medical condition was not causally related to his 1976 injury. Thus, the report by Dr. Crosson constitutes the weight of the medical evidence. Therefore, the Office properly terminated appellant compensation effective July 19, 1997 based on the report of Dr. Crosson.

³ *Carl D. Johnson*, 46 ECAB 804 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824 (1993).

⁵ *Mary Lou Barragy*, 46 ECAB 781 (1995).

The decision of the Office of Workers' Compensation Programs dated July 14, 1997 is hereby affirmed.

Dated, Washington, D.C.
August 4, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member