

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLENN A. AHNER and DEPARTMENT OF THE ARMY,
TOBYHANNA ARMY DEPOT, PA

*Docket No. 98-133; Submitted on the Record;
Issued August 3, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Worker's Compensation Programs met its burden of proof to terminate appellant's medical benefits as of January 7, 1997; (2) whether appellant has established that his condition and disability after February 22, 1997 were causally related to his accepted employment injury.

In the present case, the Office had accepted that appellant, an electronics mechanic, sustained lumbar radiculopathy as a result of lifting boxes at work on November 17, 1995. The record indicates that appellant had previously undergone a lumbar laminectomy in 1987 at L5-S1.¹ The record indicates that appellant returned to work on January 29, 1996, with a restriction of no lifting over 10 pounds. By decision dated September 9, 1997, the Office terminated appellant's entitlement to medical benefits as of January 7, 1997. The Office also found that appellant had not established that his disability commencing February 22, 1997 was causally related to his previous employment injury.

The Board finds that the Office did not meet its burden of proof to terminate appellant's medical benefits for the accepted condition of lumbar radiculopathy as of January 7, 1997.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office, to terminate authorization for medical treatment, has the burden of establishing that appellant no longer has residuals of the employment-related condition that requires further medical treatment.²

¹ Dr. Lester referred to appellant's 1987 lumbar disc injury as work related. The record is otherwise unclear as to the cause of this prior injury.

² *Jose Hernandez*, 47 ECAB 288 (1996).

On August 23, 1996 Dr. Mark C. Lester, a Board-certified neurosurgeon, reported that physical therapy had aggravated appellant's musculoskeletal pain, however, since stopping the therapy he now had minimal back discomfort and no leg pain. Dr. Lester stated that appellant did not have radicular symptoms presently and had no mechanical or neurological findings. Dr. Lester stated that appellant should have a permanent lifting restriction of 10 pounds at work, but could work normally with the lifting restriction. Finally, Dr. Lester noted that appellant had been discharged from his care. In a report dated January 7, 1997, addressed to appellant's treating osteopathic physician, Dr. Frank Romascavage, Dr. Lester noted that during a weekend in December appellant had experienced progressive discomfort across his low lumbar region, which was treated with muscle relaxer, a brace and rest. Dr. Lester explained that appellant was now markedly improved, with his normal lumbar discomfort and intermittent radiation into either leg and that his current physical examination was within normal limits. Dr. Lester stated that he had reviewed a magnetic resonance imaging (MRI) scan of the lumbosacral spine performed on December 17, 1996, which only showed minimal degenerative changes at the L4-5 disc and that the disc herniation visible one year ago was not evident. Dr. Lester concluded that appellant had sustained an acute lumbosacral strain, which was appropriately treated and had now resolved. He stated that appellant did not have any evidence of disc herniation, neoplasm or stenosis. Finally, Dr. Lester noted that if appellant experienced a recurrence of recurrent lumbar strain, perhaps treatment by a physiatrist might be helpful, however, that surgical treatment was not currently necessary and appellant had been discharged from his care and was returned to the care of Dr. Romascavage.

Dr. Lester's reports do not establish that the residuals of the accepted condition of lumbar radiculopathy had ceased as of January 7, 1997. While on August 23, 1996 Dr. Lester indicated that appellant presently had no radicular symptoms, in his report dated January 7, 1997, he reported that appellant had his normal low back discomfort and intermittent radiation into both legs. Dr. Lester explained in his January 1997 report that appellant's back strain from December 1996 had resolved, however, he did not specifically address whether the accepted condition of lumbar radiculopathy had ceased, other than to note that appellant had his usual symptoms. As previously noted, to terminate appellant's entitlement to medical benefits, the Office must establish that appellant no longer has residuals of the employment-related condition that requires further medical treatment. As of January 7, 1997 there was no medical opinion of record that appellant's accepted condition of lumbar radiculopathy had ceased. The Board also notes that Dr. Lester had placed upon appellant a permanent 10-pound lifting restriction and he had indicated that appellant might need future medical treatment from a physiatrist. While Dr. Lester indicated that he would release appellant from his care, he indicated that he was returning appellant to Dr. Romascavage's care. The Office did not clarify whether appellant's physical restriction and contemplated future medical care would be medically necessitated by the accepted condition. The Office therefore did not meet its burden of proof to establish that appellant no longer had residuals of the accepted medical condition as of January 7, 1997.

The Board also finds that appellant did not establish that he had continuing disability after February 22, 1997 causally related to the accepted employment injury.

When an employee claims a continuing disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable,

probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. As part of this burden, appellant must submit rationalized medical evidence based on a complete and accurate factual and medical background showing causal relationship.³ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relation.⁴

The medical evidence indicates that appellant was hospitalized for eight days, commencing February 22, 1997, after experiencing acute back pain while drinking coffee at home. A discharge summary dated March 2, 1997 indicates appellant's final diagnoses as intractable low back pain. No medical opinion was provided in the discharge summary regarding the cause of appellant's condition. On March 7, 1997 Dr. Thomas F. Snyder completed a disability certificate in which he indicated that appellant would be totally incapacitated until April 17, 1997 due to acute lumbosacral protrusion. Dr. Snyder offered no opinion regarding the cause of this condition. In a progress note dated March 28, 1997, Dr. Lester noted appellant's hospitalization and diagnosis of severe lumbosacral strain. He also noted that an MRI scan performed on March 24, 1997 showed only degenerative changes with no evidence of new disc herniation, neoplasm, infection or stenosis. Regarding the issue of causal relationship, Dr. Lester noted that "he has had several episodes or recurrent back pain following an August 5, 1995 injury at work." Dr. Lester offered no medical explanation, however, as to whether the August 5, 1995 employment injury, which was accepted for lumbar radiculopathy, would have caused the severe lumbosacral strain of February 1997. On April 1, 1997 Dr. Wayne Dubov reported that appellant had mechanical back pain, with right-sided lumbar paraspinal spasm. Dr. Dubov did not provide any medical opinion as to the cause of this condition. As the medical evidence of record did not provide the rationalized medical evidence necessary to establish that appellant's condition and disability after February 22, 1997 were causally related to the accepted employment injury, the Office properly denied this aspect of appellant's claim.

³ See *Armando Colon*, 41 ECAB 563 (1990).

⁴ *Ausberto Guzman*, 25 ECAB 362 (1974).

The decision of the Office of Workers' Compensation Programs dated September 9, 1997 is hereby reversed regarding the finding that appellant's lumbar radiculopathy had ceased as of January 7, 1997 and the decision is affirmed regarding the finding that appellant's condition and disability after February 22, 1997 were not causally related to his accepted employment injury.

Dated, Washington, D.C.
August 3, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member