

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REGINALD HAYNES and VETERANS ADMINISTRATION,
MEDICAL CENTER, Los Angeles, Calif.

*Docket No. 97-2399; Submitted on the Record;
Issued May 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

The Board had duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Appellant filed a claim on June 25, 1985 alleging that he injured his lower back and mouth in the performance of duty. The Office accepted appellant's claim for lumbar muscle strain and fractured tooth anterior upper arch. Appellant returned to full duty on October 21, 1985. Appellant filed claim on March 27, 1986 alleging that he developed back pain when a patient knocked him to the floor. The Office accepted this claim for lower back strain. Appellant filed claim on January 12, 1995 alleging that he sustained low back pain playing pool with a patient. The Office accepted appellant's claim for lumbosacral strain. Appellant returned to work with restrictions on September 5, 1995. The Office proposed to terminate appellant's compensation benefits by letter dated July 26, 1996. By decision dated August 23, 1996. The Office terminated appellant's compensation benefits. Appellant requested an oral hearing and by decision dated June 12, 1997 the hearing representative affirmed the Office's August 23, 1996 decision.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² Furthermore, the right to medical

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

benefits for an accepted condition is not limited to the period of entitlement for disability.³ 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.⁴

Appellant's attending physician, Dr. Marvin White, Jr., an internist, completed a note on September 1, 1995 and indicated that appellant was totally disabled from February 4 to September 1, 1995 and released appellant to return to work on September 5, 1995 with restrictions. He stated that appellant should have 15- to 20-minute periods to relax every 2 hours; no lifting greater than 10 pounds and no prolonged sitting or standing. Dr. White did not provide an opinion that these restrictions were due to appellant's accepted employment injury.

In a form report dated September 26, 1995, Dr. A. Bhai, a Board-certified family practitioner, noted appellant's history of injury and diagnosed low back strain with radiculopathy. Dr. Bhai indicated that appellant could not perform his regular work. Dr. Bhai did not provide any medical reasoning in support of his finding of partial disability and did not attribute appellant's disability to his accepted condition of lumbosacral strain.

The Office referred appellant for a second opinion evaluation with Dr. Milton E. Ashby, a Board-certified orthopedic surgeon. On July 2, 1996 Dr. Ashby completed a detailed report noting appellant's history of injury, medical history and physical findings. He diagnosed degenerative disc disease of the lumbar spine unrelated to appellant's employment injuries. Dr. Ashby reviewed appellant's job description and stated that appellant could perform his duties without restriction and that there was no need for formal medical care. The Office provided Dr. Ashby with appellant's x-rays and magnetic resonance imaging scan and in a supplemental report dated July 31, 1996 he stated that his opinion remained that appellant's degenerative disc disease was not related to his employment, that appellant was not disabled and that he did not require further medical treatment for his accepted employment injuries.

Appellant did not submit any medical evidence contemporaneous with Dr. Ashby's reports.

As Dr. Ashby's reports contain a history of injury, an opinion that appellant's current condition and disability is not related to his employment injury supported by findings on physical examination, the Board finds that his reports constitute the weight of the medical evidence. The remainder of the medical evidence did not address appellant's condition on or after September 1995 and did not provide medical reasoning relating his work restrictions to the accepted condition nor provide medical reasoning establishing that his degenerative disc disease was caused or aggravated by the accepted employment injuries. For these reasons, the Board finds the Office met its burden of proof to terminate appellant's compensation benefits.

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

The decision of the Office of Workers' Compensation Programs dated June 12, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 17, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member