

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND J. LITTLEDOG and DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, West Glacier, MT

*Docket No. 99-229; Submitted on the Record;
Issued November 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective March 28, 1998.

The Office accepted appellant's claim for exacerbation of bilateral hernias. Appellant sustained the original employment injury on August 20, 1992, stopped working on August 24, 1992, worked intermittently for the employing establishment from June 6 through July 1, 1993 when he stopped working due to an increase in groin pain and has not worked since that date. The Office paid appellant temporary total disability benefits.

By decision dated March 17, 1998, the Office terminated benefits, stating that the weight of the evidence established that he had no disabling residuals from the accepted condition. In making its decision, the Office relied on the October 23, 1997 report of Dr. Steven Beyersdorf, a Board-certified surgeon with a subspecialty in colon and rectal surgery and a second opinion physician.

In his October 23, 1997 report, Dr. Beyersdorf considered appellant's history of injury, performed a physical examination and diagnosed chronic bilateral groin pain, greater on the right than the left and status post bilateral inguinal hernia repairs. He stated that appellant did not have any objective evidence of disabling residuals from the bilateral hernias or surgical repair. Dr. Beyersdorf also stated that appellant did not have recurrent hernias. He stated that appellant did not have any symptoms which extend down the medial aspect of his thighs, indicating that there was no involvement of the genitofemoral nerve. Dr. Beyersdorf also stated that the ilioinguinal nerves on each side were identified and preserved. He found no evidence of neuropathic or nerve entrapment syndrome. Dr. Beyersdorf opined that because appellant was five years out from bilateral inguinal hernia repair and had no recurrent hernias, he could return to his usual work.

By letter dated June 1, 1998, appellant requested reconsideration of the Office's decision and submitted a medical report from Dr. Randy Webb, his treating physician and a Board-certified family practitioner, dated May 7, 1998. In his report, Dr. Webb noted that appellant had come in for a follow-up examination, that he had no evidence of inguinal hernia and no masses but he had subjective pain in his inguinal areas bilaterally worse on the right. He diagnosed chronic myofascial pain syndrome involving both inguinal areas, worse on the right. Dr. Webb stated that appellant required continued treatment with Darvocet and should not under any circumstances return to his usual work as a road laborer. He stated that appellant "would end up with an exacerbation of his condition and most likely would be even worse." In a disability note dated May 7, 1998, Dr. Webb stated that appellant was unable to work due to his medical condition.

By decision dated June 11, 1998, the Office denied modification of the March 17, 1998 decision.

By letter dated July 1, 1998 (mistakenly dated June 1, 1998), appellant requested reconsideration of the Office's decision and resubmitted Dr. Webb's May 7, 1998 report but also submitted a report from Dr. Webb dated June 24, 1998. In his June 24, 1998 report, Dr. Webb noted that when appellant returned to work after his surgery to repair his inguinal hernias, he sustained another injury which resulted in his having pain bilaterally in the groin area. He stated that appellant did not have a recurrence of his inguinal hernias but persistent pain in the region which another doctor diagnosed as myofascial pain syndrome. Dr. Webb stated that appellant had objective medical findings which were persistent pain in the area made worse by his work activity. He opined that appellant's present symptoms were connected to the August 20, 1992 employment injury. Dr. Webb stated that appellant was no longer able to perform his previous work activities "due to the fact that he [has] tried and failed in the past." He opined that appellant was not malingering.

By decision dated July 9, 1998, the Office denied appellant's reconsideration request.

The Board finds that the Office met its burden of proof to terminate compensation benefits in its March 17, 1998 decision.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

By decision dated March 17, 1998, the Office terminated appellant's compensation benefits effective March 28, 1998, relying on the opinion of Dr. Beyersdorf, a second opinion

¹ *Patricia M. Mitchell*, 48 ECAB ____ (Docket No. 95-384, issued February 27, 1987); *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

physician, that appellant could return to his usual work. Dr. Beyersdorf found no objective evidence of disabling residuals from the bilateral hernias or surgical repair. He opined that appellant did not have recurrent hernias and there was no evidence of neuropathic or nerve entrapment syndrome. Dr. Beyersdorf's opinion was complete and well rationalized and justified the Office's termination of appellant's compensation benefits in its March 17, 1998 decision. Since the issuance of that decision, however, appellant submitted medical reports from his treating physician, Dr. Weber, dated May 7 and June 24, 1998 in which Dr. Weber stated that appellant had objective findings of pain in his groin areas identifiable as myofascial pain syndrome which was work related and prevented him from working. Dr. Weber's opinion creates a conflict with Dr. Beyersdorf's opinion that appellant had no work-related residuals and could return to work. Section 8123(a) of the Federal Employees' Compensation Act provides that where there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.³ In the present case, because of the conflict between Dr. Beyersdorf's and Dr. Webb's opinion as to whether appellant can return to work, the case must be remanded for the Office to refer the case and appellant with a statement of accepted facts to an impartial medical specialist to evaluate the medical evidence and provide a rationalized opinion on the issue of whether appellant's current condition is causally related to the exacerbation of his bilateral hernias. The Board should then make a *de novo* decision based on the augmented record.

The decision of the Office of Workers' Compensation Programs dated March 17, 1998 is affirmed. The decisions of the Office dated July 9 and June 11, 1998 are set aside and the case is remanded for further development consistent with this decision of the Board, to be followed by a *de novo* decision.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

³ 5 U.S.C. § 8123(a); *Esther Velasquez*, 45 ECAB 249, 252-53 (1993).