

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HARRY T. BISE and DEPARTMENT OF THE INTERIOR,  
BUREAU OF RECLAMATION, Grand Coulee, WA

*Docket No. 00-268; Submitted on the Record;  
Issued December 27, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation, for the accepted condition of herniated disc and consequential depression, as of October 10, 1999.

On June 28, 1977 appellant, then a 50-year-old drill helper, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured his back on November 1, 1976 while emptying a cement bag. The Office accepted the claim for a herniated disc at L5-S1 and placed him on the automatic rolls for temporary total disability effective February 1, 1978. The Office subsequently authorized a laminectomy and expanded the acceptance of his claim to include depressive neurosis.

By letter dated September 26, 1984, the Office referred appellant, together with a statement of accepted facts, list of questions to be resolved and medical records, to Spokane Panel Evaluation for a second opinion as to whether appellant had any continuing disability due to his herniated disc or resultant depression.

In a panel report dated November 7, 1984, Dr. William A. Nerud, a second opinion Board-certified orthopedic surgeon, Dr. Harvey G. Copsey, a second opinion Board-certified internist, and Dr. Isaac J. Lawless, a second opinion Board-certified psychiatrist, diagnosed a herniated disc at L4-5 and postoperative lumbar laminotomy and discectomy due to appellant's employment injury and obesity, hypertension, gouty, arthritis and diabetes, which were unrelated to his accepted employment injury. Regarding whether appellant was totally disabled, the physicians concluded that appellant was capable of performing work, but that he could not perform his usual employment as a drill helper. In addition, Dr. Lawless opined that appellant had "no permanent impairment of any kind from a psychiatric standpoint."

In an effort to obtain more current evaluation relative to the extent and degree of any employment-related condition, the Office referred appellant to medical consultants network. In a

report dated August 6, 1999, Dr. Barbara G. Jessen, a second opinion Board-certified neurologist and Dr. Scott V. Linder, a second opinion Board-certified orthopedic surgeon, based upon a review of the medical record, employment injury history, statement of accepted facts and physical examination, diagnosed status post lumbar injury, chronic nonspecific complaints and presumed cardiac failure. Drs. Linder and Jessen concluded that there were no employment-related residuals that appellant's employment-related disability had ceased and that any current disability was due to his age and other health problems. They noted that appellant's other nonrelated medical problems appeared to be life threatening and the cause of any current disability and that there were no recommendations for further medical treatment as appellant's accepted condition had been treated surgically.

On August 17, 1999 the Office advised appellant that it proposed to terminate benefits on the basis that he was no longer disabled or had any residual disability due to his accepted employment injury.

By letter dated September 13, 1999, appellant disagreed with the Office's proposal to terminate benefits and submitted reports from Dr. James W. Lamberton, an osteopath, and his attending physician and Ken Tyball, a physician's assistant, to support that he remained totally disabled due to his accepted employment injury.

In a note dated July 22, 1999, Dr. Lamberton stated that appellant had been disabled due to his employment-related back injury for many years, that appellant continued to be totally disabled due to his back injury and that he was not capable of engaging in gainful employment.

In the August 27, 1999 report, Mr. Tyball opined that appellant was totally disabled from a medical and orthopedic standpoint. He attributed appellant's severe disability to his diabetes and his moderate to severe degenerative disc disease and osteoarthritis.

By decision dated September 23, 1999, the Office finalized the proposal to terminate benefits, effective October 10, 1999, on the basis that appellant had no disability or residuals due to his accepted employment injury. In the attached memorandum, the Office found that the weight of the evidence rested with the opinions of Drs. Jessen and Linder who concluded that any disability appellant had due to his accepted herniated L4-S1 disc and subsequent depression had ceased. The Office also found that Dr. Lamberton's opinion to be insufficient to cause a conflict as it was not well rationalized and failed to explain how appellant's current disability was causally related to his accepted employment injury.<sup>1</sup>

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective October 10, 1999.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination or modification of compensation benefits.<sup>2</sup> The Office may not

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<sup>1</sup> Subsequent to the Office's decision terminating benefits, appellant submitted additional medical evidence. The Board may not consider new evidence on the first time on appeal; *see* 20 C.F.R. § 501.2(c).

<sup>2</sup> *Raymond W. Behrens*, 50 ECAB \_\_\_\_ (Docket No. 97-1289, issued January 14, 1999).

terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>3</sup> The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; its reliability, its probative value and its convincing quality determine the weight of such evidence. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>5</sup>

The Board finds that report by Drs. Jessen and Linder establishes that appellant had no continuing disability resulting from the November 1, 1976 work injury. Both Dr. Jessen and Dr. Linder, based upon a thorough examination and review of the medical records, concluded that appellant's current disability was due to his age and nonemployment-related health problems and that his employment-related disability had ceased.

Regarding Dr. Lamberton's report, the Board finds sufficient medical rationale or objective findings did not support his conclusions and thus, this opinion does not constitute probative evidence.<sup>6</sup> The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are factors which enter into this evaluation.<sup>7</sup>

Thus, the Board finds that the weight of the probative evidence contained in the report of Drs. Jessen and Linder establish that appellant did not have any continuing disability due to his herniated disc.

Lastly, the Board finds that the evidence of record establishes that appellant no longer had any disability due to the accepted consequential depression. In a November 7, 1984 report, Dr. Lawless concluded that appellant no longer had any disability due to his depression and the record contains no subsequent medical report indicating that appellant had any continuing disability due to his work-related depression. Thus, the Board finds that the Office properly terminated appellant's compensation benefits for his depression as there is no evidence in the record or mention of this condition subsequent to Dr. Lawless' November 7, 1984 report.

The decision of the Office of Workers' Compensation Programs dated September 23, 1999 is hereby affirmed.

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<sup>3</sup> *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

<sup>4</sup> *Raymond W. Behrens*, *supra* note 2.

<sup>5</sup> *Connie Johns*, 44 ECAB 560, 570 (1993).

<sup>6</sup> *Jean Culliton*, 47 ECAB 728 (1996).

<sup>7</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

Dated, Washington, DC  
December 27, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Valerie D. Evans-Harrell  
Alternate Member