

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL R. TURNEY and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Omaha, NE

*Docket No. 99-1494; Submitted on the Record;
Issued December 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant had any disability after September 16, 1996, the date the Office of Workers' Compensation Programs terminated his monetary compensation entitlement, causally related to his September 15, 1995 employment injuries.

The Office accepted that on September 15, 1995 appellant, then a 47-year-old electrician, sustained a contusion on his left lower leg, pes anserine bursitis, a left meniscal tear, thrombophlebitis and saphenous nerve injury when a ladder fell on him. Appellant underwent arthroscopic surgery on May 20, 1996.

On a work restriction evaluation form dated June 29, 1996, Dr. Douglas A. Clark, a Board-certified orthopedic surgeon and appellant's treating physician, indicated that appellant had reached maximum medical improvement, that he could perform sitting, walking, lifting, bending, twisting and standing continuously and squatting, climbing and kneeling intermittently and that he could return to work eight hours per day.

By report dated July 25, 1996, Dr. Clark noted that appellant's left knee was improving, that he had been doing his exercises and riding his bicycle eight miles a day, that he had been riding his bicycle three to four times a week and that he ambulated well, walked well on his toes and heels and was able to go to a full squat and rise without difficulty. He found no significant knee swelling or effusion, no tenderness with palpation or pain with patellar compression, full extension, full flexion and no atrophy. Dr. Clark recommended that appellant "continue with his quad exercises and general aerobic conditioning activities. [Appellant] has been released to regular work, however, so far he reports being unable to find a job. He is approaching a stationary status and I would expect that when he returns in one month he can be declared stationary."

By report dated August 8, 1996, Dr. Clark noted as follows:

“The physical requirements for [appellant’s] date-of-injury job were reviewed. In my opinion he will be able to return to the same type of job that he was doing at the time of the injury. This type of job, I understand, includes active climbing, lifting and working in strange positions as well as climbing ladders and scaffolding. [Appellant] should also be able to work in support structures requiring use of a body belt as well as lift and carry items weighing 50 pounds and occasionally even more than 50 pounds.

“As far as his emotional and mental stability is concerned, I see no reason why he cannot return to the work that he was doing previously.”

On August 15, 1996 the Office issued appellant a notice of proposed termination of compensation on the grounds that the medical evidence of record showed that he was no longer disabled as a result of his employment injuries. The Office noted that appellant’s treating physician, Dr. Clark, released him to return to his date-of-injury job without restrictions.¹

Appellant objected to the proposed termination and in support he submitted a September 5, 1996 report from Dr. John A. Mattson, a psychiatrist, who indicated that he had been treating appellant once or twice a week since August 1994 and that on October 31, 1995 he placed appellant on disability status beginning November 1, 1995. He stated that appellant continued “to experience flash backs, nightmares, insomnia episodes and hopelessness when triggered” and that “in reference to his left leg injury, I believe his symptoms are present and have observed them limiting him in several areas.” Dr. Mattson opined that appellant was on psychiatric disability.²

By decision dated September 16, 1996, the Office finalized the notice of proposed termination of compensation finding that appellant’s disability as a result of his left knee arthroscopy ceased no later than September 16, 1996. The Office found that Dr. Mattson’s report did not provide current objective left knee findings of disability.

By decision dated September 25, 1996, the Office issued a new decision superseding the September 16, 1996 decision, which found that appellant’s entitlement to monetary compensation benefits was terminated as he had no injury-related disability later than September 16, 1996, but finding that he remained entitled to medical benefits.

¹ An August 21, 1996 letter from the employing establishment noted that appellant had been terminated during probation for inability to report to work, as he had vacated his home in Montana, left the area and moved to Phoenix, Arizona, without any intent of returning. The employing establishment advised appellant that he had no reemployment rights as he was separated due to voluntary relocation out of the area.

² Previously submitted medical reports from Dr. Mattson reported the diagnosis of “major depressive episode,” which occurred while appellant was working for the employing establishment in California. Appellant had a separate claim No. 13-1016216, which was accepted for a depressive disorder but which was determined to not be the cause of disability from work on February 2, 1996 and No. 12-161054, which was rejected for a psychiatric reaction on January 23, 1997.

By report dated October 1, 1996, Dr. Dana G. Seltzer, a Board-certified orthopedic surgeon, reviewed appellant's history of injury and treatment, noted some mild patellofemoral crepitation, opined that it was possible that appellant had saphenous nerve injury or entrapment and indicated that he injected his left knee with good results. Dr. Seltzer noted that appellant called after running one mile and reported that he was able to run more than a mile without any significant discomfort.

On May 1, 1997 a second opinion evaluator, Dr. Boris Stojic, a Board-certified orthopedic surgeon, reviewed appellant's history and medical records, performed an examination, found no objective evidence of disability, noted that the arthroscopic surgery did not reveal any damaged structural change of his meniscus or ligaments, but revealed only a chondral fracture which did not involve the weight bearing surface and opined that appellant was capable of performing his usual and customary line of work without restrictions. Dr. Stojic noted that appellant's residual neuropraxia of the saphenous nerve did not represent any functional handicap and would resolve with time.

On May 24, 1997 appellant responded to Dr. Stojic's report claiming that his subjective complaints of saphenous nerve injury and left leg stability were not considered and he argued that his work as a utility electrician was more grueling than the mere jogging two miles which resulted in his current aggravation and/or inflammation.

On June 13, 1997 an Office medical adviser opined that appellant had a four percent permanent impairment for schedule award purposes due to his subjective left lower extremity discomfort identified as saphenous nerve dysesthesia. On July 7, 1997 appellant was granted a schedule award for a four percent permanent impairment of his left lower extremity for the period September 17 through December 6, 1996.

Appellant submitted a September 2, 1997 report from Dr. Seltzer, which noted that he had resolving left pes anserine bursitis as well as left saphenous nerve entrapment syndrome. In an August 3, 1998 report, Dr. Seltzer noted that appellant was complaining of left knee pain and mild swelling in the region of the pes anserine bursa and he opined that appellant had chronic left pes anserine bursitis.

On January 22, 1998 appellant filed a claim for a recurrence of disability, characterized by chronic pes anserine bursitis, which he alleged had been continuous from September 15, 1995.³

On a July 17, 1998 work status report, Dr. Seltzer indicated that appellant could return to light duty on July 16, 1998 and he diagnosed left pes anserine bursitis.

By report dated August 25, 1998, Dr. Seltzer noted that appellant's examination was relatively unchanged, though his symptoms were a little bit less than they were on

³ Although the Office issued a decision denying appellant's recurrence claim on May 11, 1999, the Board had taken jurisdiction and docketed this case on March 4, 1999, such that the Office's May 11, 1999 decision is null and void for lack of jurisdiction, as both the Board and the Office cannot have concurrent jurisdiction. See 20 C.F.R. § 501.2(c).

August 3, 1998. He indicated that appellant had pes anserine bursitis that had not disappeared. On an August 26, 1998 work capacity evaluation form Dr. Seltzer noted “no” to the question of whether there was any reason appellant could not work eight hours per day.

By report dated September 4, 1998, Dr. Seltzer opined that appellant had chronic pes anserine bursitis and some tenderness over his saphenous nerve with a normal saphenous nerve sensory examination. He noted that appellant’s sensory nerve entrapment had essentially resolved, that he could not explain why appellant has had recurrent bouts of pes anserine bursitis, which respond well to injections and physical therapy, but which continue to recur and he opined that appellant needed “supportive care of three to four visits per year with possible injections and occasional physical therapy to help maintain him in a state in which he can work.” Dr. Seltzer noted that appellant’s primary problem was related to the recurrent discomfort in the pes anserine bursal region, which “certainly could be caused by the direct blow which he sustained to the medial aspect of his leg” and he opined that “[t]his knee discomfort will be a problem for [appellant] doing the strenuous activities of a utility electrician, but certainly a less strenuous job as an electrician might be something that he could tolerate. He will have a difficult time stooping, squatting, kneeling and doing repetitive standing and sitting, but I believe that he should be able to return to some form of work in the field in which he is trained.” Dr. Seltzer opined:

“I have no doubt that this is related to his original injury and a severe blow to the medial aspect of the knee can certainly cause an irritation to the saphenous nerve as it exits, Hunter’s canal in the distal thigh. This is also the region where the pes anserine bursa is and a traumatic or hemorrhagic bursitis could certainly have started this whole condition. ... [H]is symptoms really have not changed much since 1995.”

By letter dated September 9, 1998, appellant claimed that his left leg was less than 100 percent and that his left leg problems had never stopped since 1995 and he requested assistance.

In an October 13, 1998 report, Dr. Seltzer noted that appellant had tenderness over the pes anserine bursa with mild-to-moderate swelling, but had full range of motion and a negative Tinel’s sign around the saphenous nerve, with no other specific left knee problems noted. Dr. Seltzer injected appellant’s left knee, which seemed to alleviate his discomfort and he opined that a stationary bicycle would be an ideal therapy.

By decision dated December 3, 1998, the Office denied modification of the September 25, 1996 decision, finding that the evidence submitted in support was insufficient to warrant modification. The Office found that none of the newly submitted medical evidence identified any objective evidence to support disability.

The Board finds that appellant has not established that he had disability after September 16, 1996, causally related to his September 15, 1995 employment injuries.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ 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.⁵

The Board finds that the Office met its burden of proof to terminate appellant's monetary compensation entitlement based upon the reports of appellant's treating physician, Dr. Clark. In reports dated June 29, July 25 and August 8, 1996, Dr. Clark clearly found that appellant had no objective evidence of continuing disability, that he had reached maximum medical improvement, that he could perform sitting, walking, lifting, bending, twisting and standing continuously and squatting, climbing and kneeling intermittently and that he could return to work eight hours per day. Dr. Clark noted that appellant had been released to regular work and, after reviewing the physical requirements for his date-of-injury job, he opined that appellant would be able to return to the same type of job that he was doing at the time of the injury, which required active climbing, lifting and working in strange positions as well as climbing ladders and scaffolding and working in support structures requiring use of a body belt as well as lifting and carrying items weighing 50 pounds and occasionally even more than 50 pounds.

As Dr. Clark was a specialist in the appropriate field, orthopedic surgery and was treating appellant regularly and as his reports were rationalized and based upon the lack of objective signs or symptoms of disability, his reports are of great probative value.

The only medical evidence of record for that period which supported that appellant remained disabled was the report of Dr. Mattson, a psychiatrist and not a specialist in orthopedics. Dr. Mattson indicated that appellant was "on psychiatric disability" and noted only in reference to his left leg injury, that he believed appellant's symptoms were present and limited him in several areas. As the instant claim is regarding appellant's disability due to his accepted orthopedic injuries and not a psychiatric condition, continuing disability due to a psychiatric condition would not effect the Office's findings with respect to a cessation of disability due to appellant's accepted orthopedic injuries.⁶ Dr. Mattson's opinion regarding appellant's orthopedic left leg injuries is of reduced probative value as Dr. Mattson is not a specialist in the appropriate field,⁷ because he

⁴ *Harold S. McGough*, 36 ECAB 332 (1984).

⁵ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁶ Disability due to a psychiatric condition would appropriately be addressed by filing a claim for a recurrence of disability under claim No. 13-1016216, which was accepted for a depressive disorder but which was determined to not be the cause of disability from work on February 2, 1996.

⁷ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning questions peculiar to that field than the opinions of other physicians); see also *Elmer L. Fields*, 20 ECAB 250 (1969).

provides no medical rationale for his opinion⁸ and because it is couched in speculative terms of what he believed.⁹

Therefore, the Office met its burden of proof to terminate monetary compensation benefits based upon the well-rationalized reports of Dr. Clark and properly determined that the weight of the medical evidence of record at that point established that appellant had no disability after September 16, 1996 causally related to his September 15, 1995.

After the Office has met its burden of proof to terminate monetary compensation entitlement, the burden of proof then shifts to appellant to prove that he has continuing disability, causally related to his accepted employment injuries, by the weight of the reliable, probative and substantial evidence.¹⁰

Appellant has not met that burden in this case.

Dr. Seltzer noted on October 1, 1996 that, following an injection, appellant was able to run more than one mile without any significant discomfort. This report does not support that appellant continued to be disabled due to his employment injuries.

Dr. Stojic, on May 1, 1997, found no objective evidence of disability and opined that appellant was capable of performing his usual and customary work without restrictions. This report, therefore, also does not support continuing disability.

Thereafter, on August 25, 1998, Dr. Seltzer diagnosed chronic pes anserine bursitis, but noted that there was no reason that appellant could not work eight hours per day. This report, therefore, does not support any injury-related continuing or recurrent total or partial disability.

In fact, on September 4, 1998, Dr. Seltzer noted that he could not explain why appellant had recurrent bouts of pes anserine bursitis. Therefore, this report does not support a causal relationship between appellant's pes anserine bursitis at that time and his originally accepted employment injuries. Dr. Seltzer later speculated that the pes anserine bursitis "could be caused" by a direct blow, that a traumatic or hemorrhagic bursitis "could certainly have started this whole condition" and that a severe blow "can certainly cause" an irritation of the saphenous nerve. As

⁸ See *Judith A. Peot*, 46 ECAB 1036 (1995); *Clara T. Norga*, 46 ECAB 473 (1995); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991). (Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment injuries. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature and pathophysiology of the relationship between the current diagnosed condition and the specific employment injuries).

⁹ See *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

¹⁰ *Talmadge Miller*, 47 ECAB 673 (1996).

these statements are facially speculative, they are of reduced probative value and are, therefore, insufficient to establish continuing injury-related disability.¹¹

As appellant has submitted no further rationalized medical evidence supporting that he continues to be disabled to some degree, due to his accepted employment-related injuries, he has not met his burden of proof to establish his claim subsequent to the Office's termination of compensation.

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 3, 1998 is hereby affirmed.

Dated, Washington, DC
December 11, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹¹ See *supra*, Jennifer Beville, note 9.