

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAYNE B. CARLTON and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 98-1994; Submitted on the Record;
Issued July 14, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation, effective March 10, 1997; and (2) whether the Office properly determined that appellant was not entitled to a schedule award for his right shoulder condition.

On November 30, 1992 appellant, then a 40-year-old equipment cleaner, sustained an employment-related thoracolumbar strain and aggravation of herniated discs at L4-5 and L5-S1. He stopped work on December 1, 1992 and has not returned. On September 29, 1994 appellant submitted a schedule award claim for an injury to his right shoulder. By decision dated March 8, 1996, the Office terminated his compensation and on April 2, 1996 appellant requested a hearing. In a decision dated October 11, 1996, an Office hearing representative remanded the case to the Office after determining that a conflict in the medical evidence existed between appellant's treating physician, Dr. Edward A. Ridgill, and Drs. Michael B. Strauss and Geoffrey Miller, who had provided second opinions for the Office. Appellant was returned to the periodic rolls and referred to Dr. Wilmer Irvine, a Board-certified orthopedic surgeon, for an impartial medical evaluation. By letter dated January 27, 1997,¹ the Office informed appellant that it proposed to terminate his compensation, based on the referee opinion of Dr. Irvine. Appellant disagreed with the proposed termination and submitted additional medical evidence. By decision dated March 10, 1997, the Office terminated his benefits, effective that day. In a second decision dated March 10, 1997, the Office denied appellant's schedule award claim on the grounds that his shoulder condition was not employment related. Following appellant's request for a review of the

¹ The notice contains a typographical error which indicated that the date was January 19, 1996.

written record, in a January 16, 1998 decision, an Office hearing representative affirmed both March 10, 1997 decisions. The instant appeal follows.²

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective March 10, 1997.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁴ In this case, finding that a conflict of medical opinion existed, the Office referred appellant to Dr. Irvine, a Board-certified orthopedic surgeon, to provide an impartial evaluation. In a comprehensive report dated January 7, 1997, Dr. Irvine advised that appellant had no residual employment-related disability. While appellant submitted additional reports from Dr. Ridgill, his treating internist, he merely reiterated his opinion that appellant continued to be disabled due to the November 30, 1992 employment injury. As Dr. Ridgill had been on one side of the conflict in the medical opinion that Dr. Irvine, the impartial medical examiner, resolved, Dr. Ridgill's reports are insufficient to overcome the special weight accorded Dr. Irvine.⁵ The Board, therefore, finds that appellant had no employment-related disability on or after March 10, 1997, and the Office met its burden of proof to terminate his compensation benefits on that date.

The Board further finds that appellant is not entitled to a schedule award for his right shoulder condition.

Under section 8107 of the Federal Employees' Compensation Act⁶ and section 10.304 of the implementing federal regulations,⁷ schedule awards are payable for permanent impairment of

² The record in this case contains decisions issued by the Office on March 3 and May 14, 1998 regarding appellant's occupational disease claim submitted on March 4, 1996 in which he alleged that he sustained employment-related stress. Appellant, who is represented by counsel, has not filed an appeal with the Board regarding these decisions.

³ *Pedro Beltran*, 44 ECAB 222 (1992).

⁴ *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

⁵ *See Harrison Combs, Jr.*, 45 ECAB 716 (1994).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.304.

specified body members, functions or organs.⁸ In this case, however, the Office has not accepted that appellant's right shoulder condition is employment related. Furthermore, on his initial claim form, appellant did not indicate that he hurt his shoulder in the November 30, 1992 employment incident and Dr. Ridgill, who began treating him at that time, did not indicate that appellant had a problem with his right shoulder until 1994. Dr. Irvine, the referee examiner, noted physical findings regarding appellant's right shoulder but did not indicate that the condition was employment related and advised that appellant had no residual employment-related disability. The Act specifically excludes the back as an organ and, therefore, the back does not come under the provisions for payment of a schedule award.⁹ A schedule award could be payable for a permanent impairment of the arms that is due to an employment-related back condition. In this case, however, there is no credible medical evidence linking appellant's right shoulder condition to the November 30, 1992 injury. He is, therefore, not entitled to a schedule award.

The decision of the Office of Workers' Compensation Programs dated January 16, 1998 is hereby affirmed.

Dated, Washington, D.C.
July 14, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ The Board notes that, while appellant filed a claim for a schedule award for his right shoulder condition on September 29, 1994, he did not file either a Form CA-1 or CA-2 regarding this condition.

⁹ 5 U.S.C. § 8101(19); *see Francesco C. Veneziani*, 48 ECAB 572 (1997).