

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY B. WHITMORE and DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, Memphis, TN

*Docket No. 99-227; Submitted on the Record;
Issued October 24, 2000*

DECISION and ORDER

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

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

The Board has duly reviewed the case record in the present appeal and finds that the Office met its burden of proof in terminating appellant's compensation benefits.

It is well established that 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 is no longer related to the employment.¹

On December 18, 1985 appellant, then a 58-year-old realty specialist, sustained a chest wall contusion, cervical strain, low back strain and bilateral carpal tunnel syndrome in the performance of duty when a truck jackknifed in front of his vehicle and he was forced to drive into a ditch. Effective August 11, 1986 appellant was placed on the periodic compensation roll to receive compensation benefits for temporary total disability. By decision dated May 2, 1996, the Office terminated appellant's compensation benefits.

By letter dated May 24, 1996, appellant requested an oral hearing before an Office hearing representative. On February 26, 1997 a hearing was held before an Office hearing representative at which time appellant testified. By decision dated May 9, 1997, the Office hearing representative affirmed the Office's May 2, 1996 decision. By letter dated March 10, 1998, appellant requested reconsideration. By decision dated July 10, 1998, the Office denied modification of its May 2, 1996 decision.

¹ See *Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990).

In a report dated August 27, 1986, Dr. Oakley C. Jordan, Jr., appellant's attending internist, related that appellant continued to complain of pain in the upper extremities due to his carpal tunnel syndrome. He noted that appellant's neurosurgeon had indicated that he would continue to have chronic pain and discomfort, some numbness and decreased grip strength.

In a work restriction evaluation form dated October 17, 1989, Dr. Jordan indicated that appellant could work eight hours a day with no lifting over 10 pounds and with some hand restrictions.

In a report dated January 22, 1996, Dr. Samuel Meredith, a Board-certified orthopedic surgeon and an Office referral physician, who was provided with a statement of accepted facts in this case and copies of medical reports, provided a history of appellant's condition, a description of his course of treatment, detailed physical findings on examination and the results of x-rays. He stated:

"In my opinion, there is no objective evidence that [appellant's] chest wall contusion, spinal strain or carpal tunnel syndrome are presently active or causing any total disability.

"[Appellant's] current disability is not due to [a] work-related condition listed in the statement of accepted facts. He has significant other medical problems, which lie outside my area of expertise. He may have cardiovascular problems enough to warrant disability, but this question should be answered by his cardiovascular surgeon.

"Based on just the musculoskeletal findings, I think [appellant] is able to do sedentary and part standing work. I would consider him at maximum medical improvement from his alleged injuries."

By letter dated April 2, 1996, to Dr. Meredith, the Office noted that a neurosurgeon had found evidence of mild carpal tunnel syndrome on the left, moderate carpal tunnel syndrome on the right and bilateral ulnar nerve compression. The Office asked Dr. Meredith whether he believed that appellant was totally disabled due to his bilateral carpal tunnel syndrome and, if not, whether he could perform his regular job or a modified job.

In a supplemental report dated April 11, 1996, Dr. Meredith stated that he did not find any significant clinical indication of a chronic significant carpal tunnel syndrome. He stated that appellant did not have a classic Tinel's finding at the wrist and he had no significant atrophy of his hand muscles to indicate either median or ulnar neuropathy. Dr. Meredith stated:

"EMG [electromyogram] and nerve conduction studies do not always correlate with physical symptoms. It seems unlikely to me that [appellant] would continue with the degree of pain he has had without considering reoperation on his operated hand and an additional surgery on the untreated hand. Using the legal definition of medical certainty, I do not feel [appellant] has total disability based on active chronic significant carpal tunnel syndrome as a result of his accident."

He indicated that appellant could work eight hours a day with no rapid repetitive hand motion, no rapidly repeated or maximally sustained wrist flexion or grip strength activity and stated that these restrictions were not related to the 1985 employment injury.

The Board finds that the Office properly relied on the opinion of Dr. Meredith in terminating appellant's compensation benefits. He provided a comprehensive medical report with a history of appellant's condition, a review of his course of treatment, detailed physical findings on examination and a rationalized medical opinion supporting his opinion that appellant was no longer totally disabled due to his 1985 employment injury and was capable of performing limited-duty work based on nonwork-related physical restrictions.

The reports of appellant's attending physicians are not sufficient to overcome or to create a conflict with Dr. Meredith's opinion that appellant's employment-related disability had ceased.

In notes dated March 26, 1996, Dr. Stanley M. Patterson, appellant's attending Board-certified neurosurgeon, related that an electromyogram and nerve conduction studies revealed mild carpal tunnel syndrome on the left, moderate carpal tunnel syndrome on the right and mild to moderate bilateral ulnar nerve compression. He stated his opinion that appellant's difficulties with his hands and arms did not merit surgery. Dr. Patterson indicated that he told appellant to avoid activities, which aggravated his condition. However, Dr. Patterson did not opine that appellant was totally disabled due to his 1985 employment-related conditions.

In a report dated April 10, 1996, Dr. Robert T. Bobo, appellant's attending Board-certified orthopedic surgeon, related that appellant had been under his care since March 19, 1996 for symptoms referable to degenerative disc disease of the cervical spine, bilateral carpal tunnel syndrome and status post carpal tunnel release on the right. He stated:

"I have been asked to comment on the relationship of his symptoms to any injury of 1985, when he was the driver of a pickup truck that was forced off the road by a jackknifed 18-wheeler truck. It is my opinion that that injury exacerbated and accelerated the arthritic condition in his neck and possibly caused an additional disc herniation at the C4-5 level. There was a definite change in [appellant's] level of pain and his ability to function after that injury. It is possible that he may need an anterior discectomy and fusion in the cervical spine in the future. He will certainly need continued conservative treatment measures and limited activity. [Appellant] is not capable of performing work activity requiring pulling, pushing, lifting or straining with greater than 5 pounds on a frequent basis or 20 pounds on an occasional basis. He is not capable of squatting, frequent bending or stooping or climbing. He would also have difficulty with prolonged sitting or fixed positioning of the head and neck."

However, Dr. Bobo did not opine that appellant was totally disabled due to his 1985 employment injury. He indicated that he was capable of performing limited-duty work with restrictions. Regarding his opinion that the 1985 employment injury aggravated an arthritis condition and may have caused a disc herniation, these conditions have not been accepted by the Office and Dr. Bobo provided insufficient medical rationale in support of his opinion that these

conditions were causally related to the 1985 employment injury. In any event, he did not opine that appellant was totally disabled due to any of these conditions.

In a report dated January 12, 1998, Dr. Jordan, appellant's attending internist, related that appellant had been his patient for many years and that he was involved in a motor vehicle accident in 1985. He stated:

"It is my professional opinion that the accident accelerated his degenerative hypertrophic changes that were noted on an MRI [magnetic resonance imaging] [scan] done March 21, 1996 of his [cervical] spine. This accident certainly exacerbated this condition and may have caused an additional disc herniation at C4-5, as there was a distinct change in his condition and his pain after this incident.

"It is also my professional opinion that [appellant] should not be doing any work that requires pushing, pulling or lifting anything greater than 5 pounds on a frequent basis and certainly no more than 20 pounds on [an] occasional basis. He is not able to do any frequent squatting, bending, stooping or climbing, or do any prolonged sitting or have any fixed positioning of the neck.

"[Appellant's] musculoskeletal restrictions would keep him from doing anything except minimal sedentary activities. This coupled with his arteriosclerotic heart disease makes him unable to get gainful employment."

Although Dr. Jordan opined that appellant was totally disabled due to a combination of his musculoskeletal restrictions and arteriosclerotic heart disease, arteriosclerotic heart disease is not an accepted work-related condition in this case. Dr. Jordan indicated that appellant's musculoskeletal restrictions permitted minimal sedentary activities but he did not indicate that appellant was totally disabled due to his specific 1985 work-related injuries, a chest wall contusion, cervical and low back strains and bilateral carpal tunnel syndrome. His opinion that appellant's 1985 employment injury may have caused a disc herniation is speculative and not supported by test results or sufficient medical rationale.

The July 10, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 24, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member