

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEON McGINNIS and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Vicksburg, MS

*Docket No. 99-2406; Submitted on the Record;
Issued February 5, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective October 10, 1998 on the basis that appellant no longer had any disability causally related to his October 21, 1984 employment injury; and (2) whether the Office abused its discretion by refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

On October 21, 1984 appellant, then a 31-year-old mechanic, sustained a cervical strain while in the performance of duty. The Office also accepted appellant's claim for depressive reaction. He ceased work following his injury and was subsequently terminated in November 1984. The Office placed appellant on the periodic compensation rolls and he continued to receive wage-loss compensation for approximately 14 years following his October 21, 1984 employment injury.

On August 17, 1998 the Office advised appellant that it proposed to terminate his wage-loss compensation because the medical evidence established that he no longer had any continuing disability causally related to his accepted employment injury of October 21, 1984.

In a letter dated August 28, 1998, appellant noted his disagreement with the proposed termination of compensation, however, he did not submit any medical evidence in support of his claim of continuing disability.

By decision dated October 6, 1998, the Office terminated appellant's compensation effective October 10, 1998 on the basis that the evidence of record established that appellant was no longer disabled as a result of his October 21, 1984 employment injury.

On April 15, 1999 the Office received an undated request for reconsideration from appellant. In a decision dated May 22, 1999, the Office denied appellant's request for

reconsideration without reaching the merits of his claim. Appellant filed a timely appeal with the Board on July 26, 1999.¹

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³

The recent medical evidence of record establishes that appellant no longer suffers from any physical disability causally related to his accepted employment injury of October 21, 1984. In a report dated February 10, 1995, Dr. Samuel J. Wilder, a Board-certified orthopedic surgeon and Office referral physician, concluded that any cervical strain resulting from appellant's October 21, 1984 employment incident had resolved. He opined that the cervical strain had resolved within six to twelve weeks of appellant's 1984 injury. Dr. Wilder concluded that there were no significant objective findings on the basis of either physical examination or x-ray that would preclude appellant from participating in any activity he chooses. He did, however, note that appellant had an apparent psychiatric problem.

Appellant has not submitted any contemporaneous evidence that calls into question Dr. Wilder's opinion.⁴ Consequently, the medical evidence establishes that appellant no longer suffers any physical disability as a result of his previously accepted cervical strain. Appellant, therefore, is not entitled to any further disability compensation or medical treatment as a consequence of his October 21, 1984 employment-related cervical strain.

Regarding appellant's psychiatric condition, the Office referred him for evaluation by Dr. Robert M. Ritter, a Board-certified psychiatrist. In a report dated September 16, 1997, he diagnosed chronic paranoid schizophrenia with related dysthymia. Dr. Ritter specifically commented that appellant's dysthymia was not associated with any accident. He further explained that "[i]t would seem most likely that [appellant's] illness has been going on for many, many years and predated what appears to have been nothing more than a minor accident in 1984."

¹ The record on appeal includes evidence that was not submitted to the Office prior to the issuance of its May 22, 1999 decision denying reconsideration. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ On reconsideration, appellant submitted treatment records from the Department of Veterans Affairs dated March 3, 1999. These records, however, do not address whether appellant suffers from any continuing physical or psychiatric condition causally related to his October 21, 1984 employment injury.

The Office relied upon Dr. Ritter's opinion in finding that appellant had no continuing psychiatric disability arising from appellant's accepted employment injury of October 21, 1984. However, Dr. Ritter's September 16, 1997 report does not specifically address appellant's accepted condition of depressive reaction. Dr. Ritter did not mention appellant's accepted condition of depressive reaction. Thus, the record does not contain evidence that the depressive reaction resolved or progressed into a new psychiatric condition. Furthermore, while Dr. Ritter stated that appellant's current dysthymia was unrelated to "any accident," he failed to explain the relationship, if any, between appellant's accepted depressive reaction and his new condition of chronic paranoid schizophrenia with related dysthenia.⁵

In the instant case, the Office cannot satisfy its burden of proof by inference. The mere fact that Dr. Ritter did not diagnose an ongoing depressive reaction is not, of itself, sufficient proof that appellant's accepted condition has resolved. Additionally, Dr. Ritter's opinion regarding the cause of appellant's current condition lacks sufficient detail to support any reasonable inference that appellant's disabling psychiatric condition is unrelated to his accepted employment injury of October 21, 1984.

While the recent medical evidence demonstrates that appellant no longer suffers from residuals of his accepted cervical strain, the record does not establish that appellant's employment-related depressive reaction has resolved. The Board, therefore, concludes that the Office failed to satisfy its burden of proof in terminating appellant's compensation and medical benefits relevant to his accepted condition of depressive reaction.

⁵ *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).

The decision of the Office of Workers' Compensation Programs dated October 6, 1998 is affirmed with respect to appellant's orthopedic condition but reversed with respect to appellant's psychiatric condition.⁶

Dated, Washington, DC
February 5, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ Given the Board's disposition of the merit issue in the present case, it is not necessary for the Board to specifically address the nonmerit issue of whether the Office, by decision dated May 22, 1999, properly denied appellant's April 15, 1999 request for reconsideration.