

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of MICHAEL D. JONES and DEPARTMENT OF DEFENSE,  
FORT KNOX HIGH SCHOOL, Fort Knox, KY

*Docket No. 02-835; Submitted on the Record;  
Issued August 23, 2002*

---

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
MICHAEL E. GROOM

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

On April 5, 1999 appellant, then a 53-year-old mathematics teacher, sustained right hip and knee strains when he tripped over a table leg wheel.

Effective October 26, 1999 appellant was placed on the periodic compensation rolls to receive compensation for temporary total disability.

By letter dated November 8, 2000, the Office advised appellant that it proposed to terminate his compensation on the grounds that the medical evidence of record established that he had no remaining disability or medical condition causally related to his employment-related right hip and knee strains.

By decision dated December 21, 2000, the Office issued a final decision and terminated appellant's compensation effective that date on the grounds that the weight of the medical evidence established that his employment-related disability had ceased.

By letter dated January 19, 2001, appellant requested an oral hearing that was held on August 28, 2001.

By decision dated and finalized November 15, 2001, the Office hearing representative affirmed the Office's December 21, 2000 decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

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 has ceased or that it is no longer related to the employment.<sup>1</sup>

In a report dated April 8, 1999, Dr. M.L. Stetten, appellant's attending orthopedic surgeon, related that appellant had experienced difficulty with his right hip, right knee and low back since the employment incident on April 5, 1999 but he had also had a preexisting hip injury. He noted that x-rays showed degenerative changes in the femur bone of appellant's right leg.

In a report dated October 26, 1999, Dr. Stetten diagnosed severe degenerative arthritis of the right hip and recommended surgery. He indicated that appellant had sustained a right hip injury when he was 17 years old and that the April 5, 1999 employment incident "brought into reality" the preexisting right hip problem. Dr. Stetten stated that appellant was restricted from walking and standing for two to five percent of his workday.

In a report dated August 14, 2000, Dr. Robert L. Keisler, an orthopedic specialist and an Office referral physician, provided a history of appellant's condition, noting that he had been involved in a severe accident at age 20 that caused severe injury to his femur, hip and back due to multiple fractures that were treated with internal fixation of the femur and a long period of traction. After several months, the fractures apparently healed and appellant returned to relatively normal activities but he continued to have some difficulty sitting straight. Appellant began using a cane in 1998. Dr. Keisler provided findings on examination of August 14, 2000 and the results of x-rays and diagnosed status post right hip fracture with probable secondary avascular necrosis and degenerative joint disease, status post heel fracture of the right femoral shaft without symptoms and degeneration of the lumbar spine at L4-5. He stated:

"[Appellant] clearly has had severe traumatic changes in the right hip joint that are expected to be progressive with age. It appears there was significant loss of motion and deformity from that time onward. There was a history of significant problems in the seated position and significant heel cord contracture that points to long-term shortening. It is clear that there has been severe deformity and post-traumatic arthritis of the right hip joint most of his life. Current examination suggests that the hip joint has now spontaneously fused and the current symptoms and signs suggest that the majority of the symptoms are now referred from the lumbar spine. The spine has been put at extreme stress as a result of the loss of hip motion and the deformity.... In addition, there appears to be significant depression. This combination produces a significant level of impairment of function whereas standing, walking and particularly sitting is extremely stressful to the lumbar spine. The symptoms are real, but probably magnified by the depression....

"It should be noted that much of this can be treated, both the depression and the hip and spine disorders. The spine will continue to deteriorate at a rapid stage unless hip replacement is performed to relieve stress from the spine. The event in

---

<sup>1</sup> See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

April 1999 could represent acute pain in the arthritic hip. The hip may have had some movement at that time. This could be the result of an arthritic joint or an avascular fragment. The particular event would have produced a temporary exacerbation of the symptoms in the preexisting condition, but would not have produced the condition. It appears that the joint has fused and the symptoms that would be related have since disappeared....

“In reference to occupational impairment ... all walking and climbing is extremely impaired. Sitting, including a wheelchair, is severely impaired. Also, periods of ambulation with weightbearing. [Appellant] would be able to perform only light ambulatory activities using crutches and sitting for short periods with ability to change frequently and arise and move about.... Much of this can be resolved with a successful total hip replacement procedure.

“None of the impairment is the result of a single event that would have occurred in April of 1999. The possible effect of such an event would have been a temporary exacerbation of symptoms in a preexisting serious progressive disorder.”

Thus, Dr. Keisler opined that appellant had a temporary aggravation of his preexisting hip condition in April 1999 which had resolved and his remaining medical restrictions were due to his preexisting medical conditions, not the April 5, 1999 employment-related right hip and knee sprains.

In a letter dated September 13, 2000, Dr. Stetten stated:

“As I have stated in past correspondence, I felt this was a preexisting problem. I certainly have no deference ... with Dr. Robert Keisler’s current work restrictions. Everything that is stated was also stated in the note I sent you dated October 26, 1999.”

Thus, Dr. Stetten indicated his agreement with the conclusions in Dr. Keisler’s report.

The Board finds that that Office met its burden of proof in terminating appellant’s compensation based on the opinion of the Office referral physician, Dr. Keisler, who found that appellant had no continuing disability or medical condition causally related to his April 5, 1999 employment injury. Dr. Keisler provided a thorough and well-rationalized report based upon an accurate and complete factual background and the Office met its burden of proof based on this report.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.<sup>2</sup>

---

<sup>2</sup> See *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

After the Office's December 21, 2000 decision terminating appellant's compensation, appellant submitted additional medical evidence. Given that the Board has found that the Office properly relied on the opinion of Dr. Keisler in terminating appellant's compensation effective December 21, 2000, the burden shifts to appellant to establish that he is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that appellant had residuals of his April 5, 1999 employment injury after December 21, 2000.

In a report dated May 1, 2001, Dr. Mark Carter provided a history of appellant's condition and findings on examination. He diagnosed severe degenerative joint disease of the right hip. Dr. Carter stated that appellant was able to function fairly well with residuals from an old femur and hip fracture but the fall at work worsened his hip condition. He stated:

“[Appellant] needs a new hip. I do not think his hip got this way from his fall at the school in April 1999. This looks like a severe degenerative condition that has been going on for some time. The fall may have been the straw that broke the camel's back, but [appellant] would have had severe arthritic changes well before that date to have his hip look like it does now. I do not think that he is going to be able to tolerate any prolonged standing or walking. [Appellant] cannot sit with a normal flexion of the hip and certainly cannot squat, climb, crawl or kneel. He cannot operate equipment with his right leg and would be at risk driving an automobile.”

This report does not establish that appellant's continuing problems were due to his April 5, 1999 employment injury. In fact, Dr. Carter's report, like Dr. Keisler's report, indicates that appellant's continuing problems were due to his preexisting medical conditions. This report is not sufficient to discharge appellant's burden of proof.

Appellant's attorney indicated, in a September 20, 2001 letter to the Office hearing representative, that the Office should find appellant totally disabled because the Social Security Administration had found him qualified to receive medicare benefits. However, approval of a disability claim by another federal agency under its rules and regulations is not determinative of a claimant's entitlement to compensation under the Federal Employees' Compensation Act.<sup>3</sup>

---

<sup>3</sup> See *Daniel Deparini*, 44 ECAB 657, 659-60 (1993).

The decision of the Office of Workers' Compensation Programs dated November 15, 2001 is affirmed.

Dated, Washington, DC  
August 23, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member