U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM O. SMITH, SR. and TENNESSEE VALLEY AUTHORITY, DIVISION OF PURCHASING, Chattanooga, TN

Docket No. 02-411; Submitted on the Record;
Issued December 19, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation benefits, effective August 11, 2001, on the grounds that appellant no longer had any disability due to his January 30, 1995 employment injury.

On January 30, 1995 appellant, then a 43-year-old clerk dispatcher, filed a traumatic injury claim (Form CA-1) alleging he injured his leg and ankle when he stepped on a rock in the parking lot. The Office accepted the claim for right leg strain and lumbar herniated disc.[1] He returned to work on March 27, 1995 and lost intermittent hours through January 1996.[2] By letter dated January 20, 2000, the Office placed appellant on the automatic rolls for temporary total disability.

In a work capacity evaluation (Form OWCP-5c) dated March 15, 2000, Dr. Paul Broadstone, an attending Board-certified orthopedic surgeon, released appellant to work four hours per day with restrictions on sitting, walking, standing, twisting and operating a motor vehicle. Dr. Broadstone indicated that the restrictions had not changed in an April 26, 2000 work capacity evaluation form.[3]

In a June 20, 2000 functional capacity evaluation (FCE), it was determined that appellant was capable of occasional lifting and carrying up to 31 pounds, frequent lifting and carrying up to 21 pounds, limited climbing, occasional pulling up to 36 pounds and frequent pulling up to 20 pounds. The FCE indicated that appellant was capable of working in a medium category work environment.

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[1] On September 23, 1996 appellant was issued a schedule award for a one percent right lower extremity. Appellant disagreed with the Office's decision and requested oral argument, which was held on May 13, 1997.

[2] Appellant was terminated from his position with the employing establishment effective September 26, 1997.

[3] On April 14, 2000 appellant's employer, Orange Grove Center, Inc., put him on a leave of absence until Dr. Broadstone gave him a full release to work.

In a note dated August 29, 2000, Dr. Broadstone reviewed the June 20, 2000 FCE and appellant's job description[4] at the employing establishment. Dr. Broadstone stated that he agreed "with the findings & work tolerance/limitations as determined by the *FCE*." (Emphasis in the original.)

The Office issued a proposed notice to terminate his benefits on March 15, 2001 on the basis that appellant was no longer disabled from working. The Office reviewed the physical requirements of appellant's date-of-injury job and found that appellant was capable of performing the position based upon Dr. Broadstone's August 29, 2000 statement and the June 20, 2000 FCE.

On July 24, 2001 the Office finalized the termination of appellant's compensation effective August 11, 2001 on the basis that his employment-related disability had ceased.

By letter dated September 7, 2001, appellant's counsel requested an oral hearing.

On October 22, 2001 the Office denied appellant's request for an oral hearing as untimely.[5]

The Board finds that the Office properly terminated appellant's compensation benefits, effective August 11, 2001, on the grounds that appellant no longer had any residuals of his January 30, 1995 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[6] 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.[7] However, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss due to disability.[8] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[9]

In the instant case, the Office terminated appellant's compensation benefits on the basis that the medical evidence established he was capable of performing his date-of-injury position. The record reveals that appellant's date-of-injury position required no lifting over 10 pounds and intermittent sitting, walking, lifting, bending, twisting and standing. Appellant's attending physician, Dr. Broadstone, concluded that appellant was capable of working eight hours a day in a medium category based upon the June 20, 2000 FCE. Both the June 20, 2000 FCE and

[4] The position description noting lifting requirements of up to 10 pounds and intermittent sitting, walking, lifting, bending, twisting and standing.

[5] Appellant's counsel did not request the Board to review the Office's denial of his hearing request as untimely.

[6] *Ronald A. Gillis*, 53 ECAB ___ (Docket No. 00-2617, issued March 11, 2002).

[7] *Dennis A. Poppell*, 53 ECAB ___ (Docket No. 02-177, issued May 20, 2002).

[8] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[9] *Franklin D. Haislah*, 52 ECAB ___ (Docket No. 01-208, issued August 1, 2001).

Dr. Broadstone's August 29, 2000 opinion indicate that appellant was capable of performing his date-of-injury job as the position required lifting no more than 10 pounds and appellant was found to be capable of occasional lifting and carrying up to 31 pounds, frequent lifting and carrying up to 21 pounds, limited climbing, occasional pulling up to 36 pounds and frequent pulling up to 20 pounds.

The Office relied upon the June 20, 2000 FCE and Dr. Broadstone's August 29, 2000 report to reach its determination to terminate appellant's wage-loss compensation benefits. As appellant's attending physician concluded with the June 20, 2000 FCE which showed appellant was capable of performing his date-of-injury position, the Office properly concluded that appellant was no longer disabled as a result of the employment-related injury.[10] Therefore, the Office properly terminated appellant's wage-loss compensation benefits.

The July 24, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.[11]

Dated, Washington, DC
December 19, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] Under the Federal Employees' Compensation Act, "the general test of disability is whether an injury-related impairment prevents the employee from engaging in the kind of work he was doing when injured." *See David H. Goss*, 32 ECAB 24 (1980). In other words, disability under the Act means "incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury." *See Cathy Jo Fossen*, 49 ECAB 654 (1998).

[11] With his appeal appellant indicated that he was submitting additional evidence which was not available at the time of the July 24, 2001 decision. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).