

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM A. NAPIER and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 02-93; Submitted on the Record;
Issued January 29, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits, effective June 25, 2001, on the basis that he no longer suffered from residuals of his May 3, 1985 employment injury.

On June 13, 1985 appellant, then a 34-year-old motor vehicle operator, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he suffered from a fear of heights due to his employment.¹ Appellant ceased working May 3, 1985 and returned to duty on May 7, 1985 with a restriction of no work above five feet. Appellant was later terminated on April 11, 1986. The Office accepted appellant's claim for precipitation of a single episode of acrophobia. The Office awarded appropriate wage-loss compensation and placed appellant on the periodic compensation rolls. Appellant briefly resumed work as a truck driver in December 1986 and obtained work in March 1987 as a mail clerk with the Department of Veterans Affairs. He continued to work as a mail clerk until he retired effective February 28, 2001.

In a decision dated June 25, 2001, the Office found that the medical evidence established that appellant no longer suffered from residuals of his accepted condition. Consequently, the Office terminated appellant's medical benefits and wage-loss compensation.² The Office based its determination on the May 17, 2001 opinion of Dr. Reynaldo Abejuela, a Board-certified psychiatrist and Office referral physician.

¹ Appellant allegedly experienced dizziness while operating a straddle Hyster. The employing establishment described the vehicle as having a seat that is approximately 15 feet above ground level.

² On May 23, 2001 the Office issued a notice of proposed termination of wage-loss compensation and medical benefits.

Appellant requested reconsideration on August 20, 2001 and he submitted additional medical evidence. By decision dated September 19, 2001, the Office denied modification of the prior decision dated June 25, 2001.

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

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ 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.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

Appellant's psychiatrist, Dr. Robert M. Schmidt, last reported on appellant's psychiatric condition on January 7, 1997,⁷ at which time he diagnosed simple phobia -- heights and noted that appellant was not able to go above five feet. Dr. Schmidt also stated that appellant was able to work as a truck driver if he did not have to go "beyond just driving and beyond the height of the trailer."

The Office wrote to Dr. Schmidt on January 19 and March 20, 2000 requesting that he provide an updated report on appellant's condition. When Dr. Schmidt did not provide the requested information, the Office referred appellant for a second opinion psychiatric examination with Dr. Abejuela.

In a report dated May 17, 2001, Dr. Abejuela noted that appellant reported that he last experienced a fear of heights in 1986, and since his change of job to a mail clerk in 1987 did not require him to deal with heights any longer, appellant had no further problem with fear of heights. Dr. Abejuela specifically stated that "appellant denies having acrophobia at the present time." He reported no current psychiatric diagnosis. Dr. Abejuela found no evidence of psychiatric symptomatology, subjectively or objectively and no psychiatric problems that would affect appellant's work capacity.

On reconsideration appellant submitted an August 15, 2001 report from Dr. Schmidt. In his recent report, Dr. Schmidt stated that he first examined appellant in 1985 for fear of heights,

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁶ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁷ Although the doctor's report is dated January 7, 1996, appellant scheduled an appointment with Dr. Schmidt for January 7, 1997 in response to the Office's November 1996 request for a current medical report. Moreover, Dr. Schmidt's report was date stamped as being received by the Office on January 15, 1997.

simple phobia, and at the time appellant did not want treatment despite the treatable nature of his condition. Dr. Schmidt further stated that the case was reopened on May 14, 1990 for the same problem, and he saw appellant twice thereafter in 1993 and again on January 7, 1996. Appellant returned to Dr. Schmidt on August 13, 2001 and advised him that he had retired in February 2001. He also reportedly claimed to still have a fear of heights, but again expressed no desire to work on getting over the phobia. In conclusion, Dr. Schmidt stated that appellant does have a fear of heights above five feet. Additionally, he stated that he also would have to rule out a personality diagnosis of schizoid personality disorder if it was of importance in the future.

The weight of the medical evidence, as represented by Dr. Abejuela's May 17, 2001 report, establishes that appellant no longer suffers from residuals of his May 3, 1985 employment injury. Although Dr. Schmidt reported that appellant continued to suffer from a fear of heights above five feet, his August 15, 2001 report is neither well rationalized nor does it attribute appellant's current condition to his 1985 employment injury. Dr. Schmidt provided no basis for his diagnosis other than noting that appellant "claims ... he still has a fear of heights." Moreover, Dr. Schmidt saw appellant on only four occasions over an 11-year period and only when appellant needed to submit medical evidence to the Office. None of the doctor's reports dating back to May 16, 1990 provide a detailed analysis of appellant's condition and the only symptoms noted was a reported fear of crossing bridges. In contrast, Dr. Abejuela provided a thorough and detailed evaluation of appellant's current psychiatric condition and found no subjective or objective evidence of an ongoing employment-related psychiatric condition. Accordingly, the Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits.

The September 19, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 29, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member