

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of PATRICK V. CONAWAY and DEPARTMENT OF THE NAVY,
NAVAL WEAPONS STATION, Seal Beach, CA

*Docket No. 99-880; Submitted on the Record;
Issued December 27, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective December 9, 1998 on the grounds that he had no further condition or disability causally related to his accepted employment injury.

On April 5, 1989 appellant, then a 31-year-old heavy tire repairman, filed a claim for a traumatic injury occurring on March 14, 1989 in the performance of duty. The Office accepted appellant's claim for back strain.¹ The Office placed appellant on the periodic rolls effective April 1, 1991.

By decision dated December 16, 1994, the Office reduced appellant's compensation benefits effective January 8, 1995 based on its finding that he had the capacity to perform the position of bookkeeper. In a decision dated July 22, 1996, a hearing representative affirmed the Office's December 16, 1994 loss of wage-earning capacity determination.

Based on the lack of current medical evidence, on March 9, 1998, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Robert C. Winegar, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a decision dated December 9, 1998, the Office terminated appellant's compensation on the grounds that the weight of the medical evidence established that he had no further residuals of his accepted employment injury of back strain.

The Board has duly reviewed the case record and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation

¹ Appellant resigned from the employing establishment on February 27, 1990.

without establishing that the disabling condition ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

The Office based its termination of appellant's compensation on the April 2, 1998 report of Dr. Winegar, who noted appellant's history of injury, reviewed the medical evidence of record, discussed the results of objective testing and listed detailed findings on physical examination. On physical examination of the cervical and lumbar spine, he indicated essentially normal findings. Dr. Winegar diagnosed acute cervical and lumbosacral strain by history and early degenerative disc disease at C3-4 by history. He concluded that the cervical and lumbosacral strain were "related to the industrial injury and have since resolved."

The Board has carefully reviewed the opinion of Dr. Winegar and finds that it has reliability, probative value and convincing quality with respect to the conclusions reached regarding whether appellant had any residual impairment due to the accepted conditions of cervical and lumbosacral strain. Dr. Winegar based his opinion on a proper factual and medical history, discussed the results of objective testing and listed findings on examination which supported his conclusion that appellant no longer had any impairment due to his accepted employment injury.

Consequently, the Office met its burden of proof to terminate appellant's compensation effective December 9, 1998 on the grounds that he had no further condition or disability due to his employment injury after that date.

² *David W. Green*, 43 ECAB 883 (1992).

³ *See Del K. Rykert*, 40 ECAB 284 (1988).

The decision of the Office of Workers' Compensation Programs dated December 9, 1998 is hereby affirmed.

Dated, Washington, DC
December 27, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member