

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS S. SHEPPARD and DEPARTMENT OF THE NAVY,
MARINE CORPS LOGISTICS BASE, Barstow, Calif.

*Docket No. 96-219; Submitted on the Record;
Issued January 6, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, 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, effective October 16, 1994, on the grounds that he had no continuing disability resulting from the accepted work injury.

The Board has reviewed the case record and finds that the medical evidence establishes that appellant's work-related disability has resolved and thus the Office properly terminated his compensation.

Under the Federal Employees' Compensation Act,¹ the Office has the burden of justifying modification or termination of compensation once a claim is accepted and compensation paid.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ The Office's burden

¹ 5 U.S.C. § 8101 *et seq.* (1974).

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB ____ (Docket No. 94-404, issued May 31, 1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

In this case, appellant, then a 57-year-old mobile equipment serviceman, filed a notice of traumatic injury on August 7, 1989, claiming that he "mashed" his left foot while moving a heavy steel ladder on August 2, 1989. Appellant returned to work but filed a notice of recurrence of disability on August 1, 1990, claiming his original injury had never resolved and that he experienced severe pain after standing or walking for about 30 minutes.

On December 19, 1990 the Office informed appellant that the left foot crush injury sustained in August 1989 was accepted but had resulted in no disability. The Office then denied appellant's claim for a recurrence of disability on the grounds that the medical evidence failed to establish any causal relationship between the 1989 injury and appellant's complaints in 1990.

Appellant timely requested reconsideration and submitted a medical report from Stephen H. Pillman, a podiatrist. The Office referred appellant to Dr. George Lobley, a Board-certified orthopedic surgeon, along with a statement of accepted facts and specific questions. Based on Dr. Lobley's July 2 and August 8, 1991 reports, the Office vacated its denial of appellant's claim and paid appropriate compensation.

After extensive vocational rehabilitation efforts, appellant was referred to Dr. Frederick J. Lieb, a Board-certified orthopedic surgeon, who examined him on June 2, 1994. Based on his report, the Office issued a notice of proposed termination on August 25, 1994. Appellant submitted a letter disagreeing with the notice but provided no new medical evidence.

On October 12, 1994 the Office terminated appellant's compensation on the grounds that the medical evidence established that appellant had no residuals of the 1989 injury. The Office responded to each of appellant's points of disagreement with Dr. Lieb's report but noted that there were no objective findings to support appellant's subjective complaints of continued pain in his left foot.

Appellant again requested reconsideration and submitted copies of reports dated July 2, 1991 and March 31, 1992 from Dr. Lobley, who referred to chronic scarring of the soft tissues of appellant's left foot and stated that his condition was permanent and stationery. On

⁵ *Mary Lou Barragy*, 46 ECAB ____ (Docket No. 93-2326, issued May 25, 1995).

⁶ *Connie Johns*, 44 ECAB 560, 570 (1993).

November 15, 1994 the Office denied reconsideration on the grounds that the evidence submitted was *prima facie* insufficient to require the Office to reopen the claim.

On March 24, 1995 appellant requested reconsideration while his appeal to the Board was pending⁷ and submitted medical reports from Dr. Rama T. Pathy, a Board-certified orthopedic surgeon, who saw appellant on December 15, 1994. On September 21, 1995 the Office denied appellant's request for reconsideration on the grounds that the medical evidence was insufficient to warrant modification of its prior denial.

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Lieb, the referral specialist, who reviewed the medical records, including those of Dr. Lobley in 1991 through 1992, and a statement of accepted facts, and examined appellant thoroughly, reporting no abnormal clinical findings.⁸ Dr. Lieb found no evidence of residuals of soft tissue injury or scarring and remarked that appellant's left foot was "quite normal" in appearance and that his x-rays remained normal. Dr. Lieb provided a detailed and well-rationalized medical explanation of why the accepted condition had resolved and appellant had no continuing disability from the foot injury he sustained on August 2, 1989.⁹

By contrast, Dr. Pathy, who diagnosed Morton's neuroma,¹⁰ provided no rationale for his conclusion that appellant's pain was consistent with scar tissue from the 1989 injury, which had scarred the nerve and resulted in the neuroma. Nor did Dr. Pathy offer any opinion on appellant's ability to work.¹¹ Inasmuch as Dr. Pathy's opinion is not rationalized, the Board finds that Dr. Lieb's conclusion represents the weight of the medical evidence and is sufficient to

⁷ By order dated May 30, 1995, the Board dismissed appellant's appeal on the grounds that the Board and the Office may not simultaneously exercise jurisdiction over the same issue in the same claim.

⁸ See *Anna Chrun*, 33 ECAB 829, 835 (1982) (finding that the absence of objective evidence of disability is more compatible with the absence of disability than with its presence).

⁹ See *Delphine L. Scott*, 41 ECAB 799, 802 (1990) (finding that the second opinion physician's conclusion regarding the improbability of appellant's lumbosacral sprain persisting for so long was sufficient to establish that appellant had recovered from the accepted injury).

¹⁰ Morton's disease or metatarsalgia is defined as pain in the metatarsal region due to an abnormality of the foot or to osteochondrosis of the heads of the metatarsal bones. A neuroma is a tumor growing from a nerve. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

¹¹ See *John L. Clark*, 32 ECAB 1618, 1624 (1981) (finding that a medical opinion based on a claimant's complaint that he hurt too much to work, with no objective signs of disability being shown, was insufficient to establish a basis for compensation).

carry the Office's burden of proof.¹² Therefore, the Office properly terminated appellant's compensation.¹³

The September 21, 1995 and November 15, 1994 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
January 6, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹² See *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician's opinion was thorough, well rationalized and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

¹³ See *Larry Warner*, 43 ECAB 1027, 1033 (1992) (finding that the well-rationalized report of the second opinion specialist was sufficient to carry the Office's burden of proof that appellant had no residuals of his work-related carpal tunnel syndrome injury).