

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JIMMY L. HARBOR and DEPARTMENT OF THE ARMY,  
CORPS OF ENGINEERS, VICKSBURG DISTRICT, Vicksburg, Miss.

*Docket No. 96-809; Submitted on the Record;  
Issued June 10, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective October 9, 1994 on the grounds that his disability causally related to his October 18, 1993 employment injury had ceased.

On October 8, 1993 appellant, then a 40-year-old temporary revetment worker, sustained a lumbosacral strain and sprain of the left wrist, when he slipped and fell at work. He returned to work on October 18, 1993, but left work again on October 27, 1993 and did not return to work.

In a narrative report dated March 29, 1994, Dr. Robert T. Van Uden, Jr., a Board-certified orthopedic surgeon, related that he initially examined appellant on November 18, 1993 following his October 8, 1993 employment injury, in which he sustained injuries to the left wrist and low back. Dr. Van Uden related that appellant had a chronic low back condition, which he had been treating previous to his employment injury. He indicated that appellant would benefit from physical therapy. There were no findings on examination provided with the report.

By decision dated April 11, 1994, the Office denied appellant's claim for compensation benefits commencing on October 28, 1995 on the grounds that the evidence of record failed to establish any employment-related disability causally related to his October 8, 1993 employment injury.

By letter dated May 1, 1994, appellant requested an oral hearing before an Office hearing representative.

In a report dated August 9, 1994, Dr. Van Uden related that appellant had remained symptomatic with low back pain radiating down the left lower extremity. He provided findings on examination and indicated that a magnetic resonance imaging (MRI) scan was needed to rule out a significant disc lesion.

On November 15, 1994 a hearing was held before an Office hearing representative at which time appellant testified.

In a report dated November 11, 1994, Dr. Van Uden stated that he had previously made the assumption that appellant had been off work since his October 8, 1993 employment injury although he had not specifically asked appellant when he was not working. He stated that it was his understanding that appellant did work at his regular job and had some sort of light duty, until his symptoms reached the severity that he had to stop working. Dr. Van Uden stated that, in any event, at the time that he initially saw appellant he was not able to work. He stated that although appellant did have a prior history of similar low back injury, to the best of his knowledge, appellant did sustain a reinjury of his back which necessitated treatment.

By decision dated January 19, 1995, the Office hearing representative remanded the case for further development.

Medical notes dated October 1986 to March 1988, indicated that appellant had been experiencing low back pain radiating into his left lower extremity.

By letter dated March 30, 1995, appellant was referred, along with a statement of accepted facts and copies of medical records, to Dr. Robert Po, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation as to whether he had any residual disability or medical condition causally related to his October 8, 1993 employment injury.

In a report dated April 11, 1995, Dr. Po provided a history of appellant's medical condition and indicated that he had reviewed the statement of accepted facts and the case record. He provided detailed findings on examination, the results of x-rays and diagnosed a history of chronic low back strain, with subjective symptoms and a history of left wrist sprain, asymptomatic with full motion. Dr. Po stated his opinion that appellant had been disabled from October 27, 1993 through October 8, 1994 due to the October 8, 1993 employment injury, but that currently there were no residuals of the accepted lumbosacral sprain or left wrist strain that would prevent him from performing his regular work.

By decision dated April 27, 1995, the Office terminated appellant's compensation benefits effective October 9, 1994 on the grounds that the weight of the medical evidence established that his disability for work and residuals of his accepted injury had ceased by October 8, 1994.

By letter dated May 23, 1995, appellant requested reconsideration of his case and submitted additional evidence.

In a report dated May 23, 1995, Dr. Van Uden stated that he had examined appellant on 13 occasions between March 28, 1994 and May 12, 1995. He noted that appellant had never received approval for physical therapy and that his symptomatology remained largely unchanged with chronic low back pain and pain in the lower left extremity. Dr. Van Uden stated that he did not substantially disagree with Dr. Po's evaluation of appellant, except to note that he was left with residuals of the low back injury, with chronic low back pain and some radicular type symptomatology down the left lower extremity. He indicated that he felt that appellant was

capable of returning to some sort of gainful employment. Dr. Van Uden provided no physical findings on examination with this report.

By decision dated July 20, 1995, the Office denied modification of its April 27, 1995 decision.

By letter dated September 14, 1995, appellant requested reconsideration of his case and submitted additional evidence.

In a report dated August 1, 1995, Dr. Van Uden related that appellant had provided him with a copy of the Office's July 20, 1995 decision, indicating that the relationship between appellant's back condition and his October 8, 1993 employment injury was not adequately explained. He stated:

"Certainly [appellant] did have prior back injuries and ... had prior and some chronic low pain and left lower extremity pain that predated his injury in October 1993. I had seen and treated [appellant] for these injuries so I had some reasonable idea of his baseline level of chronic discomfort. His symptoms in my opinion were unquestionably made significantly more severe by his injury in October of 1993 and he remains to this day more symptomatic than he was prior to this injury. As such I think that [appellant's] injury was indeed significant and did increase his pain."

By decision dated October 25, 1995, the Office denied modification of its July 20, 1995 decision.

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

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

In this case, appellant sustained a lumbosacral strain and left wrist sprain on October 8, 1993 in the performance of duty. He returned to work on October 18, 1993, but stopped working on October 28, 1993.

Medical notes dated October 1986 to March 1988, indicated that appellant had been experiencing low back pain radiating into his left lower extremity prior to his 1993 employment injury.

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<sup>1</sup> See *Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990); *Leona Z. Blair*, 37 ECAB 615 (1986).

In a report dated April 11, 1995, Dr. Po, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's medical condition and indicated that he had reviewed the statement of accepted facts and the case record. He provided detailed findings on examination, the results of x-rays and diagnosed a history of chronic low back strain with subjective symptoms and a history of left wrist sprain, asymptomatic with full range of motion. Dr. Po stated his opinion that appellant had been disabled from October 27, 1993 through October 8, 1994 due to the October 8, 1993 employment injury, but that currently there were no residuals of the accepted lumbosacral sprain or left wrist strain that would prevent him from performing his regular work. This thorough and well-rationalized report establishes that appellant no longer had any residual disability after October 8, 1994 causally related to his October 1988 employment injury.

In a report dated May 23, 1995, Dr. Van Uden, appellant's attending Board-certified orthopedic surgeon, stated that appellant's symptomatology remained largely unchanged with chronic low back pain and pain in the lower left extremity. He stated that he did not substantially disagree with Dr. Po's evaluation of appellant except to note that he was left with residuals of the low back injury, with chronic low back pain and some radicular type symptomatology down the left lower extremity. However, appellant did not sustain any injury to his left lower extremity as part of his 1993 employment injury. The record shows that appellant had left lower extremity problems, as well as low back pain, prior to 1993. Dr. Van Uden did not explain how the problem in the left lower extremity was related to the 1993 injury, when the record shows that the Office accepted only a back strain and wrist sprain. Additionally, Dr. Van Uden did not explain how he could be sure that the low back pain was causally related to the 1993 employment injury rather than to his longstanding low back problems which preceded 1993, nor did he provide any findings on examination in support of his opinions.

In a report dated August 1, 1995, Dr. Van Uden stated:

"Certainly [appellant] did have prior back injuries and ... had prior and some chronic low pain and left lower extremity pain that predated his injury in October 1993. I had seen and treated [appellant] for these injuries so I had some reasonable idea of his baseline level of chronic discomfort. His symptoms in my opinion were unquestionably made significantly more severe by his injury in October of 1993 and he remains to this day more symptomatic than he was prior to this injury. As such I think that [appellant's] injury was indeed significant and did increase his pain."

However, Dr. Van Uden again did not explain how the left leg problems, which were not accepted by the Office as part of the 1993 employment injury, were causally related to that injury. Also, as in his May 23, 1995 report, he opined that appellant had residual back and left leg problems attributable to his 1993 employment injury but he provided no findings on examination and insufficient rationale to support his opinion.

Because of these deficiencies, Dr. Van Uden's reports are not sufficient to overcome the April 11, 1995 report of Dr. Po who determined that appellant had no residual disability after October 8, 1994 causally related to his 1993 employment injury. Therefore, the Office met its

burden of proof in terminating appellant's compensation benefits based upon the report of Dr. Po.

The decisions of the Office of Workers' Compensation Programs dated October 25, July 20, and April 27, 1995 are affirmed.

Dated, Washington, D.C.  
June 10, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member