

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN F. FARLEY and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, Okla.

*Docket No. 96-1497; Submitted on the Record;
Issued June 3, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective April 30, 1995 on the grounds that his employment-related disability had ceased.

On November 13, 1990 appellant, then a 28-year-old letter carrier, sustained a lumbar strain in the performance of duty while loading mail into a tub. Appellant was released by his physician to return to regular work on November 30, 1990.

On March 17, 1992 appellant sustained a lumbar strain in the performance of duty while moving a tub of mail.

In an occupational disease claim form dated June 21, 1994, appellant alleged that he had sustained degenerative disc disease which he attributed to his federal employment. He indicated that he first became aware of the condition on August 17, 1992.

In a report dated August 17, 1992, Dr. Thomas C. Howard, a Board-certified surgeon, provided a history of appellant's condition and findings on examination and diagnosed degenerative disc disease.

In a report dated May 27, 1993, Dr. W. Stan Bevers, a Board-certified family practitioner, related that appellant had been seen on numerous occasions for back pain due to a degenerative lumbar disc disease and indicated that appellant was not able to perform his regular work.

In a report dated June 24, 1994, Dr. Bevers provided findings on examination and diagnosed degenerative disc disease. He stated that carrying moderate amounts of weight repeatedly in his job could have prolonged or exacerbated appellant's degenerative disc disease over the past four years.

By decision dated December 16, 1994, the Office accepted that appellant sustained an aggravation of preexisting degenerative disc disease and gave as the date of injury August 17, 1992.

By letter dated February 22, 1995, the Office referred appellant, along with a statement of accepted facts and copies of medical records, to Dr. Samuel T. Moore, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether appellant had any residual disability or medical condition causally related to his employment.

By letter dated February 28, 1995, the Office placed appellant on the periodic compensation roll to receive compensation benefits for temporary total disability.

In a narrative report dated March 14, 1995, Dr. Moore stated that he had examined copies of medical records and he related a history of appellant's condition. He provided findings on examination and x-ray findings and stated that appellant was an exceptionally well developed and muscular 33-year-old. Dr. Moore stated:

“On examination of the low back, he can flex through an arc of 60 [degrees] and further progression is limited by pain. There is 10 [degrees] of extension and 10 [degrees] lateral motion. There is mild tenderness of the left posterior ilium and paralumbar area, but no involuntary muscle spasm. There is no gluteal tenderness or muscle atrophy noted anywhere in the spine or left buttock area or left lower extremity. He makes a rather poor effort at squatting and trying to walk on his heels and toes. There is full function in all parameters of both knees, hips, ankles and feet. No pain, tenderness, or swelling and no increased heat. There is full range of motion of the thoracic and cervical spine, and both shoulders and upper extremities in all parameters.”

He noted that x-rays were unremarkable. Dr. Moore diagnosed subjective complaints of tenderness and some limitation of movement but stated that objective findings were missing. He stated that he saw no indication either by physical examination or x-ray examination of significant degenerative changes of the lumbar spine. Dr. Moore stated that, historically, the lumbar condition was related to appellant's employment activities but that he found no objective evidence of ongoing physical impairment as a result of his work activities. He stated that appellant's low back condition was longstanding and primarily subjective in nature and that any aggravation had ceased as of his examination.

By letter dated March 23, 1995, the Office advised appellant of its proposal to terminate his compensation benefits on the grounds that the weight of the medical evidence, as represented by the report of Dr. Moore, established that his employment-related disability and medical condition had ceased.

By decision dated May 1, 1995, the Office terminated appellant's compensation benefits on the grounds that the medical evidence of record established that his work-related disability had ceased.

In an undated letter received by the Office on May 11, 1995, appellant requested reconsideration of the termination of his compensation and submitted additional evidence.

In a report dated April 14, 1995, Dr. Bevers stated that he had examined appellant on numerous occasions for lumbar back pain and that a recent magnetic resonance imaging scan revealed some mild degenerative changes at L4-5 with anular bulge but no frank disc herniation. He stated that appellant continued to have subjective complaints of back pain and that it was recommended that he not lift any weight over 10 pounds. Dr. Bevers provided no current physical findings on examination.

By decision dated August 18, 1995, the Office denied modification of its May 1, 1995 decision.

The Board finds that the Office has 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.¹

In this case, appellant sustained a lumbar strain in the performance of duty. Subsequently, the Office accepted that appellant also sustained an aggravation of a preexisting degenerative disc disease on August 17, 1992.

In a narrative report dated March 14, 1995, Dr. Samuel T. Moore, a Board-certified orthopedic surgeon and Office referral physician, stated that he had examined copies of medical records and he related a history of appellant's condition. He provided physical findings on examination and x-ray findings and stated that appellant was an exceptionally well developed and muscular 33-year-old. Dr. Moore stated:

"On examination of the low back, he can flex through an arc of 60 [degrees] and further progression is limited by pain. There is 10 [degrees] of extension and 10 [degrees] lateral motion. There is mild tenderness of the left posterior ilium and paralumbar area, but no involuntary muscle spasm. There is no gluteal tenderness or muscle atrophy noted anywhere in the spine or left buttock area or left lower extremity. He makes a rather poor effort at squatting and trying to walk on his heels and toes. There is full function in all parameters of both knees, hips, ankles and feet. No pain, tenderness, or swelling and no increased heat. There is full range of motion of the thoracic and cervical spine, and both shoulders and upper extremities in all parameters."

He noted that x-rays were unremarkable. Dr. Moore diagnosed subjective complaints of tenderness and some limitation of movement but stated that objective findings were missing. He stated that he saw no indication either by physical examination or x-ray examination of significant degenerative changes of the lumbar spine. Dr. Moore stated that he found no objective evidence of ongoing physical impairment as a result of appellant's work activities. He

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

stated that appellant's low back condition was longstanding and primarily subjective in nature and that any aggravation had ceased as of his examination.

In a report dated April 14, 1995, Dr. Bevers, a Board-certified family practitioner, stated that he had examined appellant on numerous occasions for lumbar back pain and that a recent magnetic resonance imaging scan revealed some mild degenerative changes but no frank disc herniation. He stated that appellant continued to have subjective complaints of back pain and that it was recommended that he not lift any weight over 10 pounds. However, Dr. Bevers provided no physical findings on examination and the record shows that his last physical examination of appellant had taken place 10 months prior to this April 1995 report in June 1994. The Board also notes that Dr. Bevers's opinion is of limited probative value in that he does not specialize in a field peculiar to appellant's claimed condition. Dr. Bevers is a Board-certified family practitioner while Dr. Moore is a Board-certified orthopedic surgeon. The opinions of physicians with training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians.²

The Board finds that the weight of the medical evidence rests with the thorough and well-rationalized March 14, 1995 report of Dr. Moore who opined that appellant no longer had any residuals from his November 13, 1990 employment-related lumbar strain or his August 17, 1992 temporary aggravation of a degenerative disc disease and the Office therefore met its burden of proof in basing its termination decision upon Dr. Moore's medical opinion.

The August 18 and May 1, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 3, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Lee R. Newberry*, 34 ECAB 1294, 1299 (1983).