

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS F. DABBS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HOSPITAL, Montrose, N.Y.

*Docket No. 98-250; Submitted on the Record;
Issued May 20, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of April 18, 1997.

On March 17, 1989 appellant, then a 44-year-old nursing assistant, injured his right leg and lower back while pushing a patient up a ramp in a wheelchair. Appellant filed a Form CA-1 claim for benefits based on traumatic injury on the date of injury, which the Office accepted for strain, right leg/hip, by letter dated July 12, 1989. He has not returned to work since March 21, 1989. Appellant was placed on the periodic rolls.

In a treatment note dated September 26, 1989, Dr. Steven R. Small, a Board-certified orthopedic surgeon, advised that he was treating appellant based on a diagnosis of osteoarthritis of the right hip and that he was permanently disabled from his present job with the employing establishment.

In a report dated December 13, 1989, Dr. Small indicated, based on physical findings and x-rays, that appellant had severe osteoarthritis of the right hip and that appellant had been disabled since the date of injury. He opined that appellant more than likely had osteoarthritis prior to this injury, but that he had experienced an exacerbation of this particular problem from the force necessary to push the patient up a ramp. Dr. Small advised that appellant's severe hip pain continued to keep him disabled from his duties at the employing establishment.

In a report dated August 23, 1993, Dr. Small reiterated his earlier findings and indicated that, since his injury, appellant had remained completely disabled with respect to his job at the employing establishment, which required him to be active on his feet all day. He stated that appellant's hip problem had gradually worsened and had become so severe that he required a total hip replacement for relief of pain.

In response to Dr. Small's report, the Office, by letter dated January 30, 1995, advised him that it required a detailed narrative medical report in support of the need for the hip replacement procedure, including a medical opinion with supporting medical rationale, which related the claimed condition to factors of employment.

In a report dated February 10, 1995, Dr. Small restated his opinion and his earlier findings and conclusions regarding the history of appellant's hip condition and stated that the problem had worsened over the years to a point where he no longer had the ability to control his pain by the use of a cane and anti-inflammatory medication and had become progressively more immobile. Dr. Small advised that "[a]t this point it is very evident that [appellant] is a strong candidate for total hip replacement; therefore, I am once again requesting permission to proceed with a porous coated total hip arthroplasty." He advised that, although appellant more than likely had osteoarthritis prior to this injury, he believed that there was an exacerbation of this particular problem with the force that was necessary to push a patient up a ramp. Dr. Small conceded that there were no x-rays to confirm his opinion, but reiterated that this was a compensable injury since the initial onset of pain was due to the stress of his job.

By letter dated June 20, 1995, the Office denied appellant's request for hip replacement surgery. The Office advised appellant that it had accepted a condition of right leg strain causally related to the March 17, 1989 employment incident, which was not the underlying medical factor for his requested hip replacement surgery. The Office stated that appellant's diagnosed osteoarthritic hip condition was the basis for his proposed hip surgery, which was a preexisting condition that would have required surgery notwithstanding the 1989 employment injury.

In order to ascertain whether appellant's current condition was related to factors of his employment, the Office scheduled a second opinion medical examination for appellant with Dr. James F. Morrissey, a Board-certified orthopedic surgeon, by letters dated January 10, 1997.

In a report dated February 19, 1997, Dr. Morrissey reviewed appellant's medical records, an x-ray report and a statement of accepted facts and indicated findings on examination. He stated that, in his opinion, the pain appellant experienced on March 17, 1989 was a response of stress to an already osteoarthritic right hip, which was confirmed by x-rays taken shortly thereafter. Dr. Morrissey advised that these x-rays indicated preexisting and progressive arthritis in the hip dating back to 1976. Based on this chronology, he found that appellant suffered a mild synovitis of his hip as a result of the March 17, 1989 work incident, which was clearly preceded by severe degenerative changes in the hip. Dr. Morrissey stated that appellant strained his right hip at that time, which should have lasted a short period of time, perhaps two to three months, after which he reverted to his preinjury status.

Dr. Morrissey concluded that appellant was totally disabled because of his bilateral severe arthritic hip condition, but that this disability was not causally related to the March 17, 1989 work incident. He further noted that appellant also had cardiac difficulties and diabetes mellitus which materially and substantially added to his degree of disability.

In a notice of proposed termination dated March 11, 1997, the Office, based on the opinion of Dr. Morrissey, found that the weight of the medical evidence demonstrated that appellant no longer had any residuals from the March 17, 1989 employment injury. The Office

adopted his opinion that, although appellant was totally disabled, this disability was not causally related to the March 17, 1989 employment injury. The Office allowed appellant 30 days to submit additional evidence or a legal argument in opposition to the proposed termination. Appellant did not submit any additional evidence in response to the notice of termination.

By decision dated April 15, 1997, the Office terminated appellant's compensation effective April 18, 1997, finding that the weight of the medical evidence established that the disability resulting from the March 17, 1989 employment injury had ceased.

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

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

In the present case, the Office based its April 15, 1997 decision to terminate appellant's compensation on the medical report of Dr. Morrissey, who found that, while appellant was totally disabled due to severe bilateral, arthritic hip condition, his total disability was not causally related to the March 17, 1989 employment injury. He noted that x-rays indicated appellant had preexisting and progressive arthritis since 1976 and that he had suffered a mild synovitis and strain of his hip as a result of the March 17, 1989 work incident, which should have resolved after two to three months. Dr. Morrissey advised that appellant also had cardiac difficulties and diabetes mellitus which materially and substantially added to his degree of disability. The only medical evidence appellant submitted consisted of the brief medical reports from Dr. Small, who indicated the need for hip replacement surgery based on appellant's preexisting, underlying osteoarthritic hip condition. The Office, however, had only accepted the claim for a strained right leg/hip and had found based on Dr. Morrissey's opinion that appellant's preexisting, underlying osteoarthritic hip condition had only been briefly and temporarily aggravated by the March 17, 1989 work injury and that his current condition was not causally related to his employment injury. The Office properly determined that the accepted condition of a right leg/hip condition had ceased based on Dr. Morrissey's opinion.

The Board holds that the Office properly found that appellant no longer had any residuals from his accepted March 17, 1989 employment injury to his right leg and hip based on the probative, well-rationalized medical opinion of Dr. Morrissey, which constituted sufficient medical rationale to support the Office's decision to terminate appellant's compensation. The Board therefore affirms the Office's April 15, 1997 decision.

The decision of the Office of Workers' Compensation Programs dated April 15, 1997 is hereby affirmed.

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

Dated, Washington, D.C.
May 20, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member