

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN G. STEPHENS and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Fort Worth, TX

*Docket No. 99-2446; Submitted on the Record;
Issued March 23, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation benefits effective December 17, 1998.

On November 11, 1997 appellant, then a 39-year-old air traffic controller, filed a notice of traumatic injury alleging that he injured his right knee and lower back on January 10, 1997 when he fell out of a chair in the course of his federal employment. On February 25, 1997 the Office accepted the claim for a lumbar strain and appellant received compensation for total temporary disability. Appellant subsequently returned to work in January 1998 working four hours per days and compensation was adjusted accordingly.

On August 4, 1998 Dr. Richard R. Jones, appellant's attending physician, Board-certified in physical medicine and rehabilitation, stated that there was no objective physical evidence that would prevent appellant from returning to full duty. He noted that appellant indicated that pain would prevent him from working full duty. Dr. Jones stated that appellant had recovered to the point where he did not need to be followed up. He completed a work capacity evaluation indicating that appellant could work only four hours per day because of complaints of pain and that he did not anticipate appellant working eight hours per day for one year.

On October 5, 1998 Dr. Jones stated that subjective complaints were the only limiting factors in appellant's return to work. In this regard, he stated that a March 11, 1997 magnetic resonance imaging (MRI) scan showed no spinal stenosis, disc herniation or neuroforaminal stenosis. He stated that there was mild, degenerative facet arthropathy consistent with appellant's age.

On November 16, 1998 the Office issued a notice of proposed termination of compensation and medical benefits. The Office allowed appellant 30 days to submit additional evidence or argument. The Office indicated that it relied on the August 4 and October 5, 1998 reports of Dr. Jones finding no objective evidence to support a work-related injury or disability.

Appellant subsequently submitted a November 20, 1997 report from Dr. Alexander I. Glogua, a Board-certified orthopedic surgeon, who previously rendered an impartial examination in this claim. Dr. Glogua indicated that appellant could work only four hours per day with certain restrictions due to his chronic recurrent thoracolumbar spine strain with psychological overlay. He stated that his restrictions were indefinite.

By decision dated December 17, 1998, the Office terminated appellant's medical and compensation benefits. The Office indicated that the basis for its decision was that Dr. Jones found that the work-related disability had ceased.

On December 14, 1998 Dr. Jones diagnosed chronic low back pain, stable and chronic pain syndrome. He noted that appellant had pain in his thoracic and lumbosacral spine. Dr. Jones also noted right side spasm. Dr. Jones stated that an MRI scan of the lumbosacral spine showed mild, degenerative facet arthropathy and mild bulges.

On December 30, 1998 Dr. Jones again stated that an MRI scan of the lumbosacral spine showed mild, degenerative facet arthropathy and mild bulges. He stated that this indicated that appellant's limitations were based on objective data. Dr. Jones stated that a December 8, 1998 lumbosacral spine x-ray showed some sacralization of L5-S1 on the left side, indicating a unilateral pseudoarthritis. He stated that this abnormality may be responsible for appellant's pain syndrome. Dr. Jones diagnosed chronic low back pain, sacralization of the lumbosacral spine, disc bulging of the lumbosacral spine and facet arthropathy. He repeated these diagnoses on January 13 and February 9, 1999.

On March 1, 1999 appellant requested reconsideration.

By decision dated May 26, 1999, the Office reviewed the merits of the case and modified the prior decision to reflect that appellant remained entitled to medical benefits. The Office, however, found that appellant failed to establish any employment-related disability from his date-of-injury job. The Office, however, indicated that Dr. Jones provided sufficient objective evidence to establish that appellant was entitled to medical benefits.

The Board finds that the Office failed to meet its burden to terminate appellant's compensation benefits effective December 17, 1998.

Once the Office accepts a claim, it has the burden of proving that the disability 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 federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.² Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.³ To terminate authorization or

¹ *Frederick Justiniano*, 45 ECAB 491 (1994).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁴

In the present case, the Office relied on the reports of Dr. Jones, appellant's attending physician and a physician Board-certified in physical medicine and rehabilitation, to terminate appellant's compensation benefits. Dr. Jones, however, maintained in his August 4, 1998 work capacity evaluation that appellant could work only four hours per day. The Office indicated that Dr. Jones stated that appellant's continued disability was not supported by any objective findings. Although Dr. Jones did state this in his August 4 and October 5, 1998 reports, he subsequently amended his opinion on December 14 and December 30, 1998 to find that appellant's limitations were based on objective data such as an MRI scan and an x-ray. Consequently, Dr. Jones' opinion supports appellant's assertion of continued disability and is insufficient to meet the Office's burden of proof in terminating compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated May 26, 1999 and December 17, 1998 are hereby reversed.

Dated, Washington, D.C.
March 23, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Id.*