

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SIDNEY NELSON, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, WA

*Docket No. 99-680; Submitted on the Record;
Issued February 5, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation as of June 12, 1998.

On May 28, 1995 appellant, a 46-year-old mailhandler, injured his left and right rib cage, lower and upper back, and left shoulder while unloading tubs of flats from a conveyor belt. Appellant filed a Form CA-1, traumatic injury claim, for benefits on the date of injury.

By decision dated July 24, 1996, the Office denied appellant's claim, finding that he failed to submit medical evidence sufficient to establish fact of injury.

On August 6, 1996 appellant filed a claim based on a recurrence of a preexisting back injury. According to a statement of accepted facts, appellant did not work from August 2 through 19, 1996, claiming a recurrence of disability. He returned to work on September 4, 1996. Appellant filed another claim for recurrence of disability on September 14, 1996, alleging that his original injury affected his back and had begun to hurt again.¹

By letter dated August 6, 1996, appellant requested a hearing.

By decision dated September 21, 1996, an Office hearing representative reversed the previous decision, finding that appellant's claim for thoracic sprain should be accepted. The Office hearing representative also remanded the case for further development, instructing the district Office to contact appellant's treating physician and request his opinion as to how he arrived at a diagnosis of a separated rib cage. The Office stated that, once this opinion was obtained, the district Office should determine whether a causal relationship existed between the

¹ An August 15, 1996 memorandum from the employing establishment indicates that appellant called in sick from August 1 through 5, 1996, and had informed his supervisor that his absence was due to an injury sustained off the job. On August 7, 1996 he brought his supervisor a note stating he was disabled for work through August 12, 1996.

rib cage injury and the May 28, 1995 employment injury, and determine the nature and extent of any disability resulting from the accepted injury.

On April 1, 1997 appellant was released to light duty with restrictions on lifting/carrying up to 20 pounds; lifting/carrying up to 40 pounds, intermittently 4 hours daily; pushing/pulling on wheels up to 100 to 150 pounds for 8 hours per day.

In order to determine the nature and extent of appellant's condition, the Office referred him to Dr. William T. Thieme, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated August 18, 1997, Dr. Thieme reviewed appellant's medical history, stated findings on examination, and had appellant undergo x-rays, which indicated an old anterior L1 compression fracture. Dr. Thieme stated that appellant had a history of chronic lumbar sprain with recurrent exacerbations following the May 28, 1995 employment injury, and opined that he should be placed on a permanent light-duty status. He advised that the lifting injury which appellant described would not ordinarily cause a compression of the lumbar spine, and that, therefore, the L1 compression was probably unrelated to the May 1995 employment injury. Dr. Thieme added that, if appellant had a preexisting compression fracture at L1, the lifting injury probably would have been exacerbated by the preexisting condition.

In a work capacity evaluation completed the date of the examination, Dr. Thieme indicated that appellant should be restricted to limited bending, lifting and carrying. Dr. Thieme specifically restricted appellant from repeated lifting and carrying in excess of 20 pounds, intermittent lifting and carrying in excess of 40 pounds, and pushing and pulling wheels exceeding 150 pounds. He advised that appellant could perform an eight-hour workday, with these restrictions, as of April 1997.

In a supplemental report dated October 6, 1997, Dr. Thieme stated that appellant's exacerbation would probably be temporary but would also be a factor in his several recurrent exacerbations. He advised that, if appellant did have a preexisting L1 compression fracture, the May 28, 1995 work injury would have exacerbated the condition, in which case his current work restriction would be a consequence of both the preexisting condition and the May 1995 lifting injury. Dr. Thieme also stated that he considered it difficult to apportion the degree to which the May 1995 work injury or the preexisting condition contributed to appellant's current condition.

By letter dated November 12, 1997, the Office informed appellant that it had accepted the condition of aggravation of preexisting L1 compression fracture.² The Office further stated, however, that, given Dr. Thieme was unable to clearly distinguish between those restrictions due to the 1995 work injury and those due to the aggravation of the work injury, it would be scheduling him for a new second opinion to obtain clarification with regard to this issue.

The Office arranged a second opinion examination for appellant with Dr. Richard G. McCollum, a Board-certified orthopedic surgeon, for March 4, 1998.

² Appellant missed work from October 24, 1997 through February 16, 1998 due to his accepted injuries, and returned to work on modified light duty on February 17, 1998. He was paid temporary total compensation during this period.

In a report dated March 5, 1998, Dr. McCollum stated that appellant had a normal examination, a normal x-ray, and that he did not see any reason why appellant would be unable to work in an occupation of his choice without restrictions. He advised that there was no indication for any light-duty work or any further medical treatment. Dr. McCollum stated that there was nothing in the records he reviewed to suggest an L1 compression fracture or an aggravation of an L1 compression fracture. He concluded that, "based on the records I have, which I believe are not complete because I do not have Dr. Thieme's records, which I would be willing to review, I cannot see any reason why this man cannot work full [duty] without any restrictions whatsoever."

On May 1, 1998 the Office issued a proposed notice of termination based on Dr. McCollum's opinion, finding that it represented the weight of the medical evidence. The Office informed appellant that he had 30 days in which to submit additional argument evidence in opposition to the proposed termination. Appellant did not respond to this notice within 30 days.

In a supplemental report dated May 5, 1998, Dr. McCollum stated that, after reviewing Dr. Thieme's August 18 and October 6, 1997 reports, he had not changed the opinion he rendered in his March 5, 1998 report. Dr. McCollum advised that appellant had complained of pain from the compression fracture for two years, although the symptoms about which he complained were not consistent with symptoms from which a person with a compression injury ordinarily experienced pain. He added that a pattern of pain lasting two years is not consistent with a compression injury, particularly with a mild type of injury. Dr. McCollum opined that appellant probably had a soft tissue injury.

Based on the reasons stated above, Dr. McCollum concluded that the pain appellant had was unrelated to the compression fracture, ongoing and of an unknown etiology. He concluded that the soft tissue injury should have healed long ago, and that he had no way to explain, as he stated in his earlier report, why appellant continued to have such symptoms given the absence of significant objective findings or physical findings.

By decision dated June 13, 1998, the Office terminated appellant's benefits. The Office stated that it had received no additional medical evidence from appellant within 30 days, and found that based on the weight of the medical evidence that the May 28, 1995 injury had resolved without residuals as of June 13, 1998.³

The Board finds 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.⁴

³ An Office vocational rehabilitational status report dated August 27, 1998 indicates that appellant was still working in his modified light-duty job as of July 10, 1998. Appellant filed another claim for a recurrence of disability on October 30, 1998, alleging that he sustained a recurrence of his back condition when his tour ended on October 28, 1998.

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

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.⁵

In the present case, the Office based its decision to terminate appellant's compensation on the March 5, 1998 medical report of Dr. McCollum, who concluded that the ongoing pain symptoms of which appellant complained were consistent with a soft tissue injury, not a compression fracture, which should already have healed years before. Dr. McCollum noted that appellant had a normal examination and a normal x-ray. In this regard, the doctor pointed out that he found no evidence of an L1 compression fracture or an aggravation of the conditions accepted in the recurrence claim. He also stated that he was unable to attribute appellant's symptoms to a particular etiology given the absence of significant objective findings or physical findings. Accordingly, Dr. McCollum concluded that he did not see any reason why appellant would be unable to work in an occupation of his choice without restrictions.

The Board finds that the Office properly found that Dr. McCollum's referral opinion that appellant was capable of returning to work without restrictions and that his compression fracture had resolved represented the weight of the medical evidence. Accordingly, the Board finds that the March 5 and May 5, 1998 reports of Dr. McCollum constituted sufficient medical rationale to negate a causal relationship between appellant's claimed condition and his May 28, 1995 employment injury, and to terminate appellant's compensation benefits. The Board therefore affirms the Office's June 13, 1998 termination decision.

⁵ *Id.*

The decision of the Office of Workers' Compensation Programs dated June 13, 1998 is hereby affirmed.

Dated, Washington, DC
February 5, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member