

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS COUNTS and DEPARTMENT OF THE INTERIOR,
NORTH UNIT ROUND SPRING, Eminence, MO

*Docket No. 00-1760; Submitted on the Record;
Issued June 1, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective August 5, 1999.

By decision dated October 6, 1997, the Office accepted that on August 12, 1997 appellant, then a 49-year-old carpenter, sustained "temporary aggravation to bulging disc at L4 and temporary aggravation to preexisting T7 disc fracture" when he slipped and fell on a bank carrying plywood. Appellant received appropriate monetary compensation and medical benefits. On December 11, 1997 his treating physician, Dr. David W. Dale,¹ opined that appellant was not able to return to light duty and diagnosed him with "T7 neuritis and spasm and mass" and "L4 marked tenderness and marked spasm" and "reactive thoracic spasm 1-12."² On December 16, 1997 the Office referred appellant to Dr. Pierce Nunley, a Board-certified orthopedic surgeon, for a second opinion examination to determine the degree of disability remaining from appellant's injury.

On January 8, 1998 Dr. Dale opined that appellant may return to light duty. On February 3, 1998 the Office received a second opinion report from Dr. Nunley dated January 27, 1998. Dr. Nunley reviewed appellant's magnetic resonance imaging (MRI) scan of the thoracic spine and the lumbar spine and found: "Mild degenerative joint disease of the cervical and thoracic spine, mild to moderate degenerative joint disease of the lumbar spine and disc disease, possible left thoracic radiculopathy and probable symptom magnification." He further found: "Certainly, I feel that the patient has some basis for complaints. I find no compelling evidence to directly link this to the accident as far as the chronic problems are concerned."

¹ The Board was unable to determine whether he is Board-certified.

² Much of this note is illegible.

Dr. Nunley also recommended that appellant be placed on desk-type activity with no heavy lifting. On February 8, 1998 Dr. Nunley opined that appellant had reached maximum medical improvement. When asked if the recommended work restrictions were a result of appellant's preexisting nonwork-related degenerative joint disease, Dr. Nunley stated: "primarily but not totally."

Based on the reports from Drs. Dale and Nunley, appellant was assigned to return to temporary limited duty on March 30, 1998. On March 12, 1998 he was apparently working on his furnace at home when "his back went out" and he was admitted to the emergency room. Appellant submitted a hospital discharge report from Dr. James T. Shaeffer, a Board-certified orthopedic surgeon, in which he provided diagnoses of "herniated thoracic disc" and "thoracic spondylosis." On March 27, 1998 appellant submitted a note from Dr. Dale stating that appellant could not even perform light-duty work until otherwise notified. On March 30, 1998 the Office requested that appellant submit additional evidence regarding his "new" March 12, 1998 injury explaining why he could not return to work.

The Office received an additional clarification report from Dr. Nunley dated April 21, 1998, regarding appellant's underlying condition, in which he stated:

"I feel there has been no material change in the patient's underlying condition. The majority of the symptoms are temporarily associated with disability. The fact that the patient still has complaints, I feel, is more attributable to his preexisting disease."

On May 26, 1998 the Office issued a notice of proposed termination of compensation. On July 6, 1998 the Office terminated appellant's compensation benefits since the weight of the medical evidence of record failed to show that the March 12, 1998 incident was causally related to the August 12, 1997 accepted employment injury.

On July 31, 1998 appellant requested an oral hearing. After conducting a merit review, the hearing representative remanded the case on April 9, 1999 and reinstated appellant's compensation benefits, finding that Dr. Nunley's January 27, 1998 report was insufficient to terminate compensation. The hearing representative found that the Office should refer appellant and the entire case record to a specialist for a second opinion on whether appellant sustained an intervening injury on March 12, 1998 sufficient to break the chain of causation or whether appellant had a spontaneous worsening of his previous condition.

On May 12, 1999 the Office referred appellant to Dr. Jerome Piontek, a Board-certified orthopedic surgeon for a second opinion examination. Based on a statement of accepted facts and on appellant's medical history and medical evidence of record, Dr. Piontek submitted a report dated June 9, 1999, stating:

"It is my impression that this patient has a lumbar strain, may have had some degree of thoracic strain as well. His T7 mildly wedged vertebral deformity is not related to his injury of August 1997, nor does his disc bulge at L4 appear to be related to that injury. Neither has changed on repeat MRI scans. It is my impression that the patient's current lumbar and thoracic discomfort is not related

to the injury of August 12, 1997. The symptoms from that injury would have been expected to resolve within eight weeks after the time of the injury. I do not detect any objective reason why the patient is unable to perform his date[-]of[-]injury job as a carpenter; however, because of his subjective symptoms he is unable to do that type of work and he should therefore not be expected to lift over 20 pounds. I would expect that he is able to do the light[-]duty sedentary office position as described in the statement of accepted facts.”

The Office also received a report from Dr. Shaeffer dated March 31, 1999 and a report from Dr. Bernard M. Abrams, a Board-certified psychiatrist and neurologist, dated July 18, 1999. In his report, Dr. Shaeffer noted:

“He really has had no significant improvement in his back or rib cage pain, which I feel is on the basis of degenerative disease of his thoracic spine. Clinically, he has a herniated thoracic disc, although this was not demonstrated on an MRI scan. However, on the MRI scan he did have evidence of spondylosis in the thoracic region.”

He further noted, “I think that his disability for carpentry work will probably be a permanent situation....”

In his July 18, 1999 report, Dr. Abrams concluded:

“Subsequent to two accidents, one August 12, 1995 and the other August 12, 1997, this patient currently has the following: (1) A compression fracture of T7. It is unclear whether or not that developed from the August 12, 1995 or the August 12, 1997 accident but in all likelihood developed from the August 12, 1995 accident. This has given him musculoskeletal pain secondary to the compression fracture and probable thoracic radiculopathy.”

On June 21, 1999 the Office issued a notice of proposed termination.

By decision dated August 5, 1999, the Office terminated appellant’s compensation benefits, finding that the weight of the medical evidence of record did not support a continuing disability causally related to the August 12, 1997 employment injury. Appellant had not returned to work and had been receiving compensation benefits since his August 12, 1997 injury.

On August 27, 1999 appellant requested an oral hearing which was held on February 17, 2000. At the hearing appellant submitted an undated report from Dr. Dale E. Haverstick,³ which stated:

“[Appellant] continues to be under my care for chronic debilitating back pain he has had since an injury at work August 12, 1997. He continues to have symptoms which prevent him from gainful employment in his past capacity as carpenter and he will likely never recover enough to be returned to the workforce.”

³ The Board was unable to determine whether he is Board-certified.

By decision dated March 22, 2000, the hearing representative affirmed the termination of appellant's compensation benefits finding that the weight of the medical evidence of record failed to establish that appellant suffered from any residuals related to his August 12, 1997 employment injury.

The Board has reviewed the case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation benefits without establishing that the disability has ceased or that it is no longer related to the employment.⁵ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁶ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁷

In this case, the Office based its termination of appellant's compensation benefits on the June 9, 1999 report from the second opinion physician, Dr. Piontek, who concluded that appellant's lumbar and thoracic discomfort was not related to the August 12, 1997 injury. He stated that the symptoms from that injury would have been expected to resolve within eight weeks. Dr. Piontek also indicated that neither appellant's T7 vertebral deformity nor disc bulge at L4 had changed on repeat MRI scans.

The Board finds that Dr. Piontek's conclusions regarding the issue of whether appellant's disability has ceased are not sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits. Dr. Piontek has not explained why appellant's aggravations are no longer present if neither condition has changed on the MRI scans. Also, his opinion that the symptoms from appellant's injury "would have been expected to resolve" is speculative. Dr. Piontek never explained when appellant's symptoms did resolve and how he reached such conclusions. In addition, he did not explain why appellant's symptoms are no longer causally related to his accepted employment injury.

Furthermore, the Board finds the medical evidence submitted by appellant from Drs. Shaeffer, Abrams and Haverstick, are sufficiently well rationalized to support that appellant has a continuing disability causally related to his August 12, 1997 accepted employment injury.

As the Office failed to base its decision to terminate appellant's compensation benefits upon a sufficiently well-rationalized medical report, it failed to meet its burden of proof.

⁴ *Harold S. McGough*, 36 ECAB 332 (1984).

⁵ *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁷ *See Calvin S. Mays*, 39 ECAB 993 (1988).

The August 5, 1999 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
June 1, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member