

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNON C. BROOKS and FEDERAL JUDICIARY,
U.S. DISTRICT COURT PROBATION OFFICE, Portland, OR

*Docket No. 01-879; Submitted on the Record;
Issued November 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective August 15, 2000.

Appellant filed a claim alleging that he sustained neck and shoulder injuries while moving a desk while in the performance of duty on June 28, 1985. The Office accepted the claim for chronic cervical strain with radiculopathy, borderline carpal tunnel syndrome and thoracic outlet syndrome. Appellant returned to work, then resigned from federal employment in March 1986.

In a decision dated August 15, 2000, the Office terminated appellant's compensation effective that date. In a decision dated December 12, 2000, the Office denied modification.

The Board finds that the Office met its burden of proof to terminate compensation.

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 was no longer related to the employment.¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.²

In this case, appellant was referred for a second opinion examination to Dr. Stephen J. Thomas, Jr., an orthopedic surgeon. In a report dated April 28, 2000, Dr. Thomas provided a

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Furman G. Peake*, 41 ECAB 361 (1990).

history and results on examination.³ Dr. Thomas diagnosed chronic cervical sprain; he indicated that appellant did not have evidence of carpal tunnel syndrome or thoracic outlet syndrome. He stated that the only objective finding was decreased range of motion in the neck. Dr. Thomas further stated, "If asked on a more probable than not basis, would the claimant's present disability be at its current level had the work-related injuries never occurred. More than likely, he would have the same disability had the work-related injuries never occurred. This is based on the fact that his subjective complaints are much greater than any objective findings." Dr. Thomas indicated that appellant still had some disability for work, noting that he would not recommend wrestling with large parolees, and he completed a work capacity evaluation (Form OWCP-5c).

In a supplemental report dated June 15, 2000, Dr. Thomas explained that any restriction was based on a subjective complaint of pain and appellant's current age (56). In response to a request for medical rationale explaining how a strain can be active for 15 years, Dr. Thomas responded that "there is no rationale. It is only the subjective complaints of pain and, in reality, the findings are more than likely due to the aging process." In a second supplemental report dated July 6, 2000, Dr. Thomas reiterated his prior statements. With regard to work restrictions, Dr. Thomas noted he had reviewed the duties and physical demands of the position description, and recommended that appellant not wrestle with large parolees, as he was 56 years old. He stated that the only objective findings were decreased neck range of motion, that restrictions were based mainly on subjective complaints, and that no further treatment was necessary.

The Board finds that the reports of Dr. Thomas constitute probative medical evidence that appellant did not have a continuing employment-related condition. Dr. Thomas noted only minimal objective findings, and found that appellant's condition was more likely due to the aging process and would have occurred regardless of the employment injury. He indicated that appellant did not need continuing medical treatment and that work restrictions were based on subjective complaints. In the absence of any other probative medical evidence, the Board finds that the weight of the medical evidence supports the Office's findings that the employment-related condition had resolved.

Following the August 15, 2000 decision, appellant submitted an August 14, 2000 report from Dr. Paul M. Puziss, an orthopedic surgeon. Dr. Puziss provided a history and diagnosed history of cervical strain, chronic cervical stiffness and right C6 and C7 radiculopathy, rule out herniated disc. Dr. Puziss stated that appellant was disabled for the position of parole officer, but he did not provide a reasoned opinion on causal relationship between a disabling condition and the 1985 employment injury. In a report dated September 15, 2000, Dr. Puziss diagnosed C5-6 large herniated disc; he stated that appellant's compensation should not have been terminated, but again he did not provide a reasoned opinion on causal relationship with employment. In a

³ There appears to be some confusion as to the exact mechanism of the original injury. In a July 24, 1985 report, appellant provided a history that he bent down to grab the bottom of the desk to straighten it out, and felt a pain as he pulled on the desk. The history that appellant gave to Dr. Thomas was that his chair got caught in a runner and he was leaning forward to move the chair, and the chair fell over. The history given to attending physician Dr. Puziss on August 14, 2000 was that he reached down to straighten out the carpet runner and fell to the floor. Any discrepancies in the history provided appear to be based on appellant's own recollection of the incident, rather than any failure of the Office to provide an accurate background.

brief report dated August 7, 2000, Dr. F. Douglas Day, a family practitioner, stated that appellant was disabled, without further explanation.

The Board finds that the evidence submitted after August 15, 2000 does not contain a reasoned medical opinion with respect to a continuing employment-related condition. The evidence is therefore not sufficient to establish entitlement to compensation after August 15, 2000.

The decisions of the Office of Workers' Compensation Programs dated December 12 and August 15, 2000 are affirmed.

Dated, Washington, DC
November 8, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member