

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM P. TIPPETS and DEPARTMENT OF HEALTH & HUMAN
RESOURCES, SOCIAL SECURITY ADMINISTRATION, Cincinnati, OH

*Docket No. 02-890; Submitted on the Record;
Issued October 21, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective March 13, 2001, on the grounds that appellant no longer had any residuals of his January 3, 2000 employment injury.

On January 3, 2000 appellant, then a 50-year-old claims representative, filed a traumatic injury claim (Form CA-1) alleging that he injured his spine, back, shoulders, low back and hip when he slipped and fell. The Office accepted the claim for closed head injury, cervical strain, left shoulder strain and bilateral hip pain. The Office also authorized a magnetic resonance imaging scan test of the spine.¹

In a note dated February 1, 2000, Dr. Richard M. Peace, an attending chiropractor and Dr. Robert Lynn Wyenandt, an attending physician, released appellant to light-duty work effective February 15, 2000.

Appellant informed the Office in a letter dated May 2, 2000, that his last day of work was April 29, 2000 and that he was moving to California for treatment and evaluation due to "multiple pre and post medical complications related to my injury of [January 3, 2000.]"

In a letter dated May 4, 2000, appellant provided further information regarding why he had to move more than 25 miles from his current work location. Appellant noted that he needed "to go back to Sacramento, CA and be treated by the [physician](s) who know my medical history and have treated my emergencies. I've been advised to return as quickly as possible."

¹ Appellant stopped work on April 29, 2000 to return to California for medical treatment and evaluation.

In an August 9, 2000 report, by Dr. Stephen G. Rapaski, opined appellant sustained a closed head injury on January 3, 2000. Dr. Rapaski further concluded:

“It need [sic] be stated that closed head injury implies at least transient and possibly permanent underlying brain dysfunction. Closed head injury does not refer to orthopedic or soft tissue injury. It is well accepted in medico neuro-sciences that closed head injury (CHI) is associated with mild brain dysfunction. It is true that many head injuries result in symptoms that are not a result of brain injury, as there are many peripheral nerves (outside the brain) which are often injured or damaged in traumatic accidents. [Appellant]’s current clinical presentation is very consistent with closed head injury and underlying brain dysfunction. He is reporting cognitive problems in the form of forgetfulness and reduced concentration. [Appellant] is photophobic (light sensitive) and his vision is often blurred. He has had continuous problems with equilibrium and balance. [Appellant] presents with tinnitus (ringing in ears) which is often centrally or brain derived.”

In a letter dated September 7, 2000, the Office informed appellant that the evidence of record was insufficient to establish that his peripheral vision deficits, mental state, seizure disorder, hypertension and heart stoppage were due to his accepted January 3, 2000 employment injury. The Office advised appellant of the type of medical evidence required to support that these conditions were related to his accepted January 3, 2000 employment injury.

In an October 6, 2000 report, Dr. Janak K. Mehtani, an attending Board-certified psychiatrist, diagnosed organic affective disorder, recurrence major depression following his head injury, chronic back pain, headaches and concussion syndrome. Dr. Mehtanti opined that appellant’s “current psychiatric condition is directly caused by the injury he sustained during the course of his employment.” Furthermore, Dr. Mehtani concluded that appellant was totally disabled due to the cumulative head injuries, which had been “exacerbated by the recent slip-and-fall injury at his workplace on January 3, 2000.”

In a November 3, 2000 report, Dr. William P. Duffy, an attending Board-certified orthopedic surgeon, diagnosed degenerative disc disease and pain in his cervical spine, thoracic spine, left hip joint, low back and left shoulder.

Dr. Duffy in a December 31, 2000 report, reported left shoulder motion restricted to 140 degrees, “tenderness on palpation of the anterior lateral area of the left shoulder” with “no weakness in extension,” straight leg bilateral raising of 80 degrees and 30 degrees of external motion and 20 degrees of internal rotation for the left hip.

In a January 3, 2001 report, Dr. Gerald C. Barnes, a second opinion Board-certified orthopedic surgeon, diagnosed chronic organic brain syndrome with seizures, left shoulder adhesive capsulitis and degenerative disc disease in the lumbar and cervical spines and “rule out left hip joint pathology, nonindustrial.” Dr. Barnes opined that he could not “be sure that any of the diagnoses are related to the work injury, as the patient has had several falls following seizure activity preceding the incident of January of 2000.” Regarding the back, neck and left shoulder, Dr. Barnes opined that they would “probably have been aggravated” by the January 3, 2000

employment injury and that any aggravation was temporary and should have resolved within a year of the injury.

On January 25, 2001 the Office issued a notice of proposed termination based on the January 1, 2001 report of Dr. Barnes, a Board-certified orthopedic surgeon, that appellant had no objective findings of recurrent aggravation of his arthritic condition and was completely asymptomatic. Appellant was provided 30 days in which to provide evidence contesting the notice.

By decision dated March 13, 2001, the Office finalized the proposal to terminate appellant's compensation benefits on the basis that he no longer had any residuals to his accepted employment injury.²

The Board finds that the Office improperly terminated appellant's compensation benefits effective March 13, 2001.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ 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.⁴ However, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage-loss due to disability.⁵ 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.⁶

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁷ The Office burden includes the

² The Board notes that the Office received a letter dated February 23, 2001, from Ilija Cvetich appealing the proposed termination on appellant's behalf. The Office advised Ms. Cvetich that a written authorization signed by appellant was required and the Office could not communicate with Ms. Cvetich until it had received the authorization form. The Office did not receive any attorney authorization form or any communication from appellant regarding the proposed termination of his benefits. Appellant sent a letter dated December 1, 2000, requesting the Office to send copies of all letters to his representative and to coordinate with his representative regarding scheduling another examination.

³ *Ronald A. Gillis*, 53 ECAB ____ (Docket No. 00-2617, issued March 11, 2002).

⁴ *Dennis A. Poppell*, 53 ECAB ____ (Docket No. 02-177, issued May 20, 2002).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Franklin D. Haislah*, 52 ECAB ____ (Docket No. 01-208, issued August 1, 2001).

⁷ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

In the instant case, the Office accepted the claim for closed head injury, cervical strain, left shoulder strain and bilateral hip pain. Appellant's attending physician, Dr. Mehtani, concluded that appellant was totally disabled due to the cumulative head injuries, which had been "exacerbated by the recent slip-and-fall injury at his workplace on January 3, 2000." Dr. Barnes, a second opinion Board-certified orthopedic surgeon, stated that he could not be sure whether appellant's chronic organic brain syndrome with seizures was work related.

As there is no probative, rationalized medical evidence, based upon objective examination and testing results, establishing that appellant's head injury-related disability had fully resolved and that he had no further injury residuals, which required further medical treatment, prior to the Office's March 13, 2001 termination decision, the Office had no medical basis upon which to base its termination. Therefore, it failed to meet its burden of proof to terminate appellant's monetary compensation and medical benefits entitlement.

The March 13, 2001 decision of the Office of Workers' Compensation Programs is hereby reversed.⁹

Dated, Washington, DC
October 21, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁸ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁹ The Board notes that, subsequent to the Office's March 13, 2001 decision, appellant submitted new evidence. However, the Board may not consider new evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).