

**United States Department of Labor
Employees' Compensation Appeals Board**

JOSEPH TOMARO, Appellant

and

**GENERAL SERVICES ADMINISTRATION,
Burlington, NJ, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-1314
Issued: September 7, 2005**

Appearances:
Thomas R. Uliase, for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 31, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' hearing representative decision dated January 18, 2005, which affirmed a February 27, 2004 decision terminating his wage-loss compensation benefits. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's wage-loss compensation benefits; and (2) whether appellant has established continuing disability after February 27, 2004, causally related to the accepted employment injury.

FACTUAL HISTORY

On December 1, 1998 appellant, a 44-year-old material handler, injured his head while standing on a forklift. He filed a claim for benefits which the Office accepted for laceration of the forehead and postconcussion syndrome. Appellant sustained another injury to his head on June 11, 1999 when he struck it on racks while picking up freight. The Office accepted the claim

for headaches. Appellant filed a claim for recurrence of his employment-related headache condition on September 28, 1999, claiming that he sustained a recurrence of disability on August 11, 1999. The Office accepted the claim for chronic headaches on September 29, 1999.

In order to determine appellant's current condition and to ascertain whether he still had residuals from his accepted injuries, the Office referred him for a second opinion examination with Dr. Gary Korenman, Board-certified in psychiatry and neurology. In a report dated March 25, 2003, Dr. Korenman, after reviewing the medical history, stated:

“On neurologic examination, [appellant] is alert and cooperative. Speech and communication are normal. Ocular fundi, eye movements and pupillary light reactions are normal. Visual fields tested unilaterally with one centimeter red targets is completely normal in each eye. The neck is mildly limited on movement in the anteroposterior direction but there is no tenderness or muscle spasm. There are no carotid bruits. Deep tendon reflexes are one plus active and symmetric in the upper lower extremities. Gait, power testing including intrinsic hand muscle power coordination are all normal. Light touch and vibration senses are normal in the upper lower extremities. Plantar responses are flexor bilaterally.”

Dr. Korenman concluded that appellant still experienced post-traumatic headaches but was not disabled for work and could return to work on full schedule without any restrictions.

On May 8, 2003 the Office issued a notice of proposed termination of wage-loss compensation to appellant. The Office found that the weight of the medical evidence, as represented by the March 23, 2003 report by Dr. Korenman, the second opinion physician, established that appellant was no longer disabled due to the accepted headache condition. The Office allowed him 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

In a May 19, 2003 letter, appellant's attorney objected to Dr. Korenman's conclusions and to the proposed termination of his compensation benefits. Counsel contended that Dr. Korenman's opinion was insufficient to represent the weight of medical opinion. He stated that Dr. Korenman failed to provide a proper medical history of appellant's injury and failed to provide objective medical evidence for his conclusion that appellant could return to work in a full schedule without restrictions. Counsel further asserted that Dr. Korenman did not discuss the circumstances of the December 1, 1998 injury and failed to demonstrate his awareness of the appellant's normal work and the physical requirements of that job. Appellant did not submit any additional medical evidence.

By decision dated February 27, 2004, the Office terminated appellant's wage-loss compensation, finding that Dr. Korenman's opinion represented the weight of the medical evidence and established that he was no longer disabled.

By letter dated March 4, 2004, appellant's attorney requested an oral hearing, which was held on October 20, 2004. At the hearing, counsel reiterated his arguments that: (a) Dr. Korenman did not provide a proper history because he indicated that the first incident

occurred on June 11, 1999 and did not offer a description of the accident; (b) he failed to provide objective medical evidence for his conclusion that appellant could return to work in a full schedule without restrictions; and (c) Dr. Korenman did not provide rationale for his conclusion that appellant could return to work without restrictions.

By decision dated January 18, 2005, an Office hearing representative affirmed the February 27, 2004 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.¹ 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.²

ANALYSIS -- ISSUE 1

In this case, the Office based its decision to terminate appellant's wage-loss compensation on the March 25, 2003 report of Dr. Korenman, an Office referral physician. He found that, on the basis of his neurological examination, appellant's speech and communication were normal, as were his ocular fundi, eye movements and pupillary light reactions. Dr. Korenman found on the basis of unilaterally tests that his visual fields, gauged with one centimeter red targets, were completely normal in each eye. He advised that appellant's neck was mildly limited on movement in the anteroposterior direction but found that there was no tenderness or muscle spasm. Dr. Korenman further stated that there were no carotid bruits, that he had a normal gait and that power testing including intrinsic hand muscle power coordination were all normal. Finally, he found that appellant's light touch and vibration senses were normal in the upper lower extremities. Dr. Korenman concluded that appellant still had residuals of post-traumatic headache but was not disabled for work and could return to work on full schedule without any physical restrictions. The Office relied on the opinion of Dr. Korenman, finding that appellant had no continuing disability for work resulting from the accepted employment injury.

The Board finds that Dr. Korenman's opinion represents the weight of the medical evidence and establishes that appellant is no longer disabled due to his accepted 1998 injuries. He noted that he experienced post-traumatic headaches, but found on the basis of head, eye, neck, lower and upper extremities, motor capacity, gait and sensory testing and examination that there was nothing precluding him from returning to work without restrictions. Dr. Korenman, therefore, properly found that appellant no longer had any disability from the employment injuries and his report is sufficiently probative, rationalized and based upon a proper factual background. The Board notes that, while the February 27, 2004 cover letter for termination decision indicated that medical benefits were also terminated, Dr. Korenman's medical opinion supports a finding that appellant still has residuals of the accepted condition which are no longer

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

disabling. The Office's termination decision therefore only terminated wage loss, not medical benefits.

LEGAL PRECEDENT -- ISSUE 2

Once the Office properly terminated appellant's compensation in its February 27, 2004 decision, the burden of proof shifted to appellant to establish continuing disability.³

ANALYSIS -- ISSUE 2

Appellant did not submit any additional medical evidence. Instead, counsel contends that Dr. Korenman's opinion was flawed and, therefore, insufficient to represent the weight of medical opinion. Although he did misstate the date of appellant's original injury as occurring on June 11, 1999 instead of December 1, 1998, this does not vitiate the probative value of his opinion. Dr. Korenman stated that appellant initially sustained an injury when he was struck on the left side while driving a lift on a track and that four or five months later he reinjured the frontal area of his scalp. He related an accurate history of injury on which to render a rationalized medical opinion. Further, there was no need for Dr. Korenman to give a detailed listing of the jobs or activities in which appellant could engage, since he found that appellant could return to work without physical restrictions. He examined and tested him to determine whether he still experienced disability related to his headaches, vision, sensory and motor capacity, gait and the strength of his extremities. On the basis of this examination and testing, which revealed normal results in all categories, Dr. Korenman concluded that appellant could return to work without restrictions. The Board notes that appellant has not submitted any medical evidence to establish any residual headaches render him totally disabled for work. The Board finds that the opinion of Dr. Korenman represents the weight of the medical evidence. The Board will affirm the January 18, 2005 Office decision.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation benefits and he has not established any employment-related disability following the termination of his benefits.

³ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 7, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board