

sustained a recurrence of his work-related lumbar strain as of July 9, 2001. The Office accepted the claim for recurrence of lower back strain. It paid compensation for temporary total disability and placed him on the periodic rolls.

In an April 18, 2002 report, Dr. Barry J. Ross, Board-certified in physical and rehabilitative medicine, stated that appellant was developing worsening adjustment disorder related to his chronic pain syndrome. He advised that appellant needed appropriate counseling for pain management and cognitive and behavioral strategy development. Dr. Ross referred him to a psychologist, Dr. Annelie S. Purdy, Ph.d and a specialist in pain management, for psychological evaluation.

In a May 13, 2002 report, Dr. Purdy stated that appellant complained of residual pain and felt emotionally overwhelmed, lost and confused regarding the insecurity of his future, economic problems and uncertainty. She indicated that he experienced hopelessness, anxiety and increased irritability due to his workers' compensation litigation and his economic problems. Dr. Purdy stated that appellant was not currently on medication but noted that he briefly received outpatient therapy while serving in the military during the Vietnam War; he denied suicidal ideation and homicidal ideation. She related that appellant experienced depression, anxiety and occasional hallucinations, although she did not notice any paranoid tendencies or psychotic features. Dr. Purdy diagnosed moderate depressive disorder, symptomatology and residuals from post-traumatic stress disorder stemming from his war experiences, aggravated by feelings of vulnerability induced by his work injury and anxiety disorder. She recommended therapy with a psychologist familiar with chronic pain patients.

In a February 24, 2004 report, Dr. Wesley E. Griffitt, Board-certified in neurosurgery, noted that appellant had complaints of chronic back pain, which he rated a 5 on a scale of 1 to 10. He stated that diagnostic tests showed no evidence of herniated discs, though a electromyogram showed evidence of chronic mid-lower radiculopathy with findings of degenerative disc disease at L4-5 and a broad-based disc bulge eccentric to the left with some possible neuroforaminal narrowing on the left. Dr. Griffitt stated that there was no evidence of significant stenosis. He diagnosed chronic low back pain with history of a lumbar strain and sacroiliac instability. Dr. Griffitt did not recommend surgical intervention in the low back based on his examination, his review of the most recent magnetic resonance imaging (MRI) scan study and appellant's complaints; he opined that appellant would benefit most with conservative measures.

To determine appellant's current condition and to ascertain whether he still suffered residuals from his accepted condition, the Office referred him for a second opinion examination with Dr. Edward J. Prostic, Board-certified in orthopedic surgery.

In a report dated September 5, 2007, Dr. Prostic stated findings on examination, reviewed the medical history and the statement of accepted facts and advised that appellant appeared to have no more than lumbar sprain and strain caused by his February 2000 work-related accident. He stated that appellant complained of a constant ache in the center of his low back at the waist level with radiation across the back and upward. Dr. Prostic also related that he experienced stiffness and soreness when he awakened in the morning which worsened with sitting, standing, walking, bending, squatting, twisting, lifting, pushing, pulling, coughing, sneezing and inclement

weather. He stated, however, that appellant's subjective complaints far outweighed the objective findings. Dr. Prostic opined that he was capable of light-duty work which required limited mobility and enabled him to change position as needed. He advised that appellant would benefit from reconditioning efforts if his psychological condition could be improved. Dr. Prostic stated that his "deconditioning" was predominantly due to psychological distress and other social factors rather than his orthopedic injury.

In an October 5, 2007 supplemental report, Dr. Prostic stated that appellant's overall examination and inability to return to work were highly suggestive of psychological decompensation. He advised that if appellant were to undergo a thorough psychological evaluation, he would show either a very high depression scale or very high scores for hypochondria and hysteria with a lower score for depression. Dr. Prostic stated that based upon the results of his 2003 MRI scan and the lack of objective physical evidence he saw no physical reason why appellant could not be able to return to work as a correctional officer. He advised that, assuming that appellant was deconditioned, reconditioning exercises should allow him to return to his previous employment. Dr. Prostic stated that the only reasons that would not be possible would be psychological barrier to improvement, malingering or significant worsening of his condition subsequent to his 2003 psychological evaluation. He asserted that, even if appellant underwent a new MRI scan and showed more impressive pathology, his inability to walk on his heels and toes and inability to flex, extend or laterally bend would be largely due to either psychological distress or malingering.

On November 16, 2007 the Office issued a proposed termination of compensation claim to appellant. It found that the weight of the medical evidence, as represented by the opinion of Dr. Prostic, the second opinion physician, established that his accepted, employment-related lower back strain had resolved. The Office noted that Dr. Prostic had stated that there was no physical reason appellant could not return to his job as a correctional officer. While Dr. Prostic noted a psychological component to appellant's inability to work, the Office noted that it had never accepted a psychological condition. Thus, it found that the only factors preventing appellant from returning to work were nonwork related. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. Appellant did not submit any additional medical evidence.

By decision dated January 2, 2008, the Office terminated appellant's compensation, finding that Dr. Prostic's opinion represented the weight of the medical evidence.

By letter dated January 11, 2008, appellant's attorney requested an oral hearing, which was held on April 11, 2008. At the hearing, appellant stated that he had a psychiatric condition stemming from the February 2000 work incident which the Office had accepted. He asserted that he had requested psychiatric care from the Office and noted that it had approved a psychiatric consultation. Appellant's attorney attended the hearing and argued that appellant had a psychological condition which required further development of the medical evidence. He noted that Dr. Prostic had indicated that there was a psychological component to appellant's inability to return to work and that appellant had been referred for psychological counseling to assist with pain management. Counsel therefore contended that the Office was required to obtain an opinion from a psychiatric specialist regarding this psychological component of appellant's accepted low back condition and to further develop the medical evidence regarding this issue.

By decision dated June 23, 2008, an Office hearing representative affirmed the January 2, 2008 termination decision, finding that the Office met its burden to terminate compensation.

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 compensation on the opinion of Dr. Prostic, the Office referral physician. In his report dated September 5, 2007, Dr. Prostic noted that he continued to complain of low back pain and stiffness but appeared to have no more than some minor symptomatology from the lumbar sprain and strain caused by his February 2000 work injury. He stated that appellant was capable of light-duty work, which required limited mobility and enabled him to change position as needed. Dr. Prostic further stated that appellant's subjective complaints far outweighed the objective findings and that he would benefit from reconditioning efforts if his psychological condition could be improved. He advised that appellant's "deconditioning" was predominantly due to psychological distress and other social factors, as opposed to his orthopedic injury. Dr. Prostic reiterated in his October 5, 2007 report, that appellant's overall examination and inability to return to work were highly suggestive of psychological decompensation. He stated that in light of the lack of objective physical evidence he saw no physical reason why appellant could not be able to return to work as a correctional officer, provided that he underwent psychological counseling and undertook a thorough reconditioning exercise program return to his previous employment. The Office relied on the opinion of Dr. Prostic, finding that appellant had no residual disability for work resulting from the accepted employment injury.

The Board finds that the Office properly found that Dr. Prostic's referral opinion represented the weight of the medical evidence and negated a causal relationship between appellant's current condition and his accepted February 2000 work injury. Dr. Prostic stated that it was possible that appellant could return to his former job as a correctional officer if he commenced retraining and psychological counseling. He opined, however, that in any case he was capable of returning to light duty with restrictions. Dr. Prostic's report is sufficiently probative, rationalized and based upon a proper factual background. The Office therefore properly relied on his opinion in its January 2, 2008 termination decision.

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

² *Id.*

LEGAL PRECEDENT -- ISSUE 2

Once the Office properly terminated appellant's compensation in its January 2, 2008 decision, the burden of proof shifted to him to establish continuing disability.³

ANALYSIS -- ISSUE 2

Appellant did not submit any additional medical evidence. Instead, his attorney argued that the Office was required to obtain an opinion from a psychiatric specialist regarding the psychological component of appellant's condition and further develop the medical evidence. He stated that the Office erred in relying on Dr. Prostic's opinion to terminate compensation because he indicated that there was a psychological component to appellant's inability to return to work and because a psychiatric problem had previously been noted in his medical history. The Board finds that the Office properly rejected this argument. Although Dr. Prostic noted that a psychological component was affecting appellant's overall ability to return to work and stated that he could benefit from a psychological reconditioning program, this does not diminish the probative value of his opinion; he opined that appellant could return to light duty even if he did not undergo rehabilitative training and psychological therapy. While appellant's treating physician, Dr. Ross, did diagnose adjustment disorder and refer him to Dr. Purdy for psychological counseling and testing in May 2002, Dr. Purdy did not present a probative, rationalized medical opinion indicating that appellant had a psychological condition causally related to employment factors. Further, the Office never accepted a psychiatric condition and appellant never filed a claim based on a psychological condition causally related to his 2000 lumbar strain injury. There is no other indication in the record that a psychological component contributed to appellant's inability to work until Dr. Prostic's September and October 2007 reports. As stated above, Dr. Prostic did not condition his opinion that appellant could return to gainful employment on a requirement that he undergo additional retraining and psychological counseling. He examined appellant and reviewed the medical record to determine whether he still experienced disability related to his 2000 lumbar strain injury. On the basis of this examination and review, Dr. Prostic concluded that appellant could return to gainful employment. Thus, the Office hearing representative properly found in his June 23, 2008 decision that appellant had submitted no evidence sufficient to undermine the Office's finding, in its January 2, 2008 termination decision, that the opinion of Dr. Prostic represented the weight of the medical evidence. The Board therefore affirms the June 23, 2008 and January 2, 2008 Office decisions.

CONCLUSION

Under the circumstances described above, the Board finds that the Office met its burden of proof to terminate appellant's compensation benefits and he has not established an employment-related continuing 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 June 23 and January 2, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 4, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board