

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH MAISEY and DEPARTMENT OF THE NAVY,  
NAVAL SEA SYSTEMS COMMAND, Philadelphia, Pa.

*Docket No. 96-428; Submitted on the Record;  
Issued April 3, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
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 28, 1995 on the grounds that he had no disability due to his January 14, 1982 employment injury after that date.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective August 28, 1995 on the grounds that he had no disability due to his January 14, 1982 employment injury after that date.

Under the Federal Employees' Compensation Act,<sup>1</sup> when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>2</sup> However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.<sup>3</sup> Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

<sup>3</sup> *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

<sup>4</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>5</sup> *Id.*

<sup>6</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In the present case, the Office accepted that appellant sustained a lumbar and cervical strain on January 14, 1982 and paid compensation for periods of disability. By decision dated August 28, 1995, the Office terminated appellant's compensation effective August 28, 1995 on the grounds that the medical evidence showed he had no disability due to his January 14, 1982 employment injury after that date.

The Board notes that the weight of the medical evidence shows that appellant did not have disability after August 28, 1995 due to his January 14, 1982 employment injury. The Board has carefully reviewed the April 30, 1994 opinion of Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon to whom the Office referred appellant, and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Klinghoffer's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Klinghoffer provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.<sup>7</sup> Dr. Klinghoffer provided medical rationale for his opinion by explaining that appellant's physical examination and diagnostic testing did not reveal any objective abnormalities. He noted that the type of employment injury appellant sustained more than 12 years prior, *i.e.*, a soft tissue injury, would have resolved itself long ago.<sup>8</sup>

Appellant submitted an August 18, 1995 letter in which Dr. Eugene Siegel, an attending osteopath, stated that he continued to be disabled due to his January 14, 1982 employment injury. This letter of Dr. Siegel, however, is of limited probative value on the relevant issue of the present case in that it does not contain medical rationale in support of its opinion on causal relationship.<sup>9</sup>

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<sup>7</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

<sup>8</sup> In early 1994, the Office referred appellant to Dr. Jon Bjornson, a Board-certified psychiatrist, for psychiatric evaluation. In a report dated March 8, 1994, Dr. Bjornson diagnosed a mixed personality disorder with sociopathic, passive-aggressive and dependent features. It has not been accepted that appellant sustained any employment-related emotional condition.

<sup>9</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value). Dr. Siegel attached various medical documents to his letter, but none of these documents contained an opinion that appellant had employment-related disability after August 28, 1995.

The decision of the Office of Workers' Compensation Programs dated August 28, 1995 is affirmed.

Dated, Washington, D.C.  
April 3, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member