

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ISAAC SMITH and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, Oklahoma City, Okla.

*Docket No. 97-162; Submitted on the Record;  
Issued December 14, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant's disability causally related to his October 19, 1990 employment injury ended by September 14, 1996.

This case has previously been before the Board on appeal. By decision and order dated May 9, 1995, the Board found that the Office of Workers' Compensation Programs had not met its burden of proof to terminate appellant's compensation for refusing suitable work, on the basis that there was a conflict of medical opinion between appellant's attending physician and the Office's referral physician regarding appellant's ability to work.<sup>1</sup>

To resolve this conflict of medical opinion, the Office, upon return of the case record, referred appellant, the case record and a statement of accepted facts to Dr. Phillip McCown, a Board-certified orthopedic surgeon. In a report dated February 8, 1996, Dr. McCown set forth appellant's history and noted that he complained of severe low back pain and walked with a cane because of his left knee and back. After describing findings on the physical examination, Dr. McCown stated that there were "no signs or objective findings of a contusion to his low back and buttocks," the condition accepted by the Office as related to his October 19, 1990 injury. Dr. McCown then concluded:

"[Appellant] is not disabled as a result of the work injury of October 19, 1990, nor is there disability attributable to any underlying degenerative disc disease, that I can determine. If there is degenerative disease as was diagnosed in 1991, there has been 5 years for changes to develop on his lumbar x-rays, which as I [have] stated above, look very good for his age and weight. ... I think the biggest problem going on here is this man's emotional problems. It's my opinion that it may be affecting his interpretation of symptoms in his back. There is no evidence of a neurological problem in his legs. He [is] not receiving any ongoing back

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<sup>1</sup> Docket No. 94-148.

treatment or medication to speak of. ... It [is] possible he is having some back symptoms, but there are minimal objective findings. There is only a little tenderness in his back. His restricted range of motion is *so* marked in light of there being no spasm in his back, I have to question how much effort he is putting forth.” (Emphasis in the original.)

Following a notice of proposed termination of compensation on July 8, 1996, the Office, by decision dated August 21, 1996, terminated appellant’s compensation effective September 14, 1996.

The Board finds that the Office properly terminated appellant’s compensation effective September 14, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.<sup>2</sup> In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>3</sup>

The February 8, 1996 report of Dr. McCown, the Board-certified orthopedic surgeon, selected by the Office to resolve the conflict found by the Board on the prior appeal, is based on an accurate factual and medical history, contains findings on examination, and provides a rationalized medical opinion that appellant’s disability related to his October 19, 1990 employment injury ended. This report is sufficient to meet the Office’s burden of proof to terminate appellant’s compensation.

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<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *James P. Roberts*, 31 ECAB 1010 (1980).

The decision of the Office of Workers' Compensation Programs dated August 21, 1996 is affirmed.

Dated, Washington, D.C.  
December 14, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member