

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY M. BROWN and DEPARTMENT OF THE ARMY,
MAINTENANCE DIVISION, Fort Benning, Ga.

*Docket No. 97-1321; Submitted on the Record;
Issued December 17, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation, effective May 25, 1996, on the grounds that he had no continuing disability causally related to the accepted work injury.

The Board has carefully reviewed the case record and finds that the Office met its burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

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.⁴ The Office burden

¹ 5 U.S.C. § 8101 *et seq.*

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In this case, appellant's notice of traumatic injury, filed on November 19, 1991, was accepted by the Office for a scalp laceration after a heavy steel bumper guard fell on appellant's head while he was removing a front axle assembly at work. Appellant had fusion surgery for herniated discs at C5-6 and C6-7 on June 3, 1992 and was released for light-duty work on October 19, 1992. Ten days later he was terminated because his appointment ended and the employing establishment was unable to provide light duty.

On May 10, 1993 the Office denied further compensation on the grounds that appellant had been medically released for regular duty as of January 18, 1993 and the medical evidence failed to establish any causal relationship between the 1991 injury and his current condition. Appellant's request for reconsideration was denied on the grounds that the May 13, 1993 report from Dr. Robert E. Burney, II, Board-certified in neurological surgery, failed to establish a causal relationship between a herniated disc at C4-5 and the 1991 work incident.

Appellant appealed to the Board, which reversed the termination of compensation but affirmed the Office's June 25, 1993 decision denying benefits for the herniated disc at C4-5.⁶

On remand the Office reinstated appellant's compensation. Subsequently, the Office referred appellant for a second opinion evaluation to Dr. John H. Widener, a Board-certified orthopedic surgeon. Based on his opinion, the Office issued a notice of proposed termination of compensation on March 5, 1996. Appellant responded, arguing that he was still disabled and unable to perform his normal duties as a mechanic.

On May 29, 1996 the Office terminated appellant's compensation on the grounds that the medical evidence established that he had no continuing disability from the accepted injury. On January 31, 1997 a hearing representative affirmed the termination, noting that the medical report submitted by appellant after the hearing failed to address the relevant issues of causal relationship or appellant's ability to work.

The Board finds that Dr. Widener's report is sufficient to meet the Office's burden of proof in terminating compensation. Dr. Widener thoroughly examined appellant and reviewed his medical history, including the 1992 reports by Dr. William E. Adams, Board-certified in surgery, who concluded that appellant's neurological examination was normal and that he had no disability and could return to work. Dr. Widener reported the results of a magnetic resonance imaging (MRI) scan as "essentially unremarkable," noting a bulging disc at C4-5 but no evidence of rupture, herniation, or nerve impingement.

In light of his physical, radiographic, and MRI findings, Dr. Widener concluded that appellant should be able to be gainfully employed at unrestricted work, with the provision that he not bear any weight on his head or neck due to the "satisfactory fusion" of the ruptured discs at

⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁶ Docket No. 93-2181 (issued March 3, 1995).

C5-6 and C6-7.⁷ Dr. Widener completed a work capacity evaluation form indicating that appellant could work eight hours a day with no restrictions.

The December 17, 1996 report of Dr. John D. Dorchak, a Board-certified orthopedic surgeon, is insufficient to detract from the probative value of Dr. Widener's opinion. While Dr. Dorchak diagnosed a herniated disc at C4-5 with associated radiculopathy, he offered no conclusions on either appellant's ability to return to work or the causal relationship of his diagnosis to the 1991 work injury. Thus, his report has no relevance to the issue of whether appellant's accepted work injury has resolved.

In his May 13, 1993 report, Dr. Burney indicated that appellant required surgery to remove the ruptured disc at C4-5 and would then be able to return to gainful employment. However, he was unable to conclude that the condition he diagnosed was related to the 1991 work incident -- he stated that all he had to go on was appellant's belief that his current problems stemmed from the accepted injury. Thus, Dr. Burney's opinion is of little probative value.

Therefore, the Board finds that the weight of the medical evidence rests with the opinion of Dr. Widener, the second opinion specialist, who provided a rationalized medical explanation of why the accepted condition had resolved and appellant had no continuing disability from the head laceration and ruptured discs he sustained on November 17, 1991 and is sufficient to meet the Office's burden of proof in terminating appellant's compensation.⁸

⁷ See *Anna Chrun*, 33 ECAB 829, 835 (1982) (finding that the absence of objective evidence of disability is more compatible with the absence of disability than with its presence).

⁸ See *Larry Warner*, 43 ECAB 1027, 1032 (1992) (finding that the weight of the medical evidence rests with the second opinion physician whose well-rationalized conclusion that appellant had no residuals of the accepted injury was sufficient to carry the Office's burden of proof).

The January 31, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
December 17, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member