

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS HIBBERT and DEPARTMENT OF THE AIR FORCE,
OTIS AIR FORCE BASE, Mass.

*Docket No. 96-366; Submitted on the Record;
Issued February 9, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he was disabled after February 23, 1992 due to his accepted April 28, 1990 or March 25, 1987 employment injuries.

The Board has duly reviewed the case record and finds that the evidence of record does not establish that the accepted employment injuries caused appellant to be disabled after February 23, 1992.

In the present case, appellant, a police officer, has provided a medical history of congenital scoliosis, diagnosed at age 17, and a back injury in 1986 which was denied by the Office of Workers' Compensation Programs as it was not established to be causally related to his federal employment. The Office has accepted that appellant sustained a low back sprain on March 25, 1987 while helping to push and slide a safe, in the performance of duty. Appellant stopped work on April 14, 1987 and returned to light-duty work on June 16, 1987. Appellant's physician, Dr. Harry E. Von Ertfelda, a Board-certified orthopedic surgeon, noted on June 3, 1987 that appellant's x-rays showed a significant old thoracolumbar scoliosis and degenerative changes involving the thoracic and upper lumbar spine. The Office has also accepted that appellant sustained a lumbosacral strain on April 28, 1990 while reaching for rifles and revolvers during a weapons inventory. Appellant stopped work on May 3, 1990.

The Office terminated appellant's compensation benefits by decision dated April 1, 1992, on the grounds that the accepted condition had ceased as of February 23, 1992. An Office hearing representative affirmed the termination of appellant's compensation benefits on March 18, 1993. The hearing representative found that the Office's second opinion physician, Dr. Richard A. Alemian, a Board-certified orthopedic surgeon, had provided a well-rationalized medical report which explained that appellant had lumbar scoliosis, with limited motion and some tenderness which were associated with his underlying conditions of scoliosis and degenerative spine disease. Dr. Alemian explained that appellant's back strains in 1987 and 1990 were superimposed on his underlying structural problems of long-standing, causing

episodes of aggravation of a preexisting condition, however, that his present complaints were due to the underlying conditions with no continuation of the April 28, 1990 or March 1987 episodes. The hearing representative also noted that appellant's treating physicians continued to note appellant's complaints of back pain, but they had not provided a current diagnosis of appellant's condition and had not provided any medical rationale to explain why appellant's employment injuries, rather than his underlying preexisting conditions, caused his current symptoms. By decision dated December 1, 1994, the Board affirmed the decision of the hearing representative dated March 18, 1993.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify 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.¹ The Board, on previous appeal, in a decision dated December 1, 1994 affirmed the Office's decisions terminating appellant's compensation benefits. The Board thus found that the Office had met its burden of proof to terminate compensation benefits. As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he has a disability causally related to his accepted employment injury.²

Appellant thereafter requested that the Office reconsider his claim. In support of his request for reconsideration, appellant submitted a report from Dr. Robert H. Moe, a Veterans Affairs physician, dated May 25, 1993. In his report Dr. Moe stated that appellant had been under his care since February 1988, at that time his history revealed he had a previous back strain. Dr. Moe noted that appellant did well in general, but on June 4, 1990 reported an injury at work one month prior. He stated that he had seen appellant approximately every six months since that time and that appellant had complained of his back problem on each occasion. Dr. Moe concluded that appellant had a chronic condition which would be permanent. The Office denied modification of the prior decision after merit review on August 8, 1995.

To establish a causal relationship between the condition, as well as any disability claimed, and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability,

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

² *George Servetas*, 43 ECAB 424 (1992).

its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.³

The only medical evidence submitted in support of appellant's claim of continuing disability was the report from Dr. Moe. The Board finds that Dr. Moe's report is of limited probative value. Dr. Moe does not indicate an awareness of appellant's medical history of congenital lumbar spine scoliosis and degenerative disc disease evidenced by x-ray in June 1987. Dr. Moe did not relate an awareness of the nature of appellant's injuries in 1986, 1987 or 1990. Furthermore, Dr. Moe does not provide a current diagnosis of appellant's condition and offered no medical rationale to causally relate appellant's current symptoms to his accepted employment injuries. As such, this report is not sufficient to establish that appellant was disabled after February 1992 due to his accepted 1987 or 1990 accepted lumbar strain conditions. As appellant has not submitted the necessary medical evidence to establish that he was disabled after February 23, 1992 due to the accepted employment injuries, appellant has not met his burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated August 8, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 9, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ See generally *Gary L. Fowler*, 45 ECAB 365 (1994).