

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS WALLS and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 96-930; Submitted on the Record;
Issued February 24, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined, in its March 16, 1995 decision, that residuals of appellant's August 5, 1986 employment injury had ceased.

In the present case, appellant filed a claim alleging that he sustained injuries on August 5, 1986 in the performance of duty when he fell while testing pipe joints. The Office of Workers' Compensation Programs accepted the claim for an acute lumbosacral sprain. Appellant returned to work in a light-duty position in January 1987 and continued to work in a light-duty job until September 17, 1994, when his position was terminated due to a reduction-in-force. Appellant filed a claim for recurrence of disability commencing September 17, 1994.

By decision dated March 16, 1995, the Office determined that the weight of the medical evidence established that residuals of the employment injury had ceased. The Office advised appellant that any prior authorization for treatment was terminated. This decision was affirmed by an Office hearing representative in a decision dated November 2, 1995.

The Board has reviewed the record and finds that the Office properly determined that residuals of appellant's August 5, 1986 employment injury had ceased.

In the present case, appellant filed a claim for a recurrence of disability commencing September 17, 1994. Since appellant had returned to work a light-duty job that was no longer available as of September 17, 1994, appellant has established a recurrence of disability.¹ The March 16, 1995 Office decision is not a denial of the recurrence claim, but a termination of

¹ See *Jackie B. Wilson*, 39 ECAB 915 (1988); *Terry R. Hedman*, 38 ECAB 222 (1986).

compensation on the grounds that the medical evidence established that residuals had ceased.² It is the Office's burden to establish that residuals of the accepted employment injury had ceased.³

The Office referred appellant, along with medical records and a statement of accepted facts, to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon. In a report dated February 2, 1995, Dr. Didizian provided a history, reviewed the medical evidence and provided results on examination. Dr. Didizian stated that he found no evidence of nerve root compression or herniated disc. He further stated:

“We are nine years from the date of the original injury and certainly a soft tissue strain/sprain would have resolved and subsided at this time. The maximum period of maturation is approximately anywhere from three to six months from the date of injury as far as soft tissues are concerned. My diagnosis today is a patient with subjective low back pain without any evidence of any objective findings. In my opinion, the patient's present symptomatology nine years post injury could not be incriminated on the original injury of January 5, 1986. Nine years is a long period of time for maturation and healing and I indicated that above. The patient, in my opinion, had reached maximum medical improvement a long time ago. The present symptomatology, in my opinion, is not related to the work injury of January 5, 1986.”⁴

The Board finds that the opinion of Dr. Didizian represents the weight of the medical evidence. He provided a reasoned opinion, based on a complete background, that residuals of the employment injury had ceased. The remainder of the medical evidence does not provide a reasoned opinion on the issue presented. Dr. H.S. Trostle, a family practitioner, submitted an October 6, 1994 report in which he provided a history and results on examination, concluding that appellant has “a chronic lumbar neuralgia since an occupational accident on August 5, 1986 which has been resistant to treatment and which prevents him from doing tasks of a nonrestricted employee.” Dr. Trostle does not provide medical reasoning in support of an opinion that appellant had a continuing disabling condition causally related to the accepted employment injury. The Board notes that the condition of lumbar neuralgia has not been accepted as employment related. Dr. Trostle does not clearly explain how that condition is causally related to the employment injury.

Appellant also submitted a June 7, 1995 report from Dr. Michael I. Stanley, a neurologist, who diagnosed a chronic pain syndrome of the low back with mild degenerative

² The hearing representative misstates both the issue and burden of proof in the November 2, 1995 decision by finding that appellant had failed to meet his burden in proof of establishing a recurrence of disability commencing September 17, 1994. The Board concurs, however, that the weight of the medical evidence is represented by the second opinion referral physician.

³ *Patricia A. Keller*, 45 ECAB 278 (1993). The March 16, 1995 Office decision properly places the burden of proof on the Office.

⁴ In his history, Dr. Didizian stated that appellant indicated the employment injury was on January 5, 1986. Dr. Didizian provides an accurate description of the employment injury and the discrepancy in the date does not diminish the probative value of the report.

changes. He did not provide an opinion as to causal relationship with employment. In a report dated July 5, 1995, Dr. John P. Salvo, an orthopedic surgeon, indicated that he had reviewed diagnostic studies, without offering an opinion on causal relationship with the employment injury.

The Board therefore finds that the probative evidence of record is represented by Dr. Didizian, who found that residuals of the employment injury had ceased. The Office has met its burden of proof in terminating compensation as of March 16, 1995.

The decisions of the Office of Workers' Compensation Programs dated November 2 and March 16, 1995 are affirmed.

Dated, Washington, D.C.
February 24, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member