

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WALTER T. ELLIOTT and DEPARTMENT OF THE NAVY,  
GREAT LAKES N.T.C., Great Lakes, Ill.

*Docket No. 96-2633; Submitted on the Record;  
Issued February 3, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation benefits effective May 26, 1996.

On April 3, 1975 appellant, then a 39-year-old painter, filed a claim alleging that he injured himself falling off a ladder in the course of his federal employment. The Office accepted the claim for cervical and dorsal strain, chronic lumbar strain, fracture left humerus, compression fracture C-5 and permanent aggravation of anxiety neurosis. Appellant stopped working and received total disability compensation.

On July 7, 1994 the Office referred appellant to Dr. Robert B. Mitchell, a Board-certified orthopedic surgeon. In a report dated August 3, 1994, Dr. Mitchell reviewed the record and his July 19, 1994 examination of appellant. He diagnosed osteoarthritis and a very minimal fracture of C-5. He also noted a nonunion of the medial epicondyle. Dr. Mitchell opined, however, that appellant's current orthopedic condition was not related to his accepted injury of April 2, 1975. He further noted that appellant's left elbow was fully functional and that he reviewed x-rays in reaching his conclusions. Dr. Mitchell stated that appellant's April 2, 1975 injuries had resolved and that there were no limitations on appellant from an orthopedic standpoint. He did not address appellant's emotion condition.

On October 24, 1994 the Office referred appellant to Dr. Michael E. Twente, a psychiatrist, to discuss appellant's emotional condition. Dr. Twente examined appellant and diagnosed schizophrenia, residual type, substantiated by a history of at least two or three major psychotic episodes and longer term symptoms of anxiety, inappropriate temper outbursts, auditory hallucinations and persecutory thought. Dr. Twente stated that these conditions were not aggravated by his April 2, 1975 injury. He opined that appellant was in a residual phase of schizophrenic illness which would be present whether or not he was injured in 1975.

On February 28, 1996 the Office issued a notice of proposed termination of compensation on the basis that disability resulting from appellant's injury had ceased. The Office indicated that it would base its actions on the reports of Drs. Mitchell and Twente. Appellant was given 30 days to submit additional evidence or argument.

In response, appellant submitted a myriad of evidence, but none of the evidence addressed whether he had any disability causally related to his accepted injuries. This evidence included prescription records, reports of physical therapy, insurance records, reports of treatment for unrelated illness, reports of treatment for back problems reports of treatment for depression and/or anxiety and laboratory tests.

In a decision dated May 28, 1996, the Office terminated compensation because the medical evidence established that appellant's disability resulting from the April 2, 1975 injury ceased by May 26, 1996. In an accompanying memorandum, the Office noted that the only evidence addressing causal relationship and disability from work was provided by Drs. Mitchell and Twente. The Office, therefore, found that their unrefuted opinions constituted the weight of the medical evidence.

On June 18, 1996 appellant requested reconsideration. In support, appellant submitted a June 7, 1996 report from Dr. William L. Bacon, a Board-certified orthopedic surgeon. Dr. Bacon diagnosed lumbar spondylosis and degenerative disc disease and stated that appellant was permanently disabled from work. He did not, however, address whether this diagnosed condition and/or disability was related to appellant's April 2, 1975 injury. Dr. Bacon relied on a computerized axial tomography interpreted by Dr. Jeffrey A. Landman, a Board-certified radiologist, indicating, without elaboration, that appellant had a minimal bulge at L3-4 and L5-S1.

In a decision dated August 8, 1996, the Office reviewed the case on its merits and denied modification inasmuch as the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office indicated that the weight of the evidence remained with the opinions of Drs. Mitchell and Twente because the record still did not contain any medical evidence refuting their conclusions that appellant had no remaining orthopedic or psychological conditions causally related to his April 2, 1975 employment injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective May 26, 1996.

Once the Office has accepted a claim and pays compensation, it has the burden or proof 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>1</sup>

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<sup>1</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

In the present case, the Board finds that the weight of the evidence rests with the reports of Dr. Mitchell, a Board-orthopedic surgeon, and Dr. Twente, a psychiatrist. Dr. Mitchell opined that appellant's current orthopedic condition was not related to his accepted injury of April 2, 1975 and that the injury had resolved. Dr. Twente examined appellant and diagnosed schizophrenia, residual type, substantiated by a history of at least two or three major psychotic episodes and longer term symptoms of anxiety, inappropriate temper outbursts, auditory hallucinations and persecutory thought. Dr. Twente stated that these conditions were not aggravated by his April 2, 1975 injury. He opined that appellant was in a residual phase of schizophrenic illness which would be present whether or not he was injured in 1975. The opinions of Drs. Mitchell and Twente negate any causal relationship between appellant's current conditions and his April 2, 1975 accepted injury. Both Drs. Mitchell and Twente based their opinions on complete factual and medical backgrounds and supported their conclusions with medical rationale. Consequently, their opinions constitute rational medical evidence, and in the absence of any contradictory evidence, are entitled to the weight of the medical evidence.<sup>2</sup> The Office, therefore, met its burden of proof to terminate appellant's benefits on May 26, 1996.

The decisions of the Office of Workers' Compensation Programs dated August 8 and May 28, 1996 are hereby affirmed.

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

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).