

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD J. MILETTA and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Pasadena, Calif.

*Docket No. 96-729; Submitted on the Record;
Issued March 17, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective January 28, 1981 on the grounds that his employment-related aggravation of Paget's disease had ceased.

This case has been on appeal previously.¹ In its September 30, 1983 decision and order, the Board reviewed the evidence of record and found that the Office, in its August 26, 1982 refusal to review the merits of appellant's claim, did not abuse its discretion.² In March 1995, appellant submitted reports and information already of record. He noted factual information he had received from the Office pertaining to claims for employment-related aggravations of preexisting conditions. In a formal request for reconsideration dated May 22, 1995, appellant contended that his prior physicians' reports established his claim for an aggravation of a preexisting condition. He maintained that the decision of the Office to terminate his compensation benefits, effective January 28, 1981, on the grounds that his aggravation had ceased, was improper.

By decision dated June 15, 1995, the Office reviewed the merits of appellant's claim and denied modification of its prior decision terminating appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits by establishing that the accepted condition has ceased or that it is no longer related to the employment.³

¹ 34 ECAB 1822 (1983).

² The facts and circumstances surrounding the case are set forth in the September 30, 1983 decision and order of the Board issued in the prior appeal.

³ *Patricia A. Keller*, 45 ECAB 278 (1993); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

Based on a January 17, 1973 report of Dr. Alfonsi Capodieci, a Board-certified orthopedic surgeon selected to resolve a conflict in the medical evidence, the Office accepted, in February 1973, appellant's claim for an aggravation of Paget's disease.⁴ The Office did not request an opinion from Dr. Carpodieci on the nature and extent of the aggravation, but instead continued to pay appellant wage-loss compensation for the accepted aggravation. Appellant received compensation benefits until January 28, 1981, when the Office terminated appellant's benefits based on a report from his attending physician, Dr. Luther B. Abram, a Board-certified orthopedic surgeon, who felt that any aggravation of Paget's disease had ceased.⁵ Upon the submission of additional medical reports, the Office referred the evidence to Dr. Donald E. King, a Board-certified orthopedic surgeon and Office consultant, who reviewed the evidence, addressed appellant's condition, and noted his opinion that appellant's condition was temporarily aggravated by his employment. The Board notes that the reports submitted by appellant did not establish his claim for a permanent aggravation. While the reports discuss the nature of appellant's condition as progressive, they do not establish that the employment injury materially altered the nature and course of his underlying condition to establish a permanent aggravation. Based on the opinion of appellant's attending physician, Dr. Abram and the Office consultant who reviewed the medical file, the Board finds that the Office properly found that appellant's employment-related aggravation had ceased by January 28, 1981.

⁴ By decision dated July 26, 1972, the Office had terminated appellant's compensation benefits after May 27, 1972, based on the evaluation of appellant on that date by Dr. Marshall R. Urist, a Board-certified orthopedic surgeon. Dr. Urist related appellant's condition to "his osteosclerosis of the [second] lumbar vertebra, very likely caused by Paget's disease and cannot be attributed to [his] history of injury on February 26, 1970." On request for reconsideration, appellant had submitted a report from Dr. Will G. Ryan, a Board-certified internist and endocrinologist, who stated that "it is reasonable to assume that the injury aggravated the preexisting disease in his weakened vertebra possibly causing neural compression." Dr. Capodieci, selected to resolve the conflict in medical opinion, supported an aggravation of appellant's underlying condition of Paget's disease due to the employment injury.

⁵ The decision to terminate appellant's compensation benefits effective January 28, 1981 was issued January 26, 1981.

The decision of the Office of Workers' Compensation Programs dated June 15, 1995 is hereby affirmed.

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

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member