

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH T. COLE and TENNESSEE VALLEY AUTHORITY,
WATTS BAR NUCLEAR PLANT, Spring City, Tenn.

*Docket No. 96-1349; Submitted on the Record;
Issued May 6, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective August 19, 1995.

On December 9, 1976 appellant, then a 30-year-old carpenter, sustained an injury to his back in the performance of duty when he lifted a heavy board with a co-worker. The Office accepted the claim for a lumbar sprain and degenerative disc disease L4-5 and paid appropriate compensation benefits.

Pursuant to the Office's request, appellant's attending physician, Dr. Geron Brown, Jr., a Board-certified orthopedic surgeon, addressed appellant's condition in a report dated September 28, 1993. Dr. Brown diagnosed chronic lumbar strain with degenerative disc disease at L4-5. He stated that appellant continued to experience residuals attributed to his accepted work injury. He stated that appellant's symptoms were continuous from the date of the employment injury. Dr. Brown indicated that appellant was not able to return to any kind of work and that was in part due to his work injury which has progressed.

Dr. Herbert S. Dodge, a Board-certified orthopedic surgeon, provided a second opinion examination on July 20, 1994. Dr. Dodge found no objective evidence of a lumbar sprain or degenerative disc disease. He further stated that the lumbar strain suffered in 1976 had resolved. He noted that appellant's current complaints were exacerbated by his exogenous obesity. He recommended a weight reduction program and very active physical activity.

Given the conflict in opinions on whether appellant had continuing disability from his accepted injuries, the Office referred appellant, along with a statement of accepted facts, to Dr. Archer Bishop, a Board-certified orthopedic surgeon, for an impartial medical opinion examination.

In a report dated November 1, 1994, Dr. Bishop noted that appellant complained of pain in his low back and leg. Dr. Bishop conducted an extensive review of appellant's history, performed an orthopedic examination, and reviewed x-rays. He noted he was unable to elicit any radicular symptoms by straight leg raising. He stated that appellant's lumbar strain in 1976 would have resolved within 12 weeks. He further stated that he did not feel appellant was totally disabled for all employment based on lumbar strain and degenerative disc disease. Dr. Bishop attempted clarified his opinion on February 8, 1995. He stated that if x-rays showed degenerative disc disease present at the time of the injury then his current degenerative disc disease was not work related. On April 11, 1995 Dr. Bishop indicated that x-rays from 1976 revealed degenerative changes. He concluded that appellant's temporary aggravation ceased in 1977.

On June 28, 1995 the Office issued a "[n]otice of [p]roposed [t]ermination of [c]ompensation" based upon the opinion of Dr. Bishop, the referee medical examiner.

Appellant subsequently submitted a brief note from Dr. John T. Purvis, a Board-certified neurological surgeon. He indicated that appellant had a cervical injury in 1976 which accelerated spondylosis at C5-6 resulting in surgery at that joint in 1982 and 1994.

In a decision dated August 16, 1995, the Office terminated appellant's compensation because the weight of the evidence established that appellant's disability ceased by August 19, 1995. In an accompanying memorandum, the Office indicated that it based its decision on the opinion of Dr. Bishop, the referee medical examiner.

On October 31, 1995 appellant requested reconsideration. In support, appellant submitted a July 28, 1995 report from Dr. Purvis. Dr. Purvis indicated that appellant osteoarthritis progressed through the years and that this injury related to appellant's 1976 injury. He said appellant's lumbar spondylosis precluded his return to his former employment.

In a decision dated December 8, 1995, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was insufficient to warrant modification. In an accompanying memorandum, the Office indicated the weight of the medical evidence remained with the opinion of the referee medical examiner, Dr. Bishop. The Office discredited Dr. Purvis' opinion as not supported by medical rationale.

The Board finds that the Office met its burden in terminating appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.² Furthermore, the right to medical benefits for the accepted

¹ *Frederick Justiniano*, 45 ECAB 491 (1994).

² *Id.*

condition is not limited to the period of entitlement to disability.³ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁴

In the present case, the Office accepted the claim for lumbar sprain and degenerative disc disease, L4-5, and authorized appropriate compensation. In a report dated September 28, 1993, Dr. Brown, a Board-certified orthopedic surgeon, diagnosed chronic lumbar strain with degenerative disc disease at L4-5. He stated that appellant continued to experience residuals attributed to his accepted work injury. He stated that appellant's symptoms were continuous from the date of the employment injury. Dr. Brown indicated that appellant was not able to return to any kind of work and that was in part due to his work injury which has progressed. Dr. Brown's opinion, however, was contradicted by the opinion of Dr. Dodge, a Board-certified orthopedic surgeon, who found no objective evidence of a lumbar sprain or degenerative disc disease and stated that the lumbar strain suffered in 1976 had resolved. Because of the conflict between these reports, the Office referred appellant to Dr. Bishop, a Board-certified orthopedic surgeon, for an impartial medical examination pursuant to section 8123 of the Act.⁵

In situations where there are opposing medical reports of virtually equal weight and the case is referred to an impartial specialist, the opinion of such a specialist will be given special weight if the opinion is based on proper factual background and well rationalized.⁶ In this case, Dr. Bishop thoroughly reviewed appellant's medical history, performed an orthopedic examination, and reviewed appellant's x-rays. He concluded that based on the x-ray evidence and his examination appellant's accepted conditions had resolved. Because Dr. Bishop's opinion was based on a proper factual background and supported by medical rationale his opinion, as that of the impartial specialist, constitutes the weight of the evidence.

Moreover, the July 28, 1995 report of Dr. Purvis, a Board-certified neurological surgeon, submitted subsequent to Dr. Bishop's opinion with appellant's application for reconsideration is entitled to diminished weight inasmuch as Dr. Purvis failed to explain his conclusion that appellant's osteoarthritis stemmed from his 1976 injury and precluded a return to work.⁷ In addition, Dr. Purvis' opinion was based on an inaccurate medical background because he indicated in an earlier report that appellant suffered a cervical injury yet the record reveals appellant's injury occurred in the lumbar region of his back.⁸

³ *Furman G. Peak*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

⁵ 5 U.S.C. § 8128 *et seq.*

⁶ *See Jack R. Smith*, 41 ECAB 691 (1990).

⁷ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *Id.*

Accordingly, the decisions of the Office of Workers' Compensation Programs dated December 8, 1995 and August 16, 1995 are affirmed.

Dated, Washington, D.C.
May 6, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member