

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GILBERT C. DIAS and DEPARTMENT OF THE NAVY,
BARBERS POINT NAVAL AIR STATION, Honolulu, Hawaii

*Docket No. 96-2362; Submitted on the Record;
Issued November 5, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to continuing compensation benefits on or after September 19, 1993.

The Board has duly reviewed the case on appeal and finds that appellant is not entitled to continuing compensation benefits on or after September 19, 1993.

This case has previously been on appeal before the Board. In its May 16, 1995 decision, the Board noted that the Office of Workers' Compensation Programs terminated appellant's compensation benefits effective September 19, 1993 and found that the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits and remanded the claim for the Office to undertake a merit review.¹ The facts and circumstances of the case as set out in the Board's prior decision are adopted herein by reference.² Following the Board's May 16, 1995 decision, the Office reviewed appellant's claim on the merits and found that he had not submitted sufficient evidence to establish that he was entitled to continuing compensation benefits. Appellant, through his representative, requested reconsideration and by decision dated May 2, 1996, the Office declined to reopen appellant's claim for review of the merits. In the incorporated memorandum, however, the Board notes that the Office reviewed the merits of the medical evidence submitted in detail, before concluding that the medical report submitted lacked probative value. Since the Office performed a merit review of the evidence submitted, the Board will treat this decision as a merit decision.

¹ Docket No. 95-373.

² Appellant, a firefighter, sustained a low back sprain in the performance of duty on July 19, 1989. The employing establishment terminated appellant on August 11, 1990 for inability to perform the duties of his position and he accepted a light-duty position in the private sector.

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.³ 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.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

In this case, appellant's attending physician, Dr. Hisham Hito, an orthopedic surgeon, completed a report on July 28, 1993 and noted no objective findings on examination or x-ray and stated that appellant was working and tolerating his job. Dr. Hito found that appellant no longer had medical residuals causally related to his accepted employment injury.

The Board finds that Dr. Hito's reports are sufficient to establish that appellant is no longer disabled and are sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits.

Following the Office's termination of his compensation benefits, appellant submitted a report dated October 6, 1993 from Dr. B.J. Molzen, an osteopath, who performed a physical examination and diagnosed chronic lumbar strain syndrome. He opined that appellant had ongoing disability due to his employment injury. Dr. Molzen stated that appellant would never progress beyond light duty and that surgery was not an option.

This report is not sufficient to establish appellant's entitlement to continuing compensation as Dr. Molzen did not provide an opinion on the causal relationship between appellant's current condition or disability and his accepted employment injury.

Appellant submitted a medical report from Dr. John D. Warbritton, III, a Board-certified orthopedic surgeon, dated November 13, 1995. Dr. Warbritton noted that he last examined appellant on October 24, 1994 and that he had reviewed the results of numerous diagnostic tests. He noted appellant's history of injury and medical history. Dr. Warbritton reviewed his findings on physical examination including positive straight leg raising on the left, one quarter inch calf atrophy on the left, tenderness over the left sacroiliac joint and significant limitation of motion in the lower back as well as significant muscle spasm. He concluded that appellant was capable of performing only light-duty work and provided work restrictions.

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Id.*

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Id.*

Dr. Warbritton did not provide an opinion on the causal relationship between appellant's disc herniation in January 12, 1992 and continuing and his accepted employment injury. His report, therefore, is not sufficient to overcome the weight of Dr. Hito's.

The decision of the Office of Workers' Compensation Programs dated May 2, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 5, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member