

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES F. HALL and DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION, Fairborn, Ohio

*Docket No. 96-2504; Submitted on the Record;  
Issued October 27, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective July 2, 1996 on the grounds that he had no disability due to his employment injury after that date.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective July 2, 1996 on the grounds that he had no disability due to his employment injury after that date.

Under the Federal Employees' Compensation Act,<sup>1</sup> when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>2</sup> However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.<sup>3</sup> Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

<sup>3</sup> *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

<sup>4</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>5</sup> *Id.*

<sup>6</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In the present case, the Office accepted that appellant sustained employment-related psychophysiologic tension headaches. Appellant developed headaches when performing air traffic controller duties which required working with radar equipment. He continued to perform air traffic controller duties for the employing establishment which did not require working with radar equipment and received compensation based on a loss of wage-earning capacity.<sup>7</sup> By decision dated July 2, 1996, the Office terminated appellant's compensation effective that date on the grounds that he had no longer had disability due to his employment injury. The Office based its termination on the opinion of Dr. Robert J. Scott, an attending Board-certified orthopedic surgeon.

In a report dated March 18, 1996, Dr. Scott determined that appellant had fully recovered from his headache condition since stopping work as an air traffic controller with radar duties. The Board has carefully reviewed the opinion of Dr. Scott and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Scott's opinion is based on a proper factual and medical history, provides a proper analysis of the factual and medical history, and reaches conclusions regarding appellant's condition which comport with this analysis.<sup>8</sup> Dr. Scott provided medical rationale for his opinion by explaining that appellant had exhibited normal findings upon physical examination and he ceased to display symptoms of his accepted condition. Dr. Scott indicated that appellant's disability might recur if he returned to radar work, but it is well established that the possibility of future injury constitutes no basis for the payment of compensation.<sup>9</sup>

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<sup>7</sup> Appellant also received compensation for various periods of total disability.

<sup>8</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957). Dr. Scott noted that, apart from avoiding a recurrence of disability, he "could think of no other medical reason that [appellant] would be disabled from his former position as an air traffic control specialist."

<sup>9</sup> *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

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

Dated, Washington, D.C.  
October 27, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member