

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT R. JACKSON and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 97-124; Submitted on the Record;
Issued October 1, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, 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 benefits.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Appellant filed a claim on October 24, 1990 alleging that he injured his back in the performance of duty. The Office accepted appellant's claim for lumbosacral strain. Appellant sustained recurrences of disability and on July 13, 1993 the Office entered appellant on the periodic rolls. The Office proposed to terminate appellant's compensation benefits on April 3, 1995 and by decision dated January 18, 1996 terminated appellant's compensation benefits effective that date.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.¹ 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ 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.⁴

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

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

⁴ *Id.*

In a report dated May 3, 1993, appellant's attending physician, Dr. Dennis B. Zaslow, an osteopath, diagnosed herniated disc at L4-5, left lumbar radiculopathy and chronic low back pain syndrome. He based his diagnosis on appellant's March 23, 1991 magnetic resonance imaging (MRI) scan.

The Office requested a supplemental report from Dr. Zaslow on November 23 and December 31, 1993 he stated that he was unable to complete a work restriction evaluation as he had not examined appellant in nearly eight months. Dr. Zaslow's office was unable to reach appellant by telephone or by letter.

The Office referred appellant for a second opinion evaluation on August 31, 1994 and provided Dr. Stephen M. Horowitz, a Board-certified orthopedic surgeon, with a statement of accepted facts and list of questions. In a report dated September 29, 1994, Dr. Horowitz noted appellant's history of injury and medical history. He provided findings from physical examination noting that appellant's range of motion was questionable. Dr. Horowitz stated appellant complained of decreased sensation in almost every dermatome test in his left lower extremity and entire nonanatomic distribution. He found that appellant's strength was within normal limits and that he had a negative straight leg raise test in both the sitting and supine positions. Dr. Horowitz concluded that appellant had minimal neurologic complaints and that his neurologic evaluation was entirely within normal limits. Dr. Horowitz stated that based on his examination he did not feel that appellant was suffering from a clinically significant radiculopathy or herniated disc and that he should be able to return to work in his prior capacity. He requested the results of appellant's tests before making a final determination.

The Office informed Dr. Horowitz on February 2, 1995 that it was unable to access the diagnostic studies and requested whether current studies would be helpful. In response to an Office inquiry, Dr. Horowitz reported on February 23, 1995 that his physical examination of appellant had no evidence of any neurologic deficits and some evidence of symptom magnification. He restated that appellant was not experiencing a clinically significant radiculopathy or herniated disc and that if appellant sustained a herniated disc as a result of his employment injury it appeared to be resolved and that appellant was asymptomatic. Dr. Horowitz stated that appellant could return to his prior work on a full-duty basis.

On March 6, 1995 Dr. Horowitz stated that it would not be worthwhile to repeat the diagnostic studies for the purposes of his examination and that his final opinion would be that appellant is not suffering from a clinically significant radiculopathy at the present time. He stated that appellant had adequate time to resolve from his employment injury and that his current complaints were not related to the employment injury. Dr. Horowitz stated that appellant could return to work with no restrictions. He indicated that appellant should not do frequent lifting due to his motor vehicle accident and preexisting condition.

On May 16, 1995 the Office provided Dr. Horowitz with a copy of appellant's diagnostic test results. In a report dated May 31, 1995, Dr. Horowitz noted reviewing computed tomography scans, and an MRI. He stated, "In the time I evaluated [appellant] he had a negative neurologic evaluation. It should be noted that abnormalities such as disc protrusions or small disc herniations can be seen even in asymptomatic individuals. Based upon the few studies it would be my impression that the changes with regard to [appellant] were quite minimal on his

imaging studies. This represents a clear lack of findings on physical examination and it would be my opinion that he is not suffering from clinically significant radiculopathy or herniated disc.” He again concluded that appellant had recovered from his employment injury and should be able to return to his prior job in a full-duty capacity.

Dr. Horowitz provided a clear opinion that appellant had no current residuals or disability causally related to his accepted employment injury. He reviewed the diagnostic studies and performed a physical examination. Dr. Horowitz explained that appellant’s findings on testing were minimal and that the physical examination did not support any continuing condition. He further noted that appellant exhibited signs of symptom magnification. As Dr. Horowitz provided well-rationalized medical reports and as there is no contemporaneous medical evidence of record supporting a continuing condition, the Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits.

The decision of the Office of Workers’ Compensation Programs dated January 18, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 1, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member