

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARRY D. DUDLEY and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 97-443; Submitted on the Record;
Issued October 15, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has any continuing disability causally related to his work injuries of September 30, 1982.

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal, and the entire case record. The Board finds that the August 8, 1996 decision of the Office of Workers' Compensation Programs' hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

On appeal, appellant's representative argues two contentions: one is that the impartial medical examiner's opinion is speculative and equivocal because he phrased it as "I do not believe that [appellant] has any residuals of the incident that occurred in September of 1982 or any physical disability related to that occurrence;" and the second is that the impartial medical examiner was remiss in failing to order testing to determine whether appellant has residual disc herniation. The Board is unpersuaded by either of these arguments. The Board finds that the phrase "I believe" or "I do not believe" as used in this context is equivalent to "I think" or "I do not think" and implicates no equivocality, unlike the recognized equivocal adverbs such as possibly, maybe, perhaps, probably, and likely. Consequently, the Board finds that the impartial medical examiner's opinion is not speculative or equivocal.

Second, the Board finds that whether or not appellant has residual disc herniation or bulging is irrelevant. The issue is whether appellant has residual *disability* due to the disc herniation or bulging, and clearly the impartial medical examiner has established that appellant has no residual *disability*, causally related to the injuries of September 1982.

As used in the Federal Employees' Compensation Act,¹ the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.² Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.³ An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.⁴ When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁵

The Board has explained that after it has been determined that an employee has *disability* causally related to his employment, the Office may not terminate compensation without establishing that the *disability* has ceased or that it is no longer related to the employment.⁶ This means a claimant's *disability* for work, and not whether he continues to have an underlying medical condition. In the instant case the impartial medical examiner determined that appellant had no continuing disability or disabling residuals due to his accepted lumbar strain of herniated nucleus pulposus injuries. Therefore, the Office was properly justified in terminating wage-loss compensation benefits.

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

³ See *Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages, and not upon physical impairment as such).

⁴ See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

⁵ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁶ *Gail D. Painton*, 41 ECAB 492 (1990).

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 8, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 15, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member