U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MUSTAFA ABDULLAH and U.S. POSTAL SERVICE,
POST OFFICE, Highland Park, IL

Docket No. 99-534; Submitted on the Record;
Issued August 25, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's disability, causally related to his January 3, 1992 employment injury, ended by October 21, 1997.

The Office of Workers' Compensation Programs accepted that appellant's January 3, 1992 injury, which occurred when appellant was pulling a bulk mail container off a lift, resulted in a lumbosacral strain. Appellant received continuation of pay from January 4 to February 14, 1992, after which the Office paid him compensation for temporary total disability until he returned to work performing light duty on May 18, 1992. Appellant again stopped work on September 3, 1993, and the Office resumed payment of compensation for temporary total disability beginning October 8, 1993, the effective date appellant elected to receive compensation in lieu of benefits under the Civil Service Retirement Act. Such compensation was paid until October 21, 1997. By decision of that date, the Office terminated appellant's compensation on the basis that the weight of the medical evidence established that his employment-related condition had resolved. Following a hearing on May 19, 1998, an Office hearing representative affirmed the Office's October 21, 1997 decision in a decision dated July 31, 1998.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.[1]

The Board finds that the Office met its burden of proof to justify termination of appellant's compensation effective October 21, 1997.

---

[1] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

In a report dated June 17, 1996, Dr. Hilliard E. Slavick, a Board-certified neurologist to whom the Office referred appellant for a second opinion, reviewed the prior medical evidence and set forth appellant's complaints and findings on examination. Dr. Slavick concluded:

> "It is my impression that [appellant] has multiple subjective complaints of pain but no objective findings. He is reported to be suffering from a post-traumatic stress disorder based upon prior psychological and psychiatric testing. I do not find any evidence on examination of a disc herniation and a prior lumbosacral MRI [magnetic resonance imaging] scan was completely normal. He appears to have suffered lumbosacral strain in January 1992 related to a work injury but, based upon the records, these symptoms appear to have resolved rapidly and completely. There is no permanent deficit and I feel he should be able to return to work from a neurological aspect."

The June 6, 1996 report from Dr. Slavick is sufficient to meet the Office's burden of proof. It is based upon a complete and accurate history and contains rationale for the conclusion that appellant's employment-related condition had resolved. There is no medical evidence relatively contemporaneous with the June 6, 1996 report of Dr. Slavick that indicates appellant continues to be disabled by residuals of his January 3, 1992 employment injury.

In a report dated February 27, 1995, Dr. Milton Glickstein, a Board-certified orthopedic surgeon to whom the Office referred appellant,[2] concluded, "It is my impression that the patient, in view of his poor endurance and tolerance for minimal work demands, is suffering from lumbosacral instability and is, at present, totally disabled." Dr. Glickstein's reports contains contradictions that reduce its probative value. Dr. Glickstein concluded that appellant was suffering from lumbosacral instability but also stated that x-rays taken in his office "showed no evidence of lumbar instability." Dr. Glickstein relied on a functional capacity evaluation done on January 25, 1995 as the basis of his work tolerance limitations, but the conclusion of the functional capacity evaluation was that appellant could do work at the light physical demand level, not that he was totally disabled, as stated by Dr. Glickstein. The Office requested a clarifying report from Dr. Glickstein, but Dr. Glickstein indicated he could "go no further in [his] evaluation of this patient" than in his initial report. It was reasonable for the Office to refer appellant to Dr. Slavick to ascertain whether his employment-related disability had ended,[3] especially given that there was evidence that appellant's disability, beginning October 8, 1993, was due to his nonemployment-related post-traumatic stress disorder rather than his January 3, 1992 employment injury.

[2] The Office mistakenly indicated in its September 29, 1994 referral letter that Dr. Glickstein's evaluation was for the purpose of resolving a conflict of medical opinion. At the time of this referral, there was medical evidence that appellant's employment-related condition had resolved, but no medical evidence that appellant continued to be disabled by residuals of his January 3, 1992 employment injury.

[3] 5 U.S.C. § 8123(a) authorizes the Office to require an employee who claims disability as a result of an employment injury to undergo such physical examination as the Office deems necessary. The only limitation on this authority is that of reasonableness. *Raymond J. Hubenak*, 44 ECAB 395 (1993).

The decision of the Office of Workers' Compensation Programs dated July 31, 1998 is affirmed.

Dated, Washington, D.C.
August 25, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member