

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES E. SCHOEN and DEPARTMENT OF THE NAVY,  
NAVAL CONSTRUCTION BATTALION CENTER, Port Hueneme, CA

*Docket No. 98-1202; Submitted on the Record;  
Issued December 7, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective February 28, 1998.

On April 26, 1978 appellant, then a heavy laborer, sustained an injury in the performance of his duties while moving camel logs weighing 2,000 pounds a pry bar. The Office accepted his claim for lumbar back strain and paid compensation for temporary total disability.

On July 28, 1997 the Office referred appellant, together with copies of the medical record and a statement of accepted facts, to Dr. James Roe, a Board-certified orthopedic surgeon, for an opinion on the continuing relationship of appellant's condition to factors of employment. In a report dated August 16, 1997, Dr. Roe stated that he reviewed the available records as well as the statement of accepted facts. He related appellant's complaints, history of injury, level of functioning and extensive findings on physical examination. Dr. Roe then summarized relevant medical records and diagnosed Grade II spondylolisthesis, L5 on S1 and degenerative disc disease, L5-S1. Responding to questions posed by the Office, Dr. Roe reported that his examination of appellant failed to reveal any objective findings that could be related to the activities described in the statement of accepted facts. He noted that appellant sustained an injury with a pry bar causing a lumbar strain but that appellant currently had no objective findings within the definitions provided, though he still manifested subjective findings. After explaining the nature of spondylosis and spondylolisthesis, Dr. Roe stated that in his opinion appellant did have a lumbosacral sprain and stated that it would be his opinion that appellant should have been considered permanent and stationary with regard to this injury within 12 months from the injury. He explained as follows:

"Based on the mechanism of the injury described, I would not expect this patient to have residuals either on the basis of direct cause or aggravation. Twelve months following a strain-type injury is sufficient, in my opinion, for permanent and stationary status to be determined. Therefore, in my opinion this patient may

be considered temporarily disabled between the periods of June 21, 1978 and June 21, 1979."

Dr. Roe reported that he found no objective evidence showing that a physiological change occurred to appellant as a result of his work-related injury. He explained that appellant's underlying spondylolisthesis and degenerative disc disease were unrelated to appellant's work activity, that they would be present whether or not appellant had been employed by the federal government or had any particular injury. Dr. Roe further explained that these conditions, but primarily the degenerative disc disease, were capable of producing complaints of back pain. He concluded his report by noting that appellant's orthopedic problem was considered minor, required no further treatment and did not prevent appellant from performing regular duties as a heavy laborer, as described.

On November 3, 1997 the Office informed Dr. Roe that appellant had an additional traumatic employment injury on November 26, 1974. The Office submitted additional medical records and drew Dr. Roe's attention to a November 22, 1978 report of Dr. Ronald M. Lawrence, a neurologist, that indicated that the incidents had aggravated appellant's condition. The Office requested that Dr. Roe submit a supplemental report on whether, in light of this evidence, his assessment regarding the cause of appellant's current condition had changed.

In a supplemental report dated November 28, 1997, Dr. Roe reviewed the additional medical records submitted by the Office. Noting that appellant's accepted employment injury was that of lumbar strain, not of sciatica or lumbar radiculopathy, Dr. Roe reported as follows:

"The information provided in these records does not provide any objective evidence of a physiological change to this claimant's underlying spondylolisthesis. It is noted in the earliest records that the spondylolisthesis is of a Grade II magnitude and that the disc space at the level of the slip is narrowed. This, in fact, describes the natural history of the spondylolisthesis. In my opinion, there is no evidence to show any permanent change in this patient's spinal condition based upon the incident of April 26, 1978.

"My assessment regarding the cause of this claimant's current condition has not changed. I would advise that the office not accept that this patient's current condition is industrial in nature."

In a decision dated February 4, 1998, the Office terminated appellant's compensation benefits effective February 28, 1998 on the grounds that the weight of the medical evidence established that he no longer suffered residuals of his work injury.

The Board finds that the Office properly terminated appellant's compensation benefits.

It is well established that, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

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.<sup>2</sup>

The Board finds that Dr. Roe's opinion constitutes the weight of the medical opinion evidence and establishes that appellant no longer suffers residuals of his April 26, 1978 employment-related lumbar strain. Dr. Roe based his opinion on the statement of accepted facts, a review of the medical evidence of record, an accurate history of injury and extensive findings on physical examination. His opinion is also well reasoned. Dr. Roe explained the nature of appellant's current diagnoses and reported that appellant had no objective findings that could be related to the activities described in the statement of accepted facts. In reaching his opinion, Dr. Roe took into consideration the mechanism of the injury described, the nature of the accepted injury and the fact that there was no objective evidence showing that a physiological change occurred to appellant as a result of his work-related injury.

Dr. Roe's opinion is well reasoned and sufficient to establish by the weight of the evidence that appellant no longer suffers residuals of his April 26, 1978 lumbar strain. The Office has met its burden of proof.

The February 4, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
December 7, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).