

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE BROWN and DEPARTMENT OF THE NAVY,
MILITARY SEALIFT COMMAND, Bayonne, NJ

*Docket No. 99-784; Submitted on the Record;
Issued December 15, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing any disability after September 10, 1997 that was causally related to his accepted January 3, 1996 employment injuries of concussion and compression of the neck.

On January 5, 1996 a notice of traumatic injury and claim was filed on behalf of appellant, then a 33-year-old ordinary seaman, alleging that he sustained injury to his right mid-upper cranium and a light concussion when a light fixture struck him in the head.¹ Appellant stopped work on September 3, 1996. The Office of Workers' Compensation Programs accepted appellant's claim for concussion and a compression injury to the neck. Appellant received appropriate compensation for temporary total disability and the Office began rehabilitation efforts. However, by decision dated August 25, 1997, the Office reduced appellant's compensation benefits to zero under section 8113(b) of the Federal Employees' Compensation Act on the grounds that he refused to participate in rehabilitation efforts that would have resulted in a return to work with no loss of wage-earning capacity. By decision dated September 10, 1997, the Office noted that appellant had indicated that he would cooperate with rehabilitation efforts effective that date but denied further wage-loss compensation on the grounds that appellant did not have any continuing disability that was causally related to his accepted employment injuries. In a decision dated October 30, 1998 and finalized November 2, 1998, an Office hearing representative affirmed the September 10, 1997 decision of the Office.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established any disability after September 10, 1997 for which he is entitled to wage-loss compensation.²

¹ The claim was filed by First Officer R. Fischer.

² The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board

After it has been established that termination or modification of compensation benefits is warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.³ In order to prevail, appellant must establish by the weight of the reliable probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.⁴

The term “disability” as used under the Act means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of injury.⁵

In the present case, the medical evidence does not establish that appellant had any disability after September 10, 1997 that was causally related to his accepted employment injuries of concussion and compression of his neck. In finding that appellant was not entitled to wage-loss compensation, the Office relied on the reports by Dr. David J. Packey, a Board-certified neurologist and appellant’s then treating physician. In a report dated June 25, 1997, Dr. Packey noted that appellant returned for a follow-up examination concerning his chronic headaches. He reported that he had referred appellant to Ronald L. Seifer, Ph.D., a licensed psychologist, for an evaluation and that, based on Dr. Seifer’s report, appellant was malingering. Dr. Packey noted that appellant provided Dr. Seifer with fictional responses and had no clearly documentable objective evidence for his claimed symptoms. In response to a request for additional information from the Office, he provided a report dated August 12, 1997 in which he reiterated his June 25, 1997 findings. Dr. Packey added that, while headaches are common in postconcussion syndrome, Dr. Seifer’s report provided objective evidence of malingering and he believed appellant embellished his symptoms. He noted that postconcussion syndrome may exist where there is normal testing but did not diagnose this condition for appellant. Dr. Packey indicated that appellant could return to his date-of-injury job based on the objective evidence and should not be allowed to malingering. He also found that appellant’s loss of vision was not consistent with head trauma as it was not due to a detached retina which would have been normal. He concluded that appellant could return to work and there was no objective evidence to limit his activities.

At his hearing, appellant resubmitted a substantially all of the medical evidence which had previously been received and considered by the Office. He also submitted additional medical evidence, however, this evidence was not sufficient to meet his burden of proof as none of the physicians provided a rationalized opinion supporting a causal nexus between appellant’s claimed symptoms and his accepted employment injuries. Dr. Andrew Zorbis, an ophthalmologist, documented appellant’s loss of vision but deferred to Dr. Packey regarding the etiology of this condition as Dr. Packey is a neurologist. Appellant also submitted several

on December 16, 1998, the only decision before the Board is the Office’s November 2, 1998 decision; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ *Gary R. Sieber*, 46 ECAB 215 (1994).

⁴ *Id.*; *see also* *Wentworth M. Murray*, 7 ECAB 572 (1955).

⁵ *See Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

reports by Dr. Gary M. Weiss, a Board-certified neurologist, who indicated that appellant was under his care for concussion and post-traumatic headaches. Dr. Weiss also diagnosed decreased memory, a herniated disc at the L5 to S1 level with right-sided radiculopathy, status post discectomy at the L5 to S1 and bulging discs in the cervical and thoracic spine. He found that appellant would be temporarily totally disabled for at least 12 months beginning May 1998. However, Dr. Weiss does not provide any definite medical conclusion concerning the cause of the diagnosed impairments and has not provided any discussion in which he explains whether or how the diagnosed conditions are related to physical or objective findings and/or the accepted January 1996 employment injuries. Thus, the weight of the medical evidence is with the well-reasoned and rationalized medical report of Dr. Packey. Appellant has not established that he had any disability after September 10, 1997 that was causally related to his accepted January 3, 1996 employment injuries.

The decision of the Office of Workers' Compensation Programs dated October 30, 1998 and finalized November 2, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 15, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member