

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEROME HENDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Ontario, Calif.

*Docket No. 96-431; Submitted on the Record;
Issued February 19, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of November 12, 1995.

On March 1, 1983 appellant, a 39-year-old laborer/fireman, sustained an injury to his head and neck when he was struck on the back of the neck and head by an unknown assailant. Appellant filed a Form CA-1 claim for benefits based on traumatic injury on the date of injury, which the Office accepted for scalp contusion and cervical strain. Appellant has not returned to work since March 3, 1983. Appellant was placed on the periodic rolls.

In a report dated July 21, 1993, Dr. Andrew N. Muller, Board-certified in internal medicine and appellant's treating physician, indicated he had examined appellant on July 21, 1993, at which time he complained of a headache. Dr. Muller indicated that he had prescribed medication for appellant on a previous visit, but that he continued to complain of a bad headache.

In a report dated September 21, 1993, Dr. Muller indicated he had examined appellant on July 27, 1993, at which time he complained of abdominal pain and burning.

In order to determine appellant's current condition, the Office scheduled three second opinion medical examinations for appellant with Dr. Ronald Levin, Board-certified in physical medicine and rehabilitation, Dr. Morris Lorber, a specialist in neurology and Dr. Elliott Markoff, Board-certified in psychiatry and neurology, by letters dated April 27, 1995.

In a report dated May 25, 1997, Dr. Levin reviewed appellant's medical records and a statement of accepted facts and indicated findings on examination. Dr. Levin stated that based on his review of the medical data and his May 25, 1997 examination of appellant, which revealed no objective evidence of any significant cervical spinal pathology, he had sustained no more than a cervical strain due to the March 1, 1983 employment injury. Dr. Levin advised that appellant had no real orthopedic objective factors of disability other than a reduced range of cervical motion, which he believed was related to a volitional effort to conceal how much motion

he actually had in his neck. Dr. Levin noted that appellant underwent a myelogram on June 23, 1983, which did not reveal any spinal pathology to explain his inability to range his neck. Dr. Levin opined that appellant had total disability related to his March 1, 1983 injury of no more than eight weeks. Dr. Levin concluded that, after reviewing the job description of his position of custodial laborer, appellant was orthopedically capable of performing all the duties of this job and that appellant had no current orthopedic physical limitations resulting from the March 1, 1983 employment injury.¹

In a report dated May 23, 1995, Dr. Lorber stated that he did not believe that appellant was able to perform his duties as a custodial laborer and was not really employable in any capacity because of his neurological limitations. Dr. Lorber, however, advised that appellant had no neurological limitations resulting from the March 1, 1983 employment injury, and that he did not believe that his neurological problems stemmed from that injury.

In a report dated May 23, 1995, Dr. Markoff stated that, based on the available records, appellant's 1983 head injury did not have the intensity and severity to have produced and maintained his current presenting status. Dr. Markoff opined that appellant's chronic alcoholism might have been a factor in producing his current mental status and might account for all of the current presenting psychiatric signs and symptoms. Dr. Markoff stated that, because of appellant's current mental status, he was incapable of performing any gainful employment, and was therefore totally and permanently disabled. Dr. Markoff further stated, however, that he did not believe this current emotional/psychiatric condition was due to, aggravated, precipitated, accelerated or proximately caused by factors of employment as described in the statement of facts. Dr. Markoff advised that there was indication that an organic process with mixed mood and psychotic features was related to an etiology other than the specific 1983 head injury.

In a notice of proposed termination dated September 21, 1995, the Office, based on the opinions of Drs. Levin, Lorber and Markoff, found that the weight of the medical evidence demonstrated that appellant no longer had any residuals from the March 1, 1983 employment injury. The Office noted that there was evidence of a psychiatric condition, but that the Office had never accepted such a condition.

By decision dated October 30, 1995, the Office terminated appellant's compensation effective November 12, 1995, finding that the weight of the medical evidence established that appellant no longer suffered from residuals of his March 1, 1983 employment injury.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal

¹ Dr. Levin commented that he was unsure of whether appellant had the mental capacity to perform this job, but stated that he would defer to the neurological specialists to make this determination.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

In the present case, the Office based its October 30, 1995 decision to terminate appellant's compensation on the medical reports of Drs. Levin, Lorber and Markoff, all of whom found that appellant was not suffering residuals from any accepted condition. Dr. Levin stated in his May 25, 1995 report that appellant had little active pathology that could be linked to his original March 1, 1983 employment injury and that he had the capacity to immediately return to work full time as a custodial laborer without any limitations on his normal work duties. In his March 23, 1995 medical report, Dr. Lorber rejected any causal relationship between factors of appellant's employment and his claimed current condition and found that he was fit to return to full duty. Finally, Dr. Markoff opined in his May 23, 1995 report that appellant was suffering from a psychiatric or emotional condition, but emphasized that this condition was not causally related to his March 1, 1983 employment injury. The only medical evidence appellant submitted consisted of the brief medical reports from Dr. Muller, which did not provide an opinion regarding whether appellant's current condition or disability was causally related to his March 1, 1983 employment injury or whether appellant was still suffering residuals from his employment injury.

The Board holds that the Office properly found that appellant no longer had any residuals from his March 1, 1983 employment injury based on the probative, well-rationalized medical opinions of Drs. Levin, Lorber and Markoff, which constituted sufficient medical rationale to support the Office's decision to terminate appellant's compensation. The Board therefore affirms the Office's October 30, 1995 decision.

The decision of the Office of Workers' Compensation Programs dated October 30, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 19, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Id.*