

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEVIN G. HOLCOMB and DEPARTMENT OF AGRICULTURE,
SAN BERNARDINO NATIONAL FOREST, San Bernardino, Calif.

*Docket No. 97-1260; Submitted on the Record;
Issued February 3, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has any residuals of his September 6, 1991 subluxation injuries on or after October 7, 1996.

On September 26, 1991 appellant, then a 30-year-old forest technician, filed a claim for back injury after shoveling and performing maintenance on wilderness trails. He initially sought treatment from Dr. Michael H. Ferlita, a chiropractor, who diagnosed lumbar intervertebral disc syndrome. On January 29, 1992 the Office of Workers' Compensation Programs denied his claim for failure to establish fact of injury.

By letter dated April 12, 1993, appellant requested an examination of the written record. In support he submitted reports from Dr. Ferlita diagnosing subluxations at C1,C2, C5, T2, T5, T7, L2, L5 and S1. By decision dated May 13, 1993, the Office's Branch of Hearings and Review denied appellant's request as untimely.

By letter dated September 15, 1993, appellant requested a hearing. Appellant requested that the Office pay his medical expenses. By decision dated October 31, 1993, the Office's Branch of Hearings and Review denied appellant's request as untimely.

Appellant appealed to the Board and was assigned the docket number 94-677. The Director of the Office submitted a motion to remand citing Office abuse of discretion, which was granted by the Board on January 18, 1996. The Office thereafter conducted a review of the written record.

By decision dated May 16, 1996, the Office hearing representative accepted that appellant sustained cervical, thoracic and lumbar subluxations. Thereafter the Office set out to determine whether appellant had any residuals of his accepted conditions.

By letter dated August 20, 1996, the Office referred appellant to Dr. Daniel S. Farnum, a Board-certified orthopedic surgeon, for a second opinion examination as to whether he had any

residuals of his accepted employment injuries. By report dated October 7, 1996, Dr. Farnum noted that appellant was currently employed at the Heartwood Institute as a massage therapist, that he had no significant pain or discomfort and that his back pain was essentially resolved. Dr. Farnum, in a well-rationalized report, noted that appellant's examination results were normal and opined that appellant's lumbar strain was resolved without significant residuals or future medical care anticipated.

By decision dated January 23, 1997, the Office determined that the weight of the medical evidence of record established that appellant no longer suffered residuals of his September 6, 1991 work injuries. The Office found that Dr. Farnum's well-rationalized medical opinion constituted the weight of the medical evidence of record.

The Board finds that appellant had no residuals of his September 6, 1991 subluxation injuries on or after October 7, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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.² In this case, the Office met its burden of proof to terminate entitlement to compensation benefits as it established that appellant had no residuals of his September 6, 1991 subluxation injuries on or after October 7, 1996.

In this case, the Office accepted, five years after the fact, that appellant sustained cervical, thoracic and lumbar subluxations in 1991. Appellant was treated from 1991 to 1993 for these injuries and then he returned to work as a massage therapist. The last medical evidence of record addressing residuals of appellant's subluxation injuries was in February 1993. After accepting appellant's claim in May 1996, the Office set out to determine whether appellant had any residual disability. The Office referred appellant, together with a statement of accepted facts and questions to be resolved, to Dr. Farnum for a second opinion evaluation. Dr. Farnum, in a thorough, complete and well-rationalized report found that appellant was working full time, had no back pain or discomfort, had no abnormal examination results and, therefore, had no residuals of his 1991 back injuries.

Dr. Farnum's report was based upon a complete factual and medical history of the case and was thorough and well rationalized. Therefore, it has great probative value.³ As there is no other medical evidence of record supporting continuing disability after February 1993, Dr. Farnum's report constitutes the weight of the medical opinion evidence in this case, and establishes that appellant has no residuals of his accepted employment injuries.

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

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

³ *See Clara T. Norga*, 46 ECAB 473 (1995); *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

On appeal appellant maintains that he is seeking reimbursement for his 1991 and 1992 medical bills. As the Office has not issued a formal final opinion on this issue, it is now not before the Board on this appeal.⁴

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 23, 1997 is hereby affirmed.

Dated, Washington, D.C.
February 3, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁴ See 20 C.F.R. § 501.2(c).