

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLYDE WILLIAMS and BUREAU OF INDIAN AFFAIRS,
WAHPETON INDIAN SCHOOL, Wahpeton, N.D.

*Docket No. 98-1329; Submitted on the Record;
Issued February 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's employment-related disability ceased by September 14, 1997, the date it terminated his compensation benefits.

On June 26, 1984 appellant, then a 49-year-old painter, injured his back when he fell off a ladder while painting. The Office accepted the claim for low back strain on August 22, 1984 and placed appellant on the automatic rolls for temporary total disability effective September 2, 1984.

On April 11, 1997 the Office referred appellant to Dr. John Dowdle, a Board-certified orthopedic surgeon, who provided a comprehensive report dated May 9, 1997. After a review of appellant's medical records, a physical examination and history of the employment injury, Dr. Dowdle opined that appellant had no objective evidence to support continuing disability. He also stated that appellant was not restricted in his physical activities because of his employment-related injury.

On June 9, 1997 the Office issued a notice of proposed termination of compensation.

In an August 4, 1997 letter, the Office notified appellant that it proposed to terminate his compensation benefits because the medical evidence showed that he no longer suffered medical residuals of the June 8, 1984 employment injury. In the attached memorandum, the Office noted that based upon the opinion of Dr. Dowdle, the second opinion physician, appellant was no longer disabled due to his accepted employment injury nor did he have any residual impairment. The Office also noted that appellant's treating physician, Dr. Joseph Kass, had not submitted any medical evidence since 1990 and that his medical opinion was unreasoned. The Office indicated that appellant had 30 days in which to submit additional evidence or argument. No response was received from appellant.

By decision dated September 5, 1997, the Office terminated appellant's compensation benefits, effective September 14, 1997. In the attached memorandum, the Office incorporated

the September 15, 1994 memorandum which credited Dr. Dowdle's opinion that appellant's disability had ceased. The Office also terminated medical benefits.

On October 20, 1997 appellant, through counsel, requested reconsideration and submitted an October 10, 1997 letter from Dr. Kass, appellant's treating physician and a September 30, 1997 letter and September 12, 1997 report from Dr. Ryan B. Harrington, a Board-certified neurologist. Dr. Kass, in his October 10, 1997 letter, noted that appellant "had a soft tissue injury" due to his June 8, 1984 employment injury, that appellant has not suffered any subsequent injury and therefore his pain remained related to his accepted employment injury. In his September 30, 1997 letter, Dr. Harrington opined that appellant remained disabled due to his 1984 low back injury and noted appellant complained of spinal pain at the time of the injury. In his report dated September 12, 1997, he noted appellant's chief complaints were post-traumatic neck and lumbar pain problem. Dr. Harrington indicated that appellant was not receiving any medical treatment and noted appellant's subjective complaints.

By decision dated January 20, 1998, the Office denied appellant's request, finding that the evidence submitted by appellant in support of his request was insufficient to warrant modification of the prior decision. In the attached memorandum, the Office noted neither Drs. Kass nor Harrington provided an opinion linking appellant's subjective complaints of pain to his June 8, 1984 employment injury. The Office also found that neither physician provided objective findings to support appellant's subjective complaints.

The Board finds that appellant's disability after September 14, 1997 was not causally related to his 1984 employment injury.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.¹ Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.²

The fact that the Office accepted appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of an employment-related disability in the period subsequent to the date when compensation is terminated or modified.³ The Office's burden includes the necessity of furnishing rationalized medical opinion based on a proper factual and medical background.⁴

In the present case, the Office accepted that appellant sustained an employment-related back strain and cervical strain. The Office has the burden of proof to justify termination of compensation for disability resulting from those conditions and it has met that burden.

¹ *William Kandel*, 43 ECAB 1011, 1020 (1992).

² *Carl D. Johnson*, 46 ECAB 804 (1995).

³ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

⁴ *Mary Lou Barragy*, 46 ECAB 781 (1995).

In a comprehensive May 9, 1997 report, Dr. Dowdle advised that there was no objective evidence to support any continuing disability and that appellant was capable of performing his work activities with no restrictions. The physician based his opinion upon a proper factual background and provided sufficient medical rationale. Neither Drs. Harrington nor Kass provided medical reasoning supporting their conclusion that appellant's disability is causally related to his accepted employment injury. As their opinions on causal relationship are not sufficiently rationalized, they are of little probative value in establishing causal relationship in this case.⁵ The Board, thus, finds that Dr. Dowdle's report constitutes the weight of the medical evidence and establishes that appellant had no further disability after September 14, 1997, the date the Office terminated his compensation benefits.⁶

The decisions of the Office of Workers' Compensation Programs dated January 20, 1998 and September 5, 1997 are hereby affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁵ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

⁶ *See Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician's opinion was thorough, well rationalized and based on an accurate factual background and thus constituted the weight of the medical opinion evidence that appellant's accepted injury had resolved.)