

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERTO FIGUEROA and U.S. POSTAL SERVICE,
POST OFFICE, San Juan, P.R.

Docket No. 97-774; Submitted on the Record;
Issued January 28, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant's disability causally related to his August 18, 1993 employment injury ended by September 17, 1996.

The Office of Workers' Compensation Programs accepted that appellant's August 18, 1993 employment injury, in which he fell off a chair onto his back, resulted in a lumbar sprain. Appellant received continuation of pay from August 19 to October 2, 1993, after which the Office began paying him compensation for temporary total disability. Such compensation was paid until September 17, 1996, on which date the Office issued a decision terminating appellant's compensation on the basis that he had no continuing disability as a result of the August 18, 1993 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹

The Board finds that the weight of the medical evidence establishes that appellant's disability causally related to his August 18, 1993 employment injury ended by September 17, 1996.

On April 4, 1996 the Office referred appellant, his medical records and a statement of accepted facts to Dr. Richard Cowan, who is Board-certified in psychiatry and neurology, and to Dr. Eugene Branovacki, a Board-certified orthopedic surgeon, for second opinions whether he was still disabled as a result of his August 18, 1993 employment injury. In a report dated May 2, 1996, Dr. Branovacki concluded:

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

“In my opinion, [appellant] is presently a seriously sick gentleman. His problem appears to be strictly emotional and psychological. [Appellant’s] examination is showing only that he believes there is severe low back pain but in my opinion it is not coming from the musculoskeletal system. For this reason, I cannot speculate about his real disability nor about his treatment. I find no objective organic disability as far as the musculoskeletal system is concerned although he has severe subjective complaints and believes that he is very sick.”

In a report dated May 16, 1996, Dr. Cowan, after setting forth appellant’s complaints and his findings on physical examination and review of prior medical records, concluded:

“In summary, physical examination reveals a man who appears intent on displaying profound impairment, an impairment which is not at all physiologic. The MRI [magnetic resonance imaging] scan !FN for date done provides data indicating that there is no reason for [appellant] to have significant radiculopathies and the diagnosis of radiculopathies by electromyography, as I have pointed out, is not a truly objective diagnosis. When a person is sitting on a table and moves his ankle, movements are done with muscles of the foreleg and such movements do not require significant muscle activity in muscles above the knee. Therefore, low back pain is not a factor in inhibiting contractions of muscles in the foreleg. The apparent weakness [appellant] displays in movements at the ankle are inconsistent with the muscle mass in the leg. The deficits he reports in sensory testing do not conform to any recognized pathophysiologic disorder of sensation. His not reporting stimuli moving distances of 10 [centimeter] on his skin is spurious -- even individuals with serious peripheral neuropathies report such stimuli. The impairments he displayed in his right hand are inconsistent with the fine finger thumb opposition he performed -- if a person had the impairment he seems to display, a person could not perform finger thumb opposition in a coordinated manner, as [appellant] does. The persistence of severe pain in a pattern rather like the pattern [appellant] reported in 1993 is also against a genuine disorder. The pain of lumbar strain and of radiculopathies evolves and abates over time and the intensity with which [appellant’s] symptoms persist indicates potent psychological elaboration. My impression is that the physical examination does not provide a valid evaluation of neurologic function and that [appellant] is consciously exaggerating his impairment to an extreme degree.

“Diagnosis of the claimant’s current condition is low back pain without convincing evidence of neurologic abnormality and with convincing evidence of strong psychological elaboration of the presentation of his symptoms.

“[Appellant] has had chronic low back pain since 1979. By history, his low back syndrome was exacerbated by events at work on August 18, 1993. In my opinion, the exacerbation has terminated.”

The Board finds that the reports from Drs. Cowan and Branovacki constitute the weight of the medical evidence and are sufficient to establish that appellant’s disability causally related

to his August 18, 1993 employment injury ended by September 17, 1996.² The reports from Drs. Cowan and Branovacki are based on a complete and accurate history, express a definite conclusion that appellant is no longer disabled due to his August 18, 1993 injury and provide convincing rationale for this conclusion. Although Dr. John Ring, Jr., a Board-certified orthopedic surgeon to whom the Office referred appellant on November 3, 1994 for a second opinion, concluded, in a December 8, 1994 report, that appellant had “a chronic pain syndrome as a result of his back injuries,” Dr. Ring did not provide convincing rationale for this conclusion or for his statement that appellant “has not returned to his status prior to the injury of August 18, 1993 at which time he was employable.” In addition, his examination of appellant on December 8, 1994 revealed no evidence of motor weakness and hypesthesia of “a stocking type in the legs and arms and follows no dermatomal sequence.” These findings on examination are consistent with the conclusions reached by Drs. Cowan and Branovacki.

The decision of the Office of Workers’ Compensation Programs dated September 17, 1996 is affirmed.

Dated, Washington, D.C.
January 28, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

² Following the Office’s September 17, 1996 decision, appellant submitted additional medical reports dated October 3, 1996. However, as the Board’s review is limited by 20 C.F.R. § 501.2(c) to “the evidence in the case record which was before the Office at the time of its final decision,” the Board cannot consider these reports on the present appeal.