

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN HARMON and DEPARTMENT OF THE NAVY,  
PACIFIC MISSILE TEST CENTER, Point Mugu, Calif.

*Docket No. 97-1395; Submitted on the Record;  
Issued January 26, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

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

This is the seventh appeal of this case. The facts of the case as set forth in the Board's June 2, 1995 decision are hereby incorporated by reference.<sup>1</sup> In the last decision dated June 2, 1995, the Board found that the Office had properly suspended appellant's compensation benefits effective January 8, 1993 on the grounds that he failed to attend a scheduled medical examination and that the Office had properly denied appellant's requests for a motor vehicle, schedule award and lump sum payment.

On March 13, 1996 the Office advised appellant that his claim remained open for medical benefits for his accepted conditions, however, that his wage-loss compensation benefits, which were suspended on January 8, 1993 due to failure to attend a scheduled medical examination, would remain suspended until appellant notified the Office of his intention to attend a scheduled medical appointment. As the record did not reflect that appellant had undergone a physical evaluation in a number of years, on April 7, 1996 the Office referred appellant to Dr. Jeffrey Woodward, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant had a continuing medical condition causally related to the accepted employment injury of March 3, 1980. In a report dated April 16, 1996, which was based upon a thorough factual background, Dr. Woodward concluded in a well-rationalized medical report that appellant had no objective findings of the accepted back conditions, and that appellant had no physical restrictions for work. On May 16, 1996 the Office issued a notice of proposed termination of compensation. On June 18, 1996 the Office terminated appellant's compensation benefits. By decision dated February 10, 1997, an Office hearing representative affirmed the termination of appellant's compensation benefits.

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

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<sup>1</sup> Docket No. 94-277 (issued June 2, 1995).

causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.<sup>2</sup>

In the present case, appellant has not submitted any evidence to the record that he remained disabled due to the accepted conditions which he sustained as a result of a slip on March 3, 1980. The Office did obtain a comprehensive report from Dr. Woodward, who concluded that he could no longer find objective evidence of the accepted conditions and that appellant had no physical restrictions. The Office did meet its burden of proof in this case.

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the Office's hearing representative, dated and finalized on February 10, 1997, is in accordance with the facts and law in this case and hereby adopts the findings and conclusions of the hearing representative.

The decision of the Office of Workers' Compensation Programs dated February 10, 1997 is hereby affirmed.

Dated, Washington, D.C.  
January 26, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>2</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).