

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES KENT and DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, Andersonville, GA

*Docket No. 98-686; Submitted on the Record;
Issued July 21, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant's disability causally related to his November 30, 1995 employment injury ended by September 29, 1997; and (2) whether appellant has a permanent impairment of either leg causally related to his November 30, 1995 employment injury.

The Office of Workers' Compensation Programs accepted that appellant's November 30, 1995 employment injury, sustained while shoveling, resulted in recurrent left sciatica and a low back strain. Appellant received continuation of pay from December 1, 1995 to January 14, 1996, followed by compensation for temporary total disability until his return to light duty on February 20, 1996. Appellant again stopped work on November 18, 1996 and the Office resumed payment of compensation for temporary total disability.

On June 20, 1997 the Office issued appellant a notice of proposed termination of compensation, on the basis that his disability was no longer related to his November 30, 1995 employment injury. By decision dated September 29, 1997, the Office terminated appellant's compensation effective that date for the reason that his disability was no longer related to his November 30, 1995 employment injury. By decision dated October 24, 1997, the Office rejected appellant's claim, filed on July 28, 1997, for a schedule award on the basis that his permanent impairment was due to postoperative changes, degenerative disc disease and osteoarthritis.

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

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

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective September 29, 1997.

In a report dated February 7, 1997, appellant's attending physician, Dr. Michael G. Gibson, stated:

"First of all, he has a generalized osteoarthritis in all of his joints but most profoundly in the lumbar region. He has significant degenerative disk [sic] disease which markedly limits his functional ability to perform physical activities and causes him a great deal of pain."

* * *

"The date when he supposedly injured his back, November 30, 1995, was probably just merely an exacerbation, or an aggravation, of a preexisting condition and certainly did not cause his degenerative condition.

"For question 'B,' the aggravation was merely a temporary aggravation of a soft tissue type injury, which was probably a lumbar strain, which caused him to have significant pain in his back. However, as usually happens in these cases, once the soft tissue injury resolves the patient is left with permanent chronic pain syndromes which would inhibit his ability to work. However, his inability to work is from his degenerative condition and not from the injury that he sustained on November 30, 1995. Therefore, to be concise, the injury was only a temporary aggravation."

This report from appellant's attending physician is sufficient to meet the Office's burden of proof. It establishes that appellant's disability after September 29, 1997 is not related to his November 30, 1995 employment injury but rather to his degenerative condition. Although appellant contends that his degenerative condition is due to an employment injury sustained in 1985, he has not presented medical evidence sufficient to establish such a causal relation.

The Board further finds that appellant has not established that he has a permanent impairment of either leg causally related to his November 30, 1995 employment injury.

Appellant has the burden of establishing that he has a permanent impairment that entitles him to a schedule award under the Federal Employees' Compensation Act.² Although a schedule award may not be paid under the Act for an impairment of the back,³ a schedule award may be paid for a permanent impairment of an extremity (an arm or leg) if the cause of the impairment originated in the spine.⁴

² *James E. Jenkins*, 39 ECAB 860 (1988).

³ *James E. Mills*, 43 ECAB 215 (1991).

⁴ *Rozella L. Skinner*, 37 ECAB 398 (1986).

In a report dated September 4, 1996, Dr. Gibson stated: “He has a [zero percent] impairment rating as the result of his injury. However, his overall impairment rating would be much higher because of his degenerative nature but this is not the responsibility of workers’ compensation.” In a report dated October 9, 1997, Dr. Gibson stated that appellant “had an injury in November 1995 that was a soft tissue injury that did not result in any permanent impairment.” These reports show that appellant does not have a permanent impairment as a result of his November 30, 1995 employment injury. Although Dr. Gibson’s October 9, 1997 report lends some support to appellant’s contention that his condition is in part due to his surgery for a 1985 employment injury, this was not the question decided by the Office in its October 24, 1997 decision. The Office found that appellant did not have a permanent impairment due to his November 30, 1995 employment injury, and this decision was correct.

The decisions of the Office of Workers’ Compensation Programs dated October 24 and September 29, 1997 are affirmed.

Dated, Washington, D.C.
July 21, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member