

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMMY W. BASSETT and DEPARTMENT OF THE ARMY,
MOTOR MAINTENANCE SECTION, Fort Polk, LA

*Docket No. 99-22; Submitted on the Record;
Issued July 21, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that he had no continuing disability resulting from the accepted work injury.

The Board has carefully reviewed the record evidence and finds that the Office met its burden of proof in terminating appellant's disability compensation.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² 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.³

The fact that the Office accepts 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 employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ The Office burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

¹ 5 U.S.C § 8101 *et seq.*

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

In this case, appellant's notice of traumatic injury, filed on September 2, 1982 was accepted for a lumbosacral strain and, subsequently, a herniated disc at L5-S1 after he hurt his back while handling an oil drum. Following his relocation to Cape Canaveral, Florida, and extensive vocational rehabilitation, the Office issued a notice of proposed reduction of compensation on June 6, 1990 stating that appellant had the capacity to earn wages as a front desk clerk.

On August 27, 1990 the Office reduced appellant's compensation based on his wage-earning capacity. Appellant requested an oral hearing, which was held on March 19, 1991. On May 29, 1991 the hearing representative reversed the Office's decision and remanded the case for further evidentiary development.

On remand the Office authorized a work-hardening program for appellant, based on the recommendation of his physician, Dr. George A. Brooks, a family practitioner. After appellant completed the program, he was found physically capable of medium-level work. Based on Dr. Brooks' August 12, 1997 report, the Office issued a notice of proposed termination of compensation on March 4, 1998.⁶

Appellant responded to the notice and submitted copies of evidence already in the record. Appellant discussed an unauthorized pain management program and his difficulties with obtaining reimbursement for medical treatment, prescriptions and fitness center workouts. Appellant also argued that the Office had failed to follow the directions of the hearing representative in his May 1991 decision.

On June 23, 1998 the Office terminated appellant's compensation, effective July 19, 1998 on the grounds that his work-related disability had ceased. Appellant twice requested reconsideration, which was denied on the grounds that the medical evidence submitted in support was insufficient to warrant modification of the prior decision.

The Board finds that the medical evidence is sufficient to establish that appellant has no continuing disability resulting from the accepted work injury. Dr. Brooks reported on May 26, 1996 that appellant had lumbago, low back pain syndrome, anxiety and depression. In response to an Office inquiry, he stated in a July 5, 1996 report, that appellant's anxiety and depression were "common" in chronic pain syndrome, that appellant should avoid any bending or lifting type of work and that treatment should include medication as well as biofeedback.

The Office authorized a pain management program and a functional capacity evaluation. After completing a work-hardening program in November 1996, appellant was rated as being physically capable of performing medium-level work, which was the standard for his date-of-injury position as a mobile equipment serviceman

Dr. Brooks reviewed the discharge summary of the work-hardening program and stated in an August 12, 1997 report, that appellant had been released to work at the medium demand level, but had been unable to work due to a psychiatric disorder, "not a physical problem," which

⁶ The notice was reissued on May 18, 1998 because appellant had moved.

he [appellant] thinks is related to the job injury. Dr. Brooks added that there was “no physical reason” that appellant could not work as recommended.

On reconsideration appellant raised several arguments regarding factual errors in the progress reports of his work-hardening program and submitted a June 10, 1998 magnetic resonance imaging (MRI) scan showing disc herniation at L4-5 and degeneration at L3-4 and L5-S1. However, appellant’s arguments were irrelevant to the issue of his physical capacity for work and the MRI scan failed to address the relationship of the disc herniation to the 1982 work injury or to appellant’s 1983 back surgery.

Appellant also asserted that he was disabled by the other herniated discs in his back, noting a 1986 report from Dr. David H. Steiner, a Board-certified orthopedic surgeon, who diagnosed internal disc disruption at L3-4, L4-5 and L5-S1. This report does not address appellant’s work capacity in 1998 and thus has little probative value. Similarly, a personnel notice dated August 26, 1986, a copy of the hearing representative’s decision dated May 29, 1991, and a letter reminding appellant of two psychiatric appointments have no probative value on the issue of whether appellant can perform medium-level work. While depression may occur with chronic pain syndrome, the Office has not accepted appellant’s mental condition as work related.

Inasmuch as the medical evidence establishes that appellant is physically capable of performing the duties of his date-of-injury position, the Board finds that the Office met its burden of proof in terminating his disability compensation.

The August 20, July 20 and June 23, 1998 decisions of the Office of Workers’ Compensation Programs are affirmed.

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

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member