

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EZEKIEL CALDWELL and DEPARTMENT OF THE NAVY,
NAVAL AIR WARFARE CENTER, China Lake, Calif.

*Docket No. 98-1728; Submitted on the Record;
Issued June 1, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective December 29, 1997; and (2) whether the Office properly terminated appellant's authorization for medical treatment.

The Board has duly reviewed the case record in the present appeal and finds that the Office met its burden of proof in terminating appellant's compensation benefits effective December 29, 1997.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

In the instant case, the Office accepted that appellant, then a 61-year-old water treatment plant operator, sustained lumbar strain and lumbar disc displacement at L4-5 as a result of traumatic injuries on May 5 and November 15, 1996. Appellant received continuation of pay from December 6, 1996 until January 19, 1997. He then worked in a limited-duty position with the employing establishment until April 13, 1997.⁴ The Office placed appellant on the periodic rolls effective July 19, 1997.

¹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

² *Id.*

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ On July 1, 1997 the Office of Personnel Management accepted appellant's claim for disability retirement.

On November 25, 1997 the Office informed appellant that it proposed to terminate his compensation benefits based on the opinion of Dr. Russell Compton, a Board-certified orthopedic and Office referral physician. By decision dated December 29, 1997, the Office terminated appellant's compensation on the grounds that the weight of the medical evidence established that he had no further disability due to his accepted employment injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective September 29, 1997 based on its finding that the well-rationalized opinion of the Office referral physician, Dr. Compton, constituted the weight of the medical evidence. In a report dated July 28, 1997, Dr. Compton found that appellant had no continuing disability due to his accepted employment injuries.

The Board has carefully reviewed the opinion of Dr. Compton and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue in the present case. He provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Compton provided a proper analysis of his findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁵ He included medical rationale for his opinion by explaining the basis for his findings with reference to the results of objective testing. Dr. Compton diagnosed degenerative arthritis, discogenic disease of the cervical spine, and status post left ulnar nerve transfer, which he found were unrelated to appellant's employment injuries. He opined that appellant's degenerative arthritis and degenerating discs at L4-5 and L5-S1 with bilateral foraminal stenosis at L5-S1 had been temporarily aggravated by his employment-related lumbar strains. Dr. Compton found that the results of the computerized tomography (CT) scan showed preexisting degenerative disc disease and stated:

“[Appellant] has documented mechanisms of injury consistent with a soft tissue strain superimposed on degenerative disc disease. Thus, it is my opinion that [he] sustained soft tissue injuries secondary to his work-related injuries which temporarily aggravated his underlying disease. I do not believe any material change occurred as a result of his work-related injuries and this is substantiated by degenerative changes in the CT scan. Even displacements can be seen in normal aging spines.”

Dr. Compton concluded that appellant had no disability due to his employment injuries and that the employment-related aggravation of his condition ceased in November 1996. He listed work restrictions “[s]econdary to the natural progression of his nonindustrial degenerative disease of the cervical and lumbar spine....”

The remaining evidence of record contemporaneous with the Office's termination of compensation does not support a finding that appellant had continuing disability due to his employment injury. In an office visit note dated April 24, 1997, Dr. Robert A. Audell, a Board-certified orthopedic surgeon and appellant's attending physician, found that appellant “had

⁵ See *Melvina Jackson*, 38 ECAB 443 (1987).

continued pain related to the lumbar spine and the lower extremities as a result of the disc disease at L4-5, L5-S1.” He related:

“It is my opinion at the present time that [appellant’s] condition remains temporarily totally disabling, but in light of the problem he is having on an ongoing basis in the lumbar spine and his cervical spine problem which pre-dated the 1996 injury, it is my sense at this time that [he] has become permanent[ly] and totally incapacitated to turning back to his prior job duties.”

Dr. Audell did not specifically discuss whether appellant’s disability from employment arose from his traumatic employment injuries or from his preexisting back condition and thus his opinion is of diminished probative value.

In a form report dated June 19, 1997, Dr. Audell described the nature of the impairment as bilateral lower extremity radiculopathy, lumbar degenerative disc disease and spinal stenosis at L4-5, L5-S1, which he stated was aggravated by appellant’s May 5, 1996 employment injury. He indicated that appellant was disabled from work but did not respond to the question on the form regarding whether appellant’s condition was due to the injury for which compensation was claimed. As Dr. Audell did not specifically attribute appellant’s disability from work to his employment injury or provide any rationale for his conclusions, his report is of diminished probative value.⁶

In an office visit note dated July 17, 1997, Dr. Audell noted that appellant had neck problems related to a 1992 employment injury and listed findings on physical examination. He recommended that appellant receive therapy for his lumbar spine problems and stated that, “It does appear that this spinal injury is also related to the industrial accident previously noted.” Dr. Audell’s finding that it “appears” appellant’s spinal condition is related to an unspecified industrial accident is speculative and equivocal in nature and thus of little probative value.⁷

In an office visit note dated September 11, 1997, Dr. Audell discussed appellant’s continued complaints of back pain and listed findings on examination. As the physician did not address causation, his report is of little relevance to the issue of whether appellant had continuing disability due to his accepted employment injury.

⁶ *Carolyn F. Allen*, 47 ECAB 240 (1995) (Medical reports not containing rationale on causal relationship are entitled to little probative value).

⁷ *See Roger Dingess*, 47 ECAB 123 (1995).

The Board finds that Dr. Compton's opinion represents the weight of the medical opinion evidence and is sufficient to meet the Office's burden of proof in terminating appellant's compensation.⁸

The Board further finds that the Office properly terminated appellant's authorization for medical treatment.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁹ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment. The Office met this burden through the report of Dr. Compton, who found that appellant had no residual condition caused by his accepted employment injuries.

The decision of the Office of Workers' Compensation Programs dated December 29, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 1, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁸ The Board notes that appellant submitted additional medical evidence to the Office subsequent to the Office's December 29, 1997 decision. The Board's review is limited to the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board, therefore, cannot consider the evidence submitted after the Office's decision. Appellant may resubmit this evidence to the Office with a formal request for reconsideration; *see* 20 C.F.R. § 501.7(a).

⁹ *Furman G. Peake*, 41 ECAB 361, 364 (1990).