

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALLISON HUTCHESON and DEPARTMENT OF THE ARMY,
ARMY AVIATION CENTER, Fort Rucker, Ala.

*Docket No. 99-87; Submitted on the Record;
Issued June 16, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective June 20, 1998 on the grounds that he no longer had disability due to his May 7, 1997 work-related injury.

On May 7, 1997 appellant, then a 60-year-old supervisory police officer, filed a claim for compensation alleging that on that day he sustained multiple contusions and cervical strain while in the performance of duty. Appellant did not return to work from that time.¹ The Office accepted appellant's claim for cervical strain and multiple contusions.

On April 28, 1998 the Office proposed termination upon the grounds that the medical evidence submitted by Dr. Hemp Greene, to whom appellant had been referred by his treating physician, and who is Board-certified in psychiatry and neurology, supported appellant's ability to physically perform his position of supervisory police officer with the only limitation of "bending more than one hour a day." By decision dated June 1, 1998, the Office terminated appellant's compensation on the grounds that the disability resulting from his May 7, 1997 injury had ceased.

The Board finds that the Office has not met its burden of proof in terminating appellant's compensation effective June 20, 1998.

Under the Federal Employees' Compensation Act,² when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the

¹ Appellant's position at the time of his injury, a supervisory police officer, had been abolished as part of a reduction-in-force action at the employing establishment. Appellant's rehabilitation nurse indicated that he had accepted a position as an inspector of household goods but that he had not returned to work because of the physical requirements of the new position.

² 5 U.S.C. §§ 8101-8193.

periods of disability related to the aggravation.³ However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.⁴ Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁵ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

In the present case, the Office accepted that appellant sustained cervical strain and multiple contusions when he fell down a flight of stairs on May 7, 1997.

In a medical report dated September 29, 1997, Dr. Greene stated that appellant had low back pain since 1956, related appellant's history of the May 6, 1997 work-related injury and noted appellant's neck pain and increasing lumbar pain since that injury. Noting results of a physical evaluation, he stated that appellant had significant limitation of cervical range of motion with only 5 degrees of vertical extension and 15 degrees of downward flexion. Dr. Greene also noted that appellant could turn his head 15 degrees from the midline to the right and 20 degrees to the left, strength was unremarkable and he could heel and toe walk. His upper extremity was fine, noting moderate decrease in anteflexion of the lumbar spine and a significant decrease in dorsiflexion. Dr. Greene stated that appellant had cervical spondylosis with cervical radiculopathy, L5 radiculopathy, post-coronary bypass surgery, chronic cigarette abuse, sleep apnea and nocturnal myoclonus. He noted that appellant had never received physical therapy and recommended that he begin such a program. Dr. Greene further noted:

“In reviewing his physical requirements of his position, the problem would exist bending more than one hour a day. Because of his lumbar spondylitis and radiculopathy it is not possible. There is no problem with him operating a vehicle other than the fact that he has limitation of cervical range of motion. I am sure that working in a temperature below 30 degrees would tend to make his arthritic and radicular symptoms worse. It would seem to me that physical therapy might well be helpful in improving his cervical symptoms. From his exam[ination] on his lumbar spine this may be a major limiting factor.”

This report is not sufficient to terminate compensation since Dr. Greene does not offer any clear opinion that appellant is no longer disabled as a result of the employment injuries. Indeed, his report is ambiguous in that he notes that appellant can operate a vehicle except for his cervical range of motion limitation. It is not clear how limiting this restriction is, nor is it clear what appellant's driving requirement would be in that the record does not reflect that Dr. Greene

³ *Richard T. DeVito*, 39 ECAB 668 (1988).

⁴ *Ann E. Kernander*, 37 ECAB 305 (1986).

⁵ *Charles E. Minnis*, 40 ECAB 708 (1989).

⁶ *Id.*

⁷ *Del K. Rykert*, 40 ECAB 284 (1988).

was provided a copy of his position description at the time of the injury.⁸ His statement that “[f]rom his exam[ination] on his lumbar spine this might be a major limiting factor” fails to support that appellant no longer had residuals based on his accepted injuries. Further, Dr. Greene did not describe the nature of the accepted employment injuries in any detail nor relate them to his discussion regarding appellant’s physical capabilities. For these reasons, he did not provide an adequately rationalized medical opinion that appellant ceased to have residuals of his May 7, 1997 employment injury. Because the Office did not provide an adequate basis for its determination that appellant ceased to have residuals of his May 7, 1997 employment injury after June 20, 1998, the Office did not meet its burden of proof to terminate appellant’s compensation effective June 20, 1998

The decision of the Office of Workers’ Compensation Programs dated June 1, 1998 is hereby reversed.

Dated, Washington, D.C.
June 16, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ The record contains annotations to the effect that Dr. Greene was provided a copy of appellant’s position description but there is no record copy of it having been received by him.