

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MORRIS A. MARGESON and DEPARTMENT OF THE NAVY,  
NAVAL SUBMARINE BASE, Silverdale, Wash.

*Docket No. 97-536; Submitted on the Record;  
Issued March 12, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated medical benefits related to appellant's back injury.

On April 18, 1991 appellant, then a 48-year-old firefighter, filed a notice of traumatic injury alleging that he injured his back on April 1, 1991 in the course of his federal employment. The Office accepted the claim for a lumbar strain and appellant received appropriate benefits.

On March 12, 1993 the Office referred appellant, along with a statement of accepted facts, to Dr. Frederick M. Tokarchek, a Board-certified orthopedic surgeon, in order to determine if appellant had any residuals from his April 1, 1991 injury. Dr. Tokarchek reviewed appellant's history of injury and treatment. He conducted a physical examination of appellant's dorsolumbar spine, and reviewed x-rays and a magnetic resonance imaging (MRI) scan. He diagnosed a lumbar strain and a degenerative lumbar disc disease at L4-5 and L5-S1. He explained that given the very small amount of trauma appellant experienced and the natural process of appellant's preexisting degenerative lumbar disc disease that any disability resulting from appellant's April 1, 1991 injury was only temporary and had resolved.

Pursuant to the Office's request, Dr. John Thayer, a Board-certified orthopedic surgeon and appellant's treating physician, responded on October 28, 1993 that appellant had chronic lower back pain. Dr. Thayer also referred appellant to Dr. Dan A. Welch, a physician Board-certified in physical medicine and rehabilitation, who treated appellant's back condition, but did not address whether the condition was employment related.

On September 23, 1994 appellant filed another notice of traumatic injury alleging that he injured his leg and back on September 19, 1994 in the course of his federal employment. On November 28, 1994 the Office accepted the claim for a left lower leg contusion, a mild right knee strain, an exacerbation of his lumbar strain and appellant received appropriate compensation.

The Office subsequently referred appellant, along with a statement of accepted facts, to Dr. John McCormick, a Board-certified orthopedic surgeon, to determine whether appellant's accepted conditions had resolved. On April 10, 1995 Dr. McCormick conducted an extensive review of the history of appellant's injuries and the treatments received. Dr. McCormick noted that appellant was not experiencing any problems with his lower back and that appellant informed him that the back had reached preinjury status. His examination of appellant's back rendered normal findings. In a supplemental report dated May 1, 1995, Dr. McCormick indicated that appellant's lumbar strain had resolved as he demonstrated no symptoms.

The Office subsequently requested that appellant's treating physician, Dr. Robert F. Oldt, address whether the lumbar strain had resolved. On April 2, 1996 Dr. Oldt, a specialist in general preventive medicine, simply diagnosed lumbar strain without further explanation.

Appellant also submitted treatment notes from an unknown health care provider dated November 20 and December 6, 1995 and January 3, 1996 which indicated that he received treatment for a chronic low back.

On March 31, 1996 Dr. Stephanus P.E. Boshoff, a chiropractor, treated appellant and diagnosed subluxations at C1, C2, C6, T11, L3 and the sacroiliac region.

On June 4, 1996 the Office issued a "notice of proposed termination of medical care for the spine." The Office indicated that the weight of the medical evidence as represented by the opinions of Drs. Tokarchek and McCormick established that appellant's back condition was not work related. Appellant was given 30 days to submit additional argument or evidence.

Appellant subsequently submitted an April 26, 1996 MRI scan interpreted by Dr. Mark R. Mitchell, a Board-certified radiologist, indicating that appellant had mild degenerative disc disease at L4-5 and L5-S1.

On May 16, 1996 Dr. Mark J. Ghilarducci, a Board-certified orthopedic surgeon, reviewed appellant's history and conducted a physical examination. He diagnosed low back pain and minimal early degenerative disc disease.

Finally, appellant submitted treatment slips from Dr. Oldt dated June 11, 25 and 27, 1996 which indicated that he treated appellant on those dates for a lumbar strain.

By decision dated August 13, 1996, the Office terminated appellant's medical benefits for his spine because it found that appellant's back condition was no longer causally related to his work injuries. In an accompanying memorandum, the Office indicated that the weight of the medical evidence continued to rest with Drs. Tokarchek and McCormick.

The Board finds that the Office properly terminated medical benefits related to appellant's back injury.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.<sup>2</sup> Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.<sup>3</sup> To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.<sup>4</sup>

On April 10, 1995 Dr. McCormick, a Board-certified orthopedic surgeon, reviewed appellant's entire history and conducted a physical examination. He indicated that appellant failed to report any back symptoms and that his examination of appellant's back rendered only normal findings. Consequently, in his supplemental report dated May 1, 1995 he opined that appellant's employment-related lumbar strain had resolved. Appellant subsequently failed to submit any evidence addressing whether he continued to have an employment-related back injury. Dr. Oldt, a specialist in general preventive medicine, diagnosed a lumbar strain on April 2, June 11, 25 and 27, 1996. Without further explanation, Dr. Oldt's reports are entitled to little weight.<sup>5</sup> Similarly, the treatment notes appellant submitted from the unknown provider dated November 20 and December 6, 1995 and January 3, 1996 failed to explain the cause of appellant's chronic low back pain and therefore are also entitled to little weight.<sup>6</sup> Dr. Boshoff's March 31, 1996 report and the April 26, 1996 MRI report interpreted by Dr. Mitchell also failed to address whether appellant had residuals from his accepted employment injuries. Finally, Dr. Ghilarducci, a Board-certified orthopedic surgeon, diagnosed low back pain and minimal early degenerative disc disease. Dr. Ghilarducci also failed to attribute these conditions to appellant's accepted injuries. Accordingly, because Dr. McCormick submitted a recent, well-rationalized opinion indicating that appellant's employment-related back condition had resolved and this opinion is not refuted by any contradictory, well-rationalized evidence, Dr. McCormick's opinion constitutes the weight of the medical evidence.

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<sup>1</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>2</sup> *Id.*

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>4</sup> *Id.*

<sup>5</sup> *Jean Culliton*, 47 ECAB 728 (1996).

<sup>6</sup> *Id.*

The decision of the Office of Workers' Compensation Programs dated August 13, 1996 is affirmed.

Dated, Washington, D.C.  
March 12, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member