

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY SEEGERs and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL, Cincinnati, Ohio

*Docket No. 97-1190; Submitted on the Record;
Issued March 12, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective December 7, 1996 on the grounds that appellant no longer had any residuals of his November 10, 1977 employment injury.

The Board has duly reviewed the case record in this appeal and finds that the Office properly terminated appellant's compensation benefits effective December 7, 1996 on the grounds that appellant no longer had any residuals of his November 10, 1977 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹

In this case, appellant, then a housekeeping aide, filed a traumatic injury claim (Form CA-1) assigned number A9-202680 on November 14, 1977 alleging that he injured his back while lifting a desk.² Appellant stopped work on November 11, 1977 and returned to work on October 22, 1979.³

The Office accepted appellant's claim for a severe lumbosacral strain and sprain, thoracolumbar strain, and aggravation of chronic left shoulder strain.

¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

² Subsequently, appellant filed several claims for back conditions that the Office consolidated into a master case file under A9-202680.

³ Appellant has not returned to work after sustaining a back injury on August 21, 1986.

In a September 6, 1994 letter, the Office advised Dr. David Gillis, an orthopedic surgeon and appellant's treating physician, to submit a detailed medical report regarding appellant's status, treatment plan and prognosis. The Office also advised Dr. Gillis to address the causal relationship between appellant's current condition and his November 10, 1977 employment injury. The Office further advised Dr. Gillis to provide whether appellant was totally disabled due to the employment injury.

In response, Dr. Gillis submitted an October 12, 1994 medical report revealing a description of the physical requirements of appellant's position and his complaints, and a history of appellant's medical treatment. He indicated his findings on physical examination, and diagnosed chronic lumbosacral sprain/strain, obvious aggravation of osteoarthritis of the lumbosacral spine, spondylosis with some mild evidence of radiculopathy, but not precise, chronic anxiety neurosis secondary to the above, and left shoulder and arm contusion. Dr. Gillis opined that appellant continued to be disabled due to the November 10, 1977 employment injury. He further opined that appellant was not a candidate for any work consistent with the description of his housekeeping aide position and that appellant did not have the training or education to perform any other type of work.

In a March 3, 1995 letter, the Office requested that Dr. Gillis provide a supplemental medical report clarifying appellant's ability to return to work.

By letter dated June 4, 1996, the Office referred appellant to Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon, along with medical records, a statement of accepted facts, and a list of questions and definitions for a second opinion medical examination. By letter of the same date, the Office advised Dr. Sheridan of the referral.

In response, Dr. Sheridan submitted a June 19, 1996 medical report indicating a history of appellant's November 10, 1977 employment injury, education and medical treatment. He further indicated appellant's complaints, his findings on physical examination and a review of medical records. Dr. Sheridan diagnosed resolved left shoulder strain and resolved chronic lumbosacral strain. He opined that appellant still suffered from residuals relating to his November 10, 1977 employment injury, but that appellant's disability was a result of his underlying degenerative disc disease and osteoarthritis, and post-surgical changes in the left shoulder from the reconstruction of the left shoulder. Dr. Sheridan further opined that there continued to be a work-related disability which was chronic lumbosacral strain. He then noted that there were no findings on clinical examination to substantiate this diagnosis, but that appellant had historical subjective complaints documented by Dr. Gillis. In an accompanying work restriction evaluation, Dr. Sheridan indicated appellant's physical restrictions and appellant's ability to work five hours per day.

By letter dated July 30, 1996, the Office advised Dr. Sheridan to clarify the contradictions in his medical report regarding whether appellant had any continued disability causally related to his November 10, 1977 employment injury. In an August 5, 1996 supplemental medical report, he explained that regarding his use of the word "residuals," he meant historical complaints. Dr. Sheridan stated that he explained this statement by noting that there were no findings on clinical examination to substantiate a diagnosis of chronic lumbosacral strain, but that appellant had historical complaints that were documented by Dr. Gillis. Dr. Gillis

then opined that “[w]ith the lack of objective findings of a chronic lumbosacral strain, it can be concluded that there is no continuing injury-related condition/disability and that [appellant’s] present condition/disability is related to his preexisting/nonwork-related conditions.” Dr. Gillis further opined that “[b]ased upon my examination of the thoracic area there is no evidence objectively to confirm that a strain persists.”

In a notice of proposed termination of compensation dated October 29, 1996, the Office advised appellant that it proposed to terminate his compensation because the weight of the medical evidence of record rested with Dr. Sheridan’s medical opinion. The Office also advised appellant to submit additional medical evidence supportive of his continued disability within 30 days. In a November 1, 1996 letter, appellant disagreed with the Office’s proposal to terminate his compensation benefits.

By decision dated December 6, 1996, the Office terminated appellant’s compensation effective December 7, 1996 because the medical evidence of record established that appellant had no residuals of his November 10, 1977 employment injury based on Dr. Sheridan’s medical opinion.⁴

Dr. Sheridan provided a rationalized opinion based on a complete medical and factual background in opining that appellant no longer had any continued disability caused by his November 10, 1977 employment injury. Dr. Gillis failed to provide any medical rationale explaining how and why appellant’s conditions of chronic lumbosacral sprain/strain, aggravation of osteoarthritis of the lumbosacral spine, spondylosis with some mild evidence of radiculopathy, chronic anxiety neurosis and left shoulder and arm contusion were caused by his November 10, 1977 employment injury.

Inasmuch as Dr. Sheridan’s medical opinion represents the weight of the evidence in this case and establishes that appellant no longer had any employment-related disability, the Office met its burden in terminating appellant’s continuing entitlement to compensation effective December 7, 1996.

⁴ In a December 13, 1996 letter, appellant requested an oral hearing before an Office representative. The Board notes that appellant did not submit any new evidence with his request.

The December 6, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

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

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member