

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLIE J. CHITWOOD and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, Ohio

*Docket No. 97-1317; Submitted on the Record;
Issued March 10, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's entitlement to medical benefits effective April 12, 1996; (2) whether appellant has met his burden of proof in establishing that he is entitled to continuing medical benefits on or after April 12, 1996; and (2) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not meet its burden of proof to terminate appellant's compensation for medical treatment effective April 12, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ After it has been determined that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.³ 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.

On June 2, 1994 appellant filed an occupational disease claim alleging that he sustained low back pain radiating into his left hip due to factors of his federal employment. Appellant attributed his condition to casing mail and prolonged walking and carrying mail in the course of

¹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361 (1990).

his employment duties. The Office accepted that appellant's claim for chronic lumbosacral strain and an aggravation of a subluxation at L4-5. The Office paid appellant compensation for medical treatment, including chiropractic treatment by Dr. Nicholas Eliopoulos. The Office further authorized physical reconditioning on the recommendation of Dr. Mark G. Kehres, appellant's attending physician.

On January 16, 1996 the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. James Paul Duffy, a Board-certified orthopedic surgeon, for a second opinion evaluation. Based on Dr. Duffy's findings, on March 11, 1996, the Office notified appellant of the proposed termination of medical benefits. By decision dated April 12, 1996, the Office terminated appellant's authorization for medical benefits on the grounds that he had no continuing condition due to his accepted employment injury after that date.⁴ In a merit decision dated May 6, 1996, the Office denied modification of its prior decision, and, by decision dated December 9, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative and thus insufficient to warrant review of the prior decision.

In interim treatment notes dated March 7 and December 7, 1995, Dr. Kehres stated that he continued to treat appellant for employment-related lumbosacral strain. He noted that appellant received physical therapy and chiropractic treatment. Dr. Kehres listed essentially normal findings on physical examination and advised appellant "to continue with his current treatment plan..." In an interim treatment note dated March 14, 1996, Dr. Kehres indicated that the Office proposed to terminate appellant's medical benefits and that appellant disagreed with the proposal. Dr. Kehres diagnosed a history of lumbosacral strain, stated that he was to continue his treatment plan and return to the clinic as needed pending a decision regarding his authorization for treatment.

In a report dated February 8, 1996, Dr. Duffy reviewed the medical evidence of record, evaluated the x-ray reports and listed findings on physical examination. He further discussed appellant's description of low back injuries sustained at work in 1976, 1985 and 1991. Dr. Duffy stated:

"It is my opinion that [appellant] has fully recovered from his back injuries sustained while at work in 1976, 1985 and most recently in 1991. There is no evidence of injury to the soft tissue structures, to the intervertebral discs or to the nerve roots in [the] lumbosacral spine. It is my opinion, therefore, that he is completely recovered and has no disability as a result of these injuries. I feel that he needs no further treatment and that he is able to work as a mail carrier with no restrictions."

The Board has carefully reviewed the opinion of Dr. Duffy and finds that it does not have reliability, probative value and convincing quality with respect to the conclusions reached regarding whether appellant has any residual impairment due to his accepted employment-related condition. Dr. Duffy discussed only appellant's history of traumatic injuries to his back

⁴ Appellant retired from the employing establishment in 1994.

rather than the factors of employment specified in the statement of accepted facts as causing appellant's occupational disease. The Board has held that medical opinions based upon an incomplete history have little probative value.⁵ Further, while Dr. Duffy concluded that appellant had no further condition or disability due to his traumatic back injuries, he did not indicate an awareness of appellant's accepted occupational disease resulting in the conditions of chronic lumbosacral strain and an aggravation of a subluxation at L4-5. Dr. Duffy, consequently failed to address the relevant issue in the present case, which is whether appellant had any further residual condition due to his occupational disease. As Dr. Duffy's opinion was not based upon appellant's accepted medical history and did not resolve the pertinent issue at hand, it is of little probative value and cannot constitute the weight of the medical opinion evidence. Therefore, the Office did not have an adequate basis upon which to terminate appellant's medical benefits effective April 12, 1996.⁶

The decisions of the Office of Workers' Compensation Programs dated December 9, May 6 and April 12, 1996 are hereby reversed.

Dated, Washington, D.C.
March 10, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁵ *Geraldine H. Johnson*, 44 ECAB 745 (1993).

⁶ In view of the Board's disposition of the first issue, the issues of whether appellant has met his burden of proof in establishing that he is entitled to continuing medical benefits on or after April 12, 1996 and the issue of whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128 are moot.