

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAMON PAGAN-ALFARO and U.S. POSTAL SERVICE,
POST OFFICE, Aguadilla, P.R.

*Docket No. 98-1937; Submitted on the Record;
Issued March 24, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective November 9, 1997.

On July 24, 1987 appellant, then a 39-year-old window clerk, filed an occupational disease claim, alleging cramps and pain in his legs and low back pain beginning April 1979 which he believed was due to factors of his federal employment. Appellant stopped work on April 8, 1985.¹ In a decision dated October 7, 1987, the Office denied appellant's occupational disease claim on the grounds that fact of injury was not established. By decision dated April 5, 1989, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant merit review. In a merit decision dated December 12, 1989, the Office denied appellant's request for reconsideration on the grounds that the evidence was not sufficient to warrant modification of the prior decision. In a decision dated May 14, 1991, the Office vacated the December 12, 1989 decision and accepted appellant's claim for chronic low back syndrome and discogenic disease. Appellant received appropriate compensation for all periods of temporary total disability and on October 20, 1992 appellant was placed on the periodic rolls.

In a letter dated August 13, 1997, the Office proposed termination of appellant's monetary and medical benefits on the grounds that the medical evidence did not establish that he had any residuals of his accepted employment injuries and therefore, he did not require further medical treatment. In a decision dated October 17, 1997, the Office terminated appellant's benefits effective November 9, 1997 on the grounds that appellant had no continuing disability or medical condition related to his accepted employment injuries.

¹ Appellant had several earlier traumatic injury claims including a March 16, 1970 injury to his back which was accepted for lumbosacral strain, a September 1974 claim which was accepted for sprain and effusion of the left knee and a March 31, 1976 recurrence of his back injury disability.

The Board has carefully reviewed the entire case record on appeal and finds that the Office properly terminated appellant's benefits effective November 9, 1997.²

Under the Federal Employees' Compensation Act,³ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.⁴ After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁵

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁶ Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after November 9, 1997 and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

In the present case, in terminating appellant's benefits, the Office relied on the May 23, 1997 report by Dr. Cesar Cintron Valle, an orthopedic surgeon and Office referral physician. Dr. Valle provided a complete history of injury⁸ and reviewed appellant's medical evidence of record. On physical examination of appellant, Dr. Valle noted a normal range of motion in the spine except for the forward flexion where he found that appellant had used submaximal effort. He noted formation of osteophytes at the L2, L3 and L4 vertebrae levels and mild dextroscoliosis at the L3 level. Dr. Valle diagnosed degenerative osteoarthritis of the lumbosacral spine and found that appellant's work-related conditions of low back pain syndrome and discogenic disease⁹ were resolved with no residual disability. He found that there were no indications for

² The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on June 25, 1998, the only decision before the Board is the Office's October 17, 1997 decision; see 20 C.F.R. §§ 501.2(c), 501.3(d)(2). On appeal, appellant attempted to submit additional evidence in support of his claim. The Board's review is limited to the evidence that was before the Office at the time of its final decision. The Board therefore cannot consider the April 23, 1998 report by Dr. Sylvia N. Payne. 20 C.F.R. § 501.2(c).

³ 5 U.S.C. §§ 8101-8193.

⁴ *William Kandel*, 43 ECAB 1011 (1992).

⁵ *Carl D. Johnson*, 46 ECAB 804 (1995).

⁶ *Dawn Sweazey*, 44 ECAB 824 (1993).

⁷ *Mary Lou Barragy*, 46 ECAB 781 (1995).

⁸ It appears that Dr. Valle's report contains a typographical error where he indicated that appellant was initially injured in March 1979 rather than March 1970, as noted in the statement of accepted facts.

⁹ The Board notes that DORLAND'S ILLUSTRATED *Medical Dictionary* (25th ed. 1974), p. 452, defines "discogenic" as a condition "caused by derangement of an intervertebral dis[c]."

further diagnostic testing and no clinical findings to suggest any herniations of the nucleus pulposus, radiculopathies or dislocations of the lumbosacral spine. Dr. Valle concluded that appellant did have arthritis related to the aging process that was not severe enough to cause disability and that appellant could work eight hours a day without limitations.¹⁰

A review of the record reveals that in a letter dated January 2, 1997 the Office requested that appellant's treating physician, Dr. Jose M. Del Rio Ferrer, an internist, provide a narrative report which provided a complete history of injury, a description of medical treatment, a "firm diagnosis" based on a recent examination, a reasoned opinion addressing the causal relationship between the diagnosed condition and the history of injury or factors of appellant's federal employment and that the physician complete a work restriction evaluation, such a report was not submitted. In response, Dr. Ferrer submitted a report dated February 13, 1997 in which he noted appellant had been treated in 1969 for back pain, in 1973 for a left ankle injury and on physical therapy since 1976. Dr. Ferrer stated that appellant continued with follow-up visits at his office with continued complaints of low back pain radiating to the lower extremities and continued physical therapy. He submitted an x-ray report and bone scans dated January 15 and February 6, 1997, respectively, in which appellant was diagnosed with spondylosis, discogenic disease at the L5 to S1 level, and degenerative changes at the shoulders, thoracic/lumbar spine and knees probably due to periosteal changes or previous trauma. In a work restriction form dated February 11, 1997, Dr. Ferrer indicated that appellant could not work eight hours a day and had limitations of walking three hours a day, sitting and standing two hours a day, lifting eight pounds and no bending, squatting, climbing, kneeling or twisting.

Dr. Valle provided a well-reasoned and rationalized report in which he found that appellant had no residuals of his employment injuries based on diagnostic testing, objective evidence and physical examination of appellant. Although he noted arthritic changes in appellant's spine he concluded that these were due to the aging process and not appellant's employment injuries. Dr. Valle's opinion that appellant could work without restriction was properly accorded more weight than the opinion of Dr. Ferrer as he set forth only a minimal description of appellant's physical findings on examination and did not reach a definite conclusion regarding the source of appellant's ongoing medical conditions. In light of the deficiencies in Dr. Ferrer's report, the Office properly determined that the report by Dr. Valle constituted the weight of the evidence. Therefore, the Office met its burden of proof in terminating appellant's compensation effective November 9, 1997.

¹⁰ The Board notes that the Office mischaracterized Dr. Valle as a Board-certified orthopedic surgeon although he reported that he was a board qualified orthopedic surgeon and none of the usual authorities used by the Board to check certification indicate that Dr. Valle is a Board-certified orthopedic surgeon. The Board notes that, while Board-certification is one of a number of factors to consider when weighing medical evidence, it is not, by itself, dispositive; see *Robert R. Henderson*, 30 ECAB 549 (1979); *Elmer L. Fields*, 20 ECAB 250 (1969).

The decision of the Office of Workers' Compensation Programs dated October 17, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 24, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member