

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM V. VIGIL and DEPARTMENT OF AGRICULTURE,
SANTE FE NATIONAL FOREST, Sante Fe, N.M.

*Docket No. 97-1952; Submitted on the Record;
Issued May 17, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on February 14, 1997.

On September 9, 1980 appellant, then a 30-year-old civil engineer technician, filed a claim for a traumatic injury, Form CA-1, alleging that on September 9, 1980 he injured his lower back and hips while working on cross sections when stepped on a wet log, turned a somersault and landed on his back. Appellant has not worked since his September 9, 1980 employment injury.

The Office accepted appellant's claim for a lumbar strain and subsequently for psychogenic pain disorder resulting from the pain of his work-related orthopedic conditions. The Office placed appellant on the periodic rolls on July 15, 1982.

In a report dated April 22, 1996, Dr. Robert G. Hillman, a Board-certified psychiatrist and neurologist, considered appellant's history of injury, performed a "mental status" examination, and stated that appellant's present course of treatment reinforced the proposition that appellant was in severe pain, needed strong pain medication and could not work. He stated that appellant had not worked for 16 years, that he had viewed himself for "far too long" as being disabled, that he had little motivation to change his present state and although he thought appellant could function in a work setting, he opined that "[a]t this point in time, there is little likelihood of success in terms of a rehabilitation program."

In his report dated August 15, 1996, Dr. William K. Jones, a second opinion physician and a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed x-rays of the lumbar spine, lower legs and femora. He concluded that appellant's physical examination was completely normal with the exception of the objective finding of shortening of appellant's left femur which he opined was due to the comminuted fracture of the left femur which appellant sustained in a car accident in 1968.

Dr. Jones also noted that appellant had a residual focal muscle herniation through a fascial rent that was also the result of the open fracture appellant sustained in the 1968 car accident. Further, he found that the x-rays did not show any residual evidence from the September 9, 1980 employment injury. Dr. Jones stated that there was no objective evidence that appellant's lumbar strain was currently active and disabling and that he "should be able to perform" the duties of a civil engineering technician. He opined that any physical difficulties appellant might be experiencing were, within a reasonable degree of medical probability, related to the 1968 car accident.

By letter dated September 9, 1996, the Office requested that Dr. Hillman clarify his April 22, 1996 report.

In a report dated October 9, 1996, Dr. Hillman stated that appellant suffered from chronic pain syndrome and that the essential features of this condition were that the patient focuses on physical complaints out of proportion to any physical findings. He stated that he reviewed Dr. Jones' report and would defer to him as to the question of appellant's pain being associated with the residuals of his automobile accident. Dr. Hillman stated that there were no objective psychological signs of disability and, according to Dr. Jones, there were no physical signs of disability. He stated that the disability persisted because appellant focused on alleged physical complaints which were not verified by Dr. Jones' examination, and the fact that he had not worked in 16 years which reinforced his belief that he was disabled. Dr. Hillman stated that appellant did not appear to be motivated to work. He concluded that there were no psychological factors that "*per se*" prevent appellant from returning to work, and that because appellant had not worked in 16 years, it was very unlikely that he would be motivated to return to work "at this point in time." Dr. Hillman noted that Dr. Jones' report showed moderate callusing which indicated some regular semi-strenuous of his hands, and that appellant believed and would continue to believe that he was unable to work.

In a notice of proposed termination dated October 11, 1996, the Office proposed to terminate appellant's compensation benefits, stating that the medical evidence established that the injury-related condition had ceased and that appellant had 30 days to respond.

In a statement dated November 5, 1996, appellant stated that Dr. Jones erroneously attributed his back condition to the 1968 car accident as prior to the September 9, 1980 employment injury, he performed very strenuous work for the employing establishment. He also stated that contrary to the Office's records, he was currently receiving medical treatment. By letter dated January 3, 1997, appellant requested that an independent psychiatric examination be conducted.

By decision dated February 14, 1997, the Office terminated appellant's compensation benefits effective February 14, 1997.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation

without establishing that the disabling condition has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

In the present case, the medical evidence of record consisting of Dr. Jones' August 15, 1996 report and Dr. Hillman's April 22 and October 9, 1996 reports establish that appellant's work-related disability had ceased. In his August 15, 1996 report, Dr. Jones considered appellant's history of injury, performed a physical examination and reviewed x-rays of the lumbar spine, lower legs and femora. He concluded that appellant's physical examination was completely normal with the exception of the objective findings of the shortening of appellant's left femur and the residual focal muscle herniation which he opined were due to the 1968 car accident. Dr. Jones found that the x-rays did not show any residual evidence from the September 9, 1980 employment injury. He concluded that appellant had no objective evidence that his lumbar strain was currently active and disabling, and "should" be able to perform the duties of a civil engineering technician. Dr. Jones stated that any physical difficulties which appellant might be experiencing were, within a reasonable degree of medical probability, related to the 1968 car accident.

In his April 22, 1996 report, Dr. Hillman opined that appellant was in severe pain, needed strong pain medication, was unable to work and was unlikely to have success at rehabilitation. In his October 9, 1996 report, Dr. Hillman stated that appellant suffered from chronic pain syndrome characterized by his focusing on physical complaints out of proportion to any physical findings. He stated that there were no psychological signs of disability and, according to Dr. Jones, there were no physical signs of disability. Dr. Hillman stated that the disability persisted because appellant focused on alleged physical complaints which were not verified by Dr. Jones' examination, and the fact that he had not worked in 16 years which reinforced his belief that he was disabled. He concluded that there were no psychological factors that "*per se*" prevented appellant from working.

Dr. Jones' and Dr. Hillman's reports are sufficiently well rationalized to support the Office's finding that appellant is no longer disabled due to the September 9, 1980 employment injury. Dr. Jones found that appellant could work based on the absence of objective findings and Dr. Hillman found no psychological factors that would preclude appellant from returning to work. Further, appellant did not submit any recent medical evidence that would establish his physical or psychological condition is related to the September 9, 1980 employment injury. Since the evidence of record establishes that appellant did not have any disability after February 14, 1997, the Office has met its burden of proof to terminate benefits.

The decision of the Office of Workers' Compensation Programs dated September 9, 1996 is hereby affirmed.

Dated, Washington, D.C.

¹ *Patricia M. Mitchell*, 48 ECAB ____ (Docket No. 95-384, issued February 27, 1987); *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

May 17, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member