

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GILBERT F. MEURER and DEPARTMENT OF THE NAVY,
NAVAL AMMUNITION DEPOT, Crane, IN

*Docket No. 98-1409; Submitted on the Record;
Issued November 8, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant's disability causally related to his December 14, 1970 employment injury ended by December 10, 1997.

The Office of Workers' Compensation Programs accepted that appellant's December 14, 1970 employment injury, sustained while moving a heavy cylinder of liquid nitrogen, resulted in a chronic left inguinal hernia. Appellant initially stopped work on April 8, 1971, underwent a surgical repair of a left inguinal on April 10, 1971, and returned to work on June 8, 1971. He again stopped work on November 10, 1972, underwent repair of a recurrent left inguinal hernia on November 14, 1972, and returned to work on January 5, 1973. Appellant next stopped work on July 23, 1973, underwent another repair of a recurrent left inguinal hernia on July 24, 1973, and returned to work on September 10, 1973. The Office paid for the surgeries and for the periods of disability associated with them.

Appellant last worked on August 1, 1975. His application for disability retirement was approved effective August 21, 1975. Appellant elected to receive benefits under the Federal Employees' Compensation Act in preference to those under the Civil Service Retirement Act. The Office began payment of compensation for temporary total disability on August 21, 1975, and also paid for additional surgeries done on February 24, 1977 (incision and drainage of an abscess at the left hernia site) and on May 3, 1978 (resection of abscess, stitches and granulation tissue, and resection of infected vas).

On September 24, 1997 the Office issued appellant a notice of proposed termination of compensation on the basis that the disability resulting from his employment injury had ceased. The Office stated that the weight of the medical evidence rested with the opinion of Dr. Brej Antreasian, a Board-certified internist, to whom it had referred appellant for a second opinion. Appellant disagreed with the proposed action, and submitted a report dated October 17, 1997 from Dr. Charles M. McKeen, a Board-certified surgeon. By decision dated December 10, 1997, the Office terminated appellant's compensation, including medical benefits, effective that date

on the basis that the weight of the medical evidence established that appellant's employment-related condition had resolved.

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 disability has ceased or that it is no longer related to the employment.¹

The Board finds that the Office has not met its burden of proof to terminate appellant's compensation, as there is an unresolved conflict of medical opinion in this case.

In a report dated January 8, 1997, Dr. Antreasian stated that there was "no medical evidence that a left inguinal hernia is currently active or causing any objective findings," and that there was "no medical evidence that any current disability is related to the claimant's December 14, 1970 work injury." Dr. Antreasian set forth work tolerance limitations, but indicated none of these were due to appellant's employment injury. In a supplemental report dated June 29, 1997, Dr. Antreasian stated, "I would have to say that on the basis of my examination, I found no evidence of any hernia and any hernias which had been present appeared to have been satisfactorily repaired." Dr. Antreasian also stated, "Regarding any weight restriction, disregarding those imposed by his impaired back, I would have to say there is no reason for lifting restrictions related to the previous hernia."

In his October 17, 1997 report, Dr. McKeen, after noting that he had reviewed Dr. Antreasian's report, stated:

"On physical examination I also did not find evidence for a hernia at the level of the internal ring but thought that there was a laxity in the area where a direct hernia could occur. There was some stiffness and thickness to the tissue that was certainly consistent with numerous previous procedures here. I found him reproducibly tender in this area as well as along the ipsilateral side of his spermatic cord. As mentioned by Dr. Antreasian, this could represent a spermatocele but also could represent changes consistent with scarring from multiple surgical procedures."

* * *

"[A]lthough this gentleman may not have a physically impaired area that requires structural realignment at his age and at his level of current activity, the multiple past surgical procedures can still leave him with scarring and entrapment of nerve tissue. I believe there is a causal relationship between his accident in 1970 of the 500-[pound] cylinder onto his groin and the multiple surgical operations that followed. I can also find a causal relationship between the pain that he has in the groin now and the multiple operations that he has had in the past."

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

The opinion expressed by Dr. McKeen in his October 17, 1997 report is consistent with that expressed in Dr. McKeen's December 17, 1982 report, wherein the doctor stated that appellant had "legitimate pain in his left groin," and that appellant was "certainly entitled to a host of problems just simply related to the scarring." It is also consistent with the opinion of Dr. Mark N. Goren, a Board-certified internist, who, in a December 14, 1982 report stated:

"I am convinced that he has pain and that there is a physical cause for it.... At this point, it is clearly impossible to say whether his pain is from the original injury or is a consequence of the residual effects of one or more of his surgical procedures. Both would seem to play a role in his symptoms."

Dr. Goren expressed a similar opinion in reports dated May 2, 1986, March 23, 1990 and May 13, 1993. In the May 13, 1993 report, Dr. Goren stated, "It seems clear to me that the patient's chronic pain was from the initial injury and the subsequent surgical procedures."

The opinions of Drs. Antreasian and McKeen conflict on the determinative question of whether appellant continues to have residuals of his December 14, 1970 injury. Dr. Antreasian concluded that he did not, although Dr. Antreasian did not directly address whether appellant had residuals of the accepted surgeries. Dr. McKeen agreed with Dr. Antreasian that appellant no longer had a left inguinal hernia, but concluded that he had residuals of the accepted surgeries for this condition that disabled him for work. Due to this conflict of medical opinion, the Office has not met its burden of proof to terminate appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated December 10, 1997 is reversed.

Dated, Washington, D.C.
November 8, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member