

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ERIC DARDIGNAC and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 98-946; Submitted on the Record;  
Issued October 14, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective April 26, 1996.

The Office accepted that appellant's January 2, 1992 employment injury, sustained when he was pulling cable, resulted in a lumbosacral strain. Appellant did not stop work, except for doctors' visits and physical therapy, but performed light duty from January 2 to April 20, 1992. By letter dated September 27, 1995, the Office advised appellant that additional treatment was not authorized, as the report of Dr. Leonard Klinghoffer, the Board-certified orthopedic surgeon selected by appellant as his treating physician from a list of three provided by the Office, stated that additional treatment was not required.

On March 12, 1996 the Office issued a notice of proposed termination of compensation on the basis that appellant no longer suffered from residuals of his January 2, 1992 employment injury. By decision dated April 26, 1996, the Office terminated appellant's compensation effective that date on the basis that the weight of the medical evidence established that the residuals of his January 2, 1992 injury ceased by that date. Appellant requested a hearing, which was held before an Office hearing representative on November 18, 1996. By decision dated December 23, 1996, an Office hearing representative found that the weight of the medical evidence established that appellant had no residuals of his January 2, 1992 employment injury. Appellant requested reconsideration and submitted additional medical evidence. By decision dated October 31, 1997, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions.

Except for time missed for medical treatment for which the Office paid, appellant has not missed time from work due to his January 2, 1992 employment injury. Therefore the only effect of the Office's April 26 and December 23, 1996 and October 31, 1997 decisions was to terminate appellant's entitlement to medical benefits under the Federal Employees' Compensation Act. The right to medical benefits for an accepted condition is not limited to the

period of entitlement to compensation for disability.<sup>1</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further treatment.<sup>2</sup>

The Board finds that the Office properly terminated appellant's compensation effective April 26, 1996.

In a report dated June 19, 1995, Dr. Klinghoffer set forth appellant's history, complaints and findings on physical examination and on prior diagnostic testing. He then concluded:

“On the basis of this man's history and the information in his records I believe that he sprained his low back as a result of an episode that occurred while at work in January of 1992, three and a half years ago. He is 60 years of age and has some degenerative arthritis in his lumbar spine and on that basis I believe that the symptoms that were precipitated by his work injury no doubt lasted longer than they would have lasted in someone else under the same circumstances; however, his examination does not reveal any physical abnormality now, and I believe that he has recovered from the physical effects of that incident. I do not believe that he needs any treatment now, and I do not believe that he has any physical disability related to that occurrence. I believe that he is capable now of performing the type of work that he was able to perform before January of 1992 and he told me that he has indeed been back to work ever since approximately three months after the incident.

“He is entitled to some intermittent low back symptoms on the basis of his age and his x-ray findings, but it is my feeling that those symptoms have nothing to do with anything that happened in 1992.”

The Board finds that the opinion of Dr. Klinghoffer constitutes the weight of the medical evidence on the question of whether appellant continued to suffer from residuals of his January 2, 1992 employment injury. Appellant's prior treating physician, Dr. Gregory A. Nelson, an internist, stated in an April 15, 1994 report that appellant was instructed, on his most recent visit on March 14, 1994, “to continue with physical therapy and exercise at home,” based on his complaints of persistent low back pain associated with intermittent radiation of pain into the legs.” Dr. Nelson, however, did not indicate that the recommended treatment was for the effects of appellant's January 2, 1992 employment injury. In a report dated October 31, 1994, Dr. Zohar Stark, an orthopedic surgeon, also recommended that appellant continue physical therapy and nonsteroidal anti-inflammatory medications, but also did not indicate that this treatment was for the effects of the January 2, 1992 employment injury as opposed to the degenerative disc disease listed as one of appellant's diagnoses. Dr. Raymond Lohier, a general practitioner and general surgeon, stated in an August 20, 1997 report: “To a reasonable degree of medical certainty there is a direct causal relationship between the low back injury symptoms

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<sup>1</sup> *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>2</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

and the accident on January 2, 1992.” Dr. Lohier, however, did not provide any rationale for this opinion. Dr. Klinghoffer’s conclusion that appellant had no residuals of his January 2, 1992 employment injury, based on the absence of any physical abnormality on physical examination, constitutes the weight of the medical evidence.

The decision of the Office of Workers’ Compensation Programs dated October 31, 1997 is affirmed.

Dated, Washington, D.C.  
October 14, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member