

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAURICE D. LUNDBERG and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 99-355; Submitted on the Record;
Issued October 6, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had any disability or injury residuals on or after November 7, 1998 causally related to his November 2, 1982 or October 29, 1984 employment injuries.

The Board finds that the weight of the medical evidence of record supports that appellant had no disability or injury residuals on or after November 7, 1998 causally related to his accepted employment injuries.

On November 2, 1982 appellant, then a 47-year-old laborer, suffered a dizzy spell and fell eight feet into bilge piping, injuring his right leg and lower back. The Office of Workers' Compensation Programs accepted that appellant sustained a concussion, posterior cervical strain, lumbosacral strain and a right trochanteric contusion. Appellant thereafter returned to duty as a labor checker investigating fraud, waste and abuse.

On October 29, 1984 appellant fell while descending a ladder. The Office accepted that he sustained low back strain and a right hip contusion. Appellant was terminated from his employment in November 1984 and began to receive compensation benefits. Thereafter, the cases were doubled.

The Office referred appellant to a panel of specialists for a second opinion examination. By report dated August 13, 1985, Dr. John F. Burns, a Board-certified orthopedic surgeon, Dr. David W. Anderson, a Board-certified orthopedic surgeon, and Dr. Donald L. Stainsby, a Board-certified neurosurgeon, examined appellant, reviewed the medical records and testing results and reviewed the imaging results. This panel diagnosed: "Lumbar strain, by history, resolved; Contusion right hip, by history, resolved; low back pain and right hip pain, undetermined

etiology, possible non-physiologic; Minimal degenerative disc disease, lumbar spine, not related to injury, apparently on x-ray.” The panel noted as follows:

“We felt that this man’s clinical condition from his lumbar strain and right hip had improved and probably had reached maximum improvement at about three months post injury. We found that some of his physical findings were non-physiologic. We found that his physical findings and complaints were not suggestive nor diagnostic of any specific disease or injury. We did not feel that a lumbar myelogram was necessary nor that this particular entity represented a surgical disease.”

In an attached work restriction evaluation the panel opined that appellant could work eight hours per day with certain activity restrictions. On September 17, 1985 the Office medical adviser concurred with the findings of the panel.

By report dated February 12, 1987, Dr. Kenneth W. Eder, a Board-certified orthopedist and appellant’s treating physician, noted that he had been treating appellant since October 29, 1984, that appellant had been scheduled for possible surgery in June 1985, but that he did not show up twice for the diagnostic preoperative myelogram. Dr. Eder noted that appellant had uncontrolled diabetes and was still out of shape, out of condition and overweight. He noted inconsistencies in range of motion exercises and physical activities and that appellant had motion restrictions upon testing that Dr. Eder really could not explain. He also noted that all of appellant’s symptoms and reactions did not fit and he opined that it sounded like a little bit of overreacting. Dr. Eder opined that appellant’s residual impairment was “probably weakness,” that appellant had a very negative attitude and that he needed some help from the psychological/psychiatric side. Dr. Eder opined that appellant was not in condition to perform his preinjury job, but stated that he did not know what job he could do “without aggravating this condition, because he seems to hurt with just about everything he does here in the office.” Dr. Eder completed a work restriction evaluation and indicated that vocational rehabilitation might be needed.

The rehabilitation counselor noted that Dr. Eder indicated that appellant should start part time for work hardening and she provided him a copy of a file clerk position in accordance with Dr. Eder’s restrictions, which he approved as appropriate for appellant on September 3, 1987. However, appellant refused to participate in the proposed rehabilitation program, which brought the effort to a stop.

A December 22, 1987 physical capacity evaluation, was submitted which noted appellant’s functional capacities and activity limitations and which stated that, during the lifting phase of the evaluation, the examiner felt that there was some symptom magnification. The functional capacity recommendations were that appellant would most likely be able to return to an eight-hour job in a light sedentary duty position that allowed for periodic breaks. Work hardening was also recommended.

On March 21, 1988 appellant was examined by Dr. Robert Clawson, a Board-certified physical medicine and rehabilitation specialist, who noted his diagnoses as “vertebral hemangioma; L4-5 disc bulge with right sciatic pain,” and who, thereafter, recommended a

recondition program with lumbar flexibility and aerobic conditioning emphasized with progression as tolerated. On April 19, 1988 Dr. Clawson opined that he thought appellant could probably work at a desk although he had significant physical disability. He opined that appellant was certainly not a surgical candidate and that he would support a situation where appellant could return to work at a sedentary job. On June 5, 1989 Dr. Clawson noted that neurologically he could not find any specific muscle weakness in appellant's lower extremities when he could get him to persist in his efforts and he opined that appellant's cooperation was not optimal and that some of appellant's histrionics made it impossible to be sure what he could do or could not do. Dr. Clawson noted that appellant "should be able to walk on his toes and persisted in claiming he could not," that he could not explain that finding and felt that the problem appellant had was stable and that his condition should allow him to be able to do some kind of work. He also noted that there was no treatment indicated.

On April 3, 1991 the Office referred appellant for a current second opinion examination by a panel of physicians.

By report dated April 23, 1991, the panel of examining physicians, comprised of Dr. Harry S. Reese, a Board-certified orthopedist, Dr. Jacquelyn A. Weiss, a Board-certified neurologist, and Dr. George A. Henriksen, a Board-certified psychiatrist, indicated that their opinions and recommendations were based upon physical examination, review of testing and imaging results and review of the case record. The panel noted that appellant complained of bulging discs, leg nerve root damage, cardiac arrhythmia, a "herniated lower abdomen," marginally controlled diabetes, a hiatal hernia and asbestosis. It found invalid range of motion results upon orthopedic examination, inconsistent nonphysiologic responses on straight leg raising, positive Waddell's signs and inconsistent giveway weakness in the right lower extremity upon neurologic examination that did not correspond to an L5 nerve root distribution and nondermatomal sensory findings. The panel found that appellant's condition was stationary and permanent, that no further treatment was indicated and that there was no evidence of permanent impairment. The panel concluded that appellant's accepted employment-related conditions had resolved, that their examination did not reveal any significant objective findings of an orthopedic, neurologic or psychological nature and that based upon appellant's invalid range of motion and lack of objective neurological deficits, he had sustained no physical impairment as a result of his work-related injuries. The panel opined that appellant was not disabled from all work, but was capable of reasonably continuous gainful employment in a light-work capacity and that he had no psychiatric disorder causally related to his accepted employment injuries.

No further medical evidence supporting continued disability was submitted by appellant. No further development of the record or action upon the record was undertaken by the Office.

Appellant got married on September 17, 1996 and requested augmented compensation benefits.

By notice dated September 1, 1998, the Office proposed termination of appellant's compensation benefits, finding that the weight of the medical evidence supported that he had recovered from his accepted employment-related contusion and soft tissue muscle strain injuries.

Appellant objected to the proposed termination and in response he submitted some nursing progress notes, a lumbar spine magnetic resonance imaging report demonstrating disc herniations and spinal x-ray results revealing fairly severe degenerative changes in the lumbar spine. Also submitted was a 1985 CA-20 attending physician's report from Dr. Eder diagnosing a herniated disc at L4-5 to the right and central, with the date of injury noted as January 10, 1985 and "yes" checked to the question of causal relation. Electromyogram results without a discussion of causation were submitted, as were several reports omitting any explanation of causal relation of the conditions found. Merit System Protection Board material was additionally submitted.

By decision dated October 6, 1998, the Office finalized the termination of compensation effective November 7, 1998. The Office noted that there was no medical evidence submitted to establish that appellant's 1998 disc herniations were causally related to his 1982 or 1984 lumbosacral soft tissue muscle strain injuries.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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.² Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁴ In this case, the Office met its burden of proving that appellant no longer had disability or residuals, causally related to his accepted soft tissue contusion and muscle strain injuries.

The record in this case fails to support that appellant was totally disabled for all work beginning as early as August 13, 1985, when the examining panel found no injury residuals causally related to his accepted employment soft tissue injuries and found that appellant could work an eight-hour day. That same year appellant's physician, Dr. Eder, was speculative regarding the presence of any injury residuals and indicated that vocational rehabilitation and work hardening was needed. A physical capacity evaluation done in 1987 revealed that appellant could work eight hours per day in a light sedentary capacity. In 1988 and 1989 Dr. Clawson opined that appellant could probably work at a desk in a sedentary capacity and indicated that no further treatment was indicated. Thereafter, in 1991 another second opinion panel was convened and it determined that appellant's accepted employment injuries had

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁴ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

resolved, that he had no injury-related residuals and that he needed no further treatment. It additionally indicated that appellant could perform gainful employment in a light-work capacity.

As there is no medical evidence subsequent to 1985 that supports that appellant's accepted conditions of contusions and soft tissue muscle strain injuries persisted and as there is no medical evidence which supports continued disability or injury-related residuals, the weight of the medical evidence of record and indeed the virtual totality of the medical evidence of record, establishes that appellant's accepted employment-related injuries have resolved without residuals and that he can return to some type of gainful employment. Accordingly, the Office met its burden of proof to terminate monetary compensation benefits and medical benefits.

Consequently, the decision of the Office of Workers' Compensation Programs dated October 6, 1998 is hereby affirmed.

Dated, Washington, D.C.
October 6, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member