

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD CONLON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HOSPITAL, Montrose, NY

*Docket No. 98-77; Submitted on the Record;
Issued September 10, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation benefits on June 24, 1996.

Appellant filed a claim alleging that on December 19, 1993 he injured his right hip, knee and head in the performance of duty. The Office accepted appellant's claim for muscle contusion and lumbosacral strain/sprain. The Office later accepted the additional condition of herniated disc and effusion right knee. Appellant filed a notice of recurrence of disability alleging on June 28, 1994 he sustained a recurrence of total disability due to his accepted employment injury. The Office accepted this claim and entered appellant on the periodic rolls. The Office proposed to terminate appellant's compensation benefits on May 22, 1996. By decision dated June 24, 1996, the Office terminated appellant's compensation benefits. Appellant requested reconsideration on June 2, 1997 and by decision dated September 4, 1997, the Office denied modification of its June 24, 1996 decision.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify 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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

Appellant's attending physician, Dr. Prem Nath, a Board-certified surgeon, completed a series of form reports diagnosing herniated disc and indicating with a checkmark "yes" that appellant's condition was due to his employment injury. Dr. Nath completed two narrative reports noting appellant's history of injury and diagnosing foot drop with L5 radiculopathy. On June 10, 1996 he stated that appellant's herniated disc was directly caused by the work-related accident of December 19, 1993.

In this case, the Office terminated appellant's compensation benefits based on the report of Dr. John Mazzella, a second opinion physician and a Board-certified orthopedic surgeon. In a report dated September 13, 1995, Dr. Mazzella, noted appellant's history of injury and medical history. He diagnosed low back syndrome with preexisting osteoarthritis and Grade II spondylolisthesis and disc herniation at L5-S1. Dr. Mazzella opined that the December 19, 1993 employment injury caused a temporary aggravation of appellant's underlying conditions of osteoarthritis and degenerative disc disease. He stated that appellant's current difficulties were no longer related to the December 19, 1993 incident but to the progression of the underlying degenerative process. Dr. Mazzella stated that appellant had reached maximum medical improvement due to his accepted employment injury and that he was partially disabled due to his preexisting conditions.

The Board finds that Dr. Mazzella's September 13, 1995 report, is not sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits. Although Dr. Mazzella opined that appellant's current symptoms and disability were due to his underlying conditions of osteoarthritis, spondylolisthesis and disc herniation, he did not offer any medical reasoning in support of his opinion. Dr. Mazzella did not address why he concluded that appellant's herniated disc was due to his underlying conditions rather than the accepted employment injury. Reasoning in support of this opinion is necessary to meet the Office's burden of proof as appellant has sought continued medical treatment since his June 1994 recurrence and as appellant's attending physician continued to support that appellant's disc herniation was due to the accepted employment injury and was responsible for appellant's continued disability and as the Office accepted herniated disc as causally related to appellant's employment injury.

⁴ *Id.*

The decision of the Office of Workers' Compensation Programs dated September 4, 1997 is hereby reversed.

Dated, Washington, D.C.
September 10, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member