

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM J. SCOTT and DEPARTMENT OF THE AIR FORCE,
LUKE AIR FORCE BASE, AZ

*Docket No. 98-2638; Submitted on the Record;
Issued August 24, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation.

On February 14, 1985 appellant, then a 53-year-old supervisory operating accountant, filed a claim alleging that on February 11, 1985 he fell off a chair and sustained injuries to his back. Appellant's condition was accepted for contusion of back and buttocks, aggravation of neurogenic bladder and aggravation of preexisting ankylosing spondylitis. Appellant stopped working on the date of injury and did not return and compensation benefits were paid.

The Board notes that appellant was in a prework injury motor vehicle accident in December 1981, which resulted in a cerebral contusion, right basilar skull fracture, right scapular fracture and compression fractures of T4-5 and T5-6 and for which appellant underwent spinal fusion on January 6, 1982.

By letters dated April 28, 1997, the Office referred appellant to Dr. Terry C. Sawchuk, a Board-certified orthopedist and Dr. David Kimball, a Board-certified urologist, for second opinion evaluations.

In a medical report dated May 12, 1997, Dr. Sawchuk diagnosed appellant as suffering from chronic mechanical lower back pain syndrome, lumbar degenerative disc disease, thoracic pain syndrome, thoracic degenerative disc disease, status post-thoracic vertebral body fracture with surgical fusion in January 1982 and diffuse idiopathic skeletal hyperostosis. It was Dr. Sawchuk's opinion that there were no current objective findings of active and/or disabling residuals related to the back condition that occurred on February 11, 1985. Dr. Sawchuk stated that, although appellant's actual subjective complaints "may outweigh the objective findings," appellant did have "extensive multi-level spinal changes affecting both the thoracic and lumbar spines and I do believe that the patient suffers from a significant degree of discomfort." Dr. Sawchuk opined that, appellant reached maximum medical improvement with regards to the

injury sustained on February 11, 1985. Although Dr. Sawchuk believed that appellant was disabled from his previous work as a supervisory operating accountant, he did not believe that this was specifically related to the accident of February 1985. He continued:

“The patient has now been out of work for greater than 12 years and I am sure from an emotional and mental standpoint, we would be unlikely to be successful in any attempts to return him to this type of work. He is not totally disabled from all work but gainful employment is going to be extremely difficult for him to obtain and in fact probably not possible.”

“As I have indicated above, I believe that this is primarily related to other conditions and is not directly attributable to the work-related accident. These other conditions, in my mind, would represent his current age, previous injuries, the extent of his current disability and absence from work, now at greater than 12 years.”

Dr. Sawchuk opined that appellant was “capable of lifting no greater than 20 pounds on an occasional or rare basis, perhaps 3 to 4 times per day. It is my opinion he would be capable of lifting approximately 10 pounds up to 10 times per hour.”

In a medical report dated May 22, 1997, Dr. Kimball noted that, at this time, appellant was “having very mild urgency urinary incontinence” and also had “some nocturia one or two times per night, which could be age related.” Dr. Kimball did not believe that either of the problems were significant as far as returning him to work, except for some urgency and if he is able to work close to a bathroom or someplace he could eliminate his bladder there should be no significant problem. He did believe that his orthopedic problems might be somewhat more restrictive. In response to the specific questions from the Office, Dr. Kimball responded in a medical report dated July 7, 1997 that he did not see how appellant’s minor problems with both impotence and his bladder would affect his ability to work. He stated that there was no way to tell if these problems preceded his fall from the chair or whether it was secondary to the accident.

On August 25, 1997 the Office issued a proposed notice of termination of compensation based on the weight of medical evidence, which support work-related disability as a result of the injury of February 11, 1985. The Office noted that there were no current medical reports with objective findings of active and disabling residuals resulting from the work injury of February 11, 1985. The Office noted, “[g]iven Dr. Sawchuk’s and Dr. Kimball’s thorough examination of you and the medical records supporting their conclusions, their reports represent the weight of the medical evidence concerning continuing injury-related disability.” The Office noted that, if appellant disagreed with the proposed termination, he might submit additional evidence or argument.

By decision dated September 29, 1997, the Office terminated appellant’s compensation, noting that he had not submitted additional evidence, which would establish the existence of disabling residuals resulting from the employment injury of February 11, 1985.

At appellant's request, a hearing was held on April 22, 1998. Appellant testified that, since the 1985 accident, his pain has been excruciating and described how the work injury affected his everyday life. His wife testified that since 1985 appellant's back condition has deteriorated rapidly.

After the hearing appellant submitted a May 6, 1998 opinion by Dr. Brent A. Felix, an orthopedic surgeon, who stated that it was his opinion that appellant's condition was aggravated by his fall in 1985, although he noted that he did not evaluate him at that time and had to rely on old records. Dr. Felix did not believe that the injuries, which were sustained in February 11, 1985, had resolved.

By decision dated June 4, 1998, the hearing representative affirmed the termination of benefits. The hearing representative noted that the Office did not dispute that appellant continued to have a disability, merely that there were no objective findings on examination to support that appellant had disabling residuals of the 1985 work injury. The hearing representative found that as the opinions of Drs. Sawchuk and Kimball were well rationalized, and that appellant had not submitted any contemporaneous medical evidence, which refutes these opinions, the proposed termination of compensation was affirmed.

The Board finds that the Office met its burden of proof in terminating 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 disability has ceased or that it is no longer related to the employment.¹ Thus, the burden of proof is on the Office rather than the employee with respect to the period subsequent to the date when compensation is terminated or modified.²

As the Office already accepted this claim for contusion of the back and buttocks, aggravation of neurogenic bladder and aggravation of preexisting ankylosing spondylitis and as compensation benefits were already paid, it was the burden of the Office to establish that appellant was no longer entitled to compensation benefits. The Office, relying on the opinions of Drs. Sawchuk and Kimball, met this burden.

Dr. Sawchuk noted that there were no objective findings of active or disabling residuals related to the back condition, which occurred on February 11, 1985. Although Dr. Sawchuk noted that appellant's subjective complaints may outweigh the objective findings, he opined that any remaining disability was not directly attributable to the work accident, but was instead attributable to various nonemployment factors. Dr. Kimball opined that the neurological conditions were minimal and not disabling. The Office, by way of its August 25, 1997 proposed notice of termination, gave appellant the opportunity to submit further medical evidence, but appellant failed to do so. After the hearing, appellant submitted a medical report by Dr. Felix,

¹ *Beverly J. Duffey*, 48 ECAB 569 (1997).

² *Eddie Franklin*, 51 ECAB __ (Docket No. 98-1240, issued December 14, 1999).

but this report did not offer any significant new information. Although Dr. Felix opined that appellant's February 11, 1985 injuries had not resolved, he basically relied upon old records in forming this opinion and, therefore, his opinion is entitled to diminished weight. Accordingly, the Office properly terminated appellant's benefits.

The decisions of the Office of Workers' Compensation Programs dated June 4, 1998 and September 19, 1997 are hereby affirmed.

Dated, Washington, D.C.
August 24, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member