

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH D. BAILEY and GENERAL SERVICES ADMINISTRATION,
PUBLIC BUILDINGS SERVICE, Columbus, OH

*Docket No. 97-2865; Submitted on the Record;
Issued January 12, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of August 23, 1996.

On June 19, 1984 appellant, a 28-year-old heating vent and air conditioner repairman, injured his left ankle while unloading a semi-trailer. Appellant filed a claim for benefits, which the Office accepted for left ankle strain, left knee strain and subsequent left knee surgery. The Office paid appellant compensation for appropriate periods and placed appellant on the periodic rolls.

On January 11, 1994 Dr. James P. Hsu, a Board-certified orthopedic surgeon, examined appellant and completed a work restriction evaluation form in which he opined that appellant was capable of working an eight-hour day. Dr. Hsu outlined physical restrictions for appellant of intermittent walking, lifting, bending and standing for eight hours, intermittent kneeling and twisting for one hour per day and prohibited him entirely from jobs involving squatting, climbing and standing.

In a memorandum dated December 28, 1995, the Office noted that it had not received a medical report updating appellant's current condition since Dr. Hsu's January 1994 work restriction evaluation. In order to determine appellant's current condition and determine whether he still suffered residuals from his June 19, 1984 employment injury, the Office scheduled a second opinion medical examination with Dr. Bernard B. Bacevich, a Board-certified orthopedic surgeon.

Appellant subsequently submitted a February 27, 1996 opinion from Dr. Howard J. Bellin, an osteopath, who stated that his examination of appellant on February 16, 1996 revealed persistent pain and immobility of the left knee and ankle. He further stated that his examination had revealed limited flexion extension of the ankle and some instability of the knee. Dr. Bellin

opined that appellant's impairment was permanent and that he would not be able to return to his job as a mechanic.

In a report dated March 21, 1996, Dr. Bacevich reviewed appellant's medical records and a statement of accepted facts and indicated findings on examination, which took place on March 21, 1996. He stated:

"In summary, the current objective findings in the left ankle are mild restriction of dorsiflexion and loss of any inversion action in the hindfoot. There is no evidence of any instability of the ankle. There are no current objective findings in the left knee, except for minor decrease in the circumference of the thigh of only ¼ inch. Based on the fact that he historically has had recurrent buckling of his left knee, I would feel that he is unable to perform the duty of a maintenance mechanic as it would be unsafe for him to work from height or do climbing or to be working around moving machinery. He is certainly capable of many other types of gainful, sustained, remunerative employment. I see no limitations in relationship to his left ankle. At this point in time, the only treatment would be continuation with a home exercise program with strengthening to his left knee. The activities I would limit are climbing, working from heights, or sudden twisting, turning maneuvers to his left knee. I see no reason why this man cannot work an eight-hour day."

In a supplemental report dated April 8, 1996, Dr. Bacevich stated:

"[Appellant] has only two mild residuals from his injury of June [18], 1984. One is minimal atrophy as compared to the opposite side. This minimal type of atrophy usually does not cause recurrent buckling or giving out of the lower extremity. I cannot objectively explain the subjective complaints that he has of recurrent buckling of his left leg. I find no evidence of any internal derangement or mechanical disorder within the joint to explain this and with this minimal amount of atrophy, one would not expect to have buckling of the leg. The minimal difference in motion in the left ankle would not cause any clinical problems.

"It is my opinion that he is unable to return to a maintenance mechanic is purely based upon his subjective symptoms of recurrent buckling of his left lower extremity. I have not clinically observed this buckling to be able to document it. My opinion is only based upon the history given to me by [appellant] that his leg buckles. If this would be the case, I feel it would [be] unsafe for him to be working around machinery or working from various heights. However, again, I cannot substantiate this buckling on an objective basis."

In a notice of proposed termination dated June 28, 1996, the Office, based on Dr. Bacevich's opinion, found that the weight of the medical evidence demonstrated appellant no longer had any residuals from the June 19, 1984 employment injury. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. Appellant did not respond to this request within 30 days.

In a letter to Dr. Bacevich dated August 13, 1996, the Office requested his opinion as to whether appellant was currently capable of performing his date-of-injury job as a maintenance mechanic in light of his current physical condition and restrictions. Accompanying the letter was a job description of the maintenance mechanic job. In a report dated August 16, 1996, Dr. Bacevich stated that he had reviewed the job description of maintenance mechanic and determined that appellant did not have objective findings which would preclude him from performing the job and that he was capable of performing the duties of the job.

By decision dated August 23, 1996, the Office terminated appellant's compensation effective August 26, 1996.

By letter dated September 20, 1996, appellant's attorney requested an oral hearing, which was held on May 22, 1997. In support of his request, appellant submitted an August 30, 1996 report from Dr. Thomas E. Anderson, a Board-certified orthopedic surgeon, who advised that appellant was becoming increasingly more symptomatic with the arthritis in his knee and would gradually worsen to the point where he would require surgery. He stated that appellant's ankle symptoms were probably due to scar tissue in the anterolateral aspect of the ankle, but that he was unlikely to experience any significant progression. Dr. Anderson stated:

"I agree with some of the other notes that he brought with him where he has seen outside physicians for a second opinion regarding his government disability. I indeed agree with those opinions that his knee will not be able to tolerate any manual labor. Work activities where he is on his feet a lot, will be very symptomatic for him. He should be looking for a job where his training would have him be in a very sedentary occupation. Arthritic symptoms, however, also do not allow him to work on an assembly line sitting, because the intermittent movement of his joints seems to lessen his discomfort considerably. Therefore, a job where he can move his legs freely when he wants to go as well as intermittently getting up and walking across the room are really most amenable for the type of problem he is having. I do agree that if he has a sedentary job that he can work at this eight hours a day, but would need appropriate retraining."

By decision dated August 5, 1997, an Office hearing representative affirmed the previous decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

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

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

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

In the present case, the Office based its August 23, 1996 decision to terminate appellant's compensation on the medical reports of Dr. Bacevich, which represented the weight of the medical evidence in this case. Dr. Bacevich stated in his March 21, 1996 report that there were no objective findings regarding his left knee or ankle to preclude him from returning to gainful employment at an eight-hour workday, although he advised that appellant should not perform the duty of a maintenance mechanic, his preinjury job, as it would be unsafe for him to work at heights, engage in climbing, or to be working around moving machinery. In his April 8, 1996 report, Dr. Bacevich stated that there were no residuals from his June 18, 1984 work injury preventing from returning to full-time work and opined that appellant's inability to return to his job as a maintenance mechanic was entirely based on his subjective symptoms of recurrent buckling of his left lower extremity. He indicated that he had not clinically observed this buckling to be able to document it, that he was unable to substantiate this alleged buckling on an objective basis and that his opinion was only based on the history provided to him by appellant. Finally, when provided by the Office with a job description of the maintenance mechanic position, Dr. Bacevich stated that he had reviewed the job description and opined that appellant had no objective findings precluding him from performing the job.³ The Office properly relied on Dr. Bacevich's opinion in terminating appellant's compensation, as it constitutes the only probative, rationalized medical opinion in the record regarding whether appellant had residuals from his accepted conditions and whether he could return to full-time employment.

The only medical evidence appellant submitted consisted of the reports from Drs. Bellin and Anderson. Dr. Bellin's February 27, 1996 report does not constitute sufficient medical evidence to demonstrate that appellant still had residuals from his accepted conditions and that he remained unable to return to full-time employment. Although Dr. Bellin noted appellant's complaints of persistent pain and indicated findings on examination of immobility of the left knee and ankle with limited flexion-extension of the ankle and some instability of the knee, his opinion is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.⁴ Moreover, his opinion is of limited probative value for the further

² *Id.*

³ The position description for this job, as of August 14, 1979, states that the "position is responsible for the operation, maintenance, repair and control of the mechanical equipment required to provide heating, ventilation and air conditioning and utility services to facilitate the operation of four government buildings in Columbus, Ohio." The scope of the work included "the complete operation and repair of the various types of steam boilers, fired with natural gas or oil, with the related boiler room equipment such as boiler feed water pumps, vacuum pumps, feed water heaters, condensate return tanks and pumps, damper controls, high and low water alarm systems and steam reducing valves. Checks gauges and instruments for indications of proper or improper operating condition of air conditioning, heating and ventilating system." Working conditions for the maintenance mechanic job were described as "work is performed both in boiler rooms and out of doors. Incumbent is exposed to high temperatures, moving machinery, elevated positions on cooling towers, heat, cold, dirt, dust, caustics and acids, fumes from refrigerants, danger of electrical shock, cuts, bruises, abrasions and possible falls. Work of necessity is performed in confined areas which subjects employee to abnormal conditions of heat and cold."

⁴ *William C. Thomas*, 45 ECAB 591 (1994).

reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's impairment was permanent and that he would not be able to return to his job as a mechanic.

Dr. Anderson, in his August 30, 1996 report, indicated that appellant was having increasing problems with arthritis in his knee and stated that appellant's ankle problems were not likely to get any worse. He also stated that appellant's knee would have some difficulty tolerating jobs which involve manual labor and remaining on his feet for prolonged periods and recommended that appellant obtain employment in a sedentary job in which he could move his legs freely and alternate sitting and walking intermittently. Dr. Anderson, however, failed to provide a rationalized medical opinion which specifically indicated whether or not appellant's accepted medical conditions had resolved.

The Board holds that the Office properly found that appellant no longer had any residuals from his June 19, 1984 employment injury and was able to return to full-time employment with the employing establishment based on Dr. Bacevich's probative, well-rationalized referral opinion, which represented the weight of the medical evidence in this case. The Board, therefore, affirms the Office's August 5, 1997 decision affirming the August 26, 1996 termination decision.

The decision of the Office of Workers' Compensation Programs dated August 5, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 12, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member