

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICEA LUIS and DEPARTMENT OF THE ARMY,
WEST POINT MILITARY ACADEMY, West Point, NY

*Docket No. 99-1298; Submitted on the Record;
Issued January 19, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's medical benefits effective July 7, 1998 and appellant's compensation benefits effective July 18, 1998.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's medical benefits effective July 7, 1998 and appellant's compensation benefits effective July 18, 1998.

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

On April 17, 1975 appellant, then a 38-year-old food service worker, filed a claim for injuries to his back sustained on March 27, 1975 when he twisted his back as a result of a slip and fall. The Office accepted the claim for lumbosacral sprain/strain and herniated disc L5-S1

¹ *Lawrence D. Price*, 47 ECAB 120 (1995).

² *Id.*

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

⁴ *Id.*

and authorized a disc removal June 22, 1976. The Office paid compensation after continuation of pay had ended.

The most recent evidence, a July 10, 1997 OWCP-5 form from appellant's treating physician, Dr. Han Ki Sim, a Board-certified physiatrist, indicated that appellant could work two to three hours per day with restrictions and that dampness and cold weather affected appellant. On April 13, 1998 the Office referred appellant, a statement of accepted facts and a list of specific questions to Dr. Mary T. Godesky, a Board-certified orthopedic surgeon, for a complete medical evaluation. In a report dated April 13, 1998, Dr. Godesky summarized the results of her examination along with the diagnostic studies and medical evidence of record. Dr. Godesky concluded that, based on her examination and review of available medical documentation, appellant was status post back surgery of 20+ years ago. She indicated that there was no evidence of radiculopathy on examination and that there appears to be an exaggeration of symptoms not supported by the objective physical findings. Dr. Godesky opined, from an orthopedic standpoint, that appellant had recovered from the work incident of March 27, 1975. She indicated that appellant was capable of performing his former food service job and that no further orthopedic treatment was needed.

Based on the medical evidence of record, the Office proposed to terminate appellant's compensation benefits on May 18, 1998. The Office allowed appellant 30 days to submit additional evidence or argument. Appellant responded on June 9, 1998 and submitted additional medical evidence. Medical progress notes from 1987 through 1996 were submitted. A May 8, 1998 OWCP-5 form from Dr. Sim indicated that appellant could work two to three hours with restrictions and that dampness and cold weather affected appellant. In a June 4, 1998 letter, Dr. Sim provided a description of appellant's work injury and the treatments provided. Dr. Sim indicated that, since appellant underwent a lumbar laminectomy in 1976, he has been suffering from chronic low back pain with on/off acute exacerbation. He has been having minimal neurologic deficit with good muscle strength, reflexes and sensation. However, when his pain comes back, he can hardly move his back without severe muscle spasm, severe limited mobility, straightened lordotic curve associated with giveaway weakness, difficult to sleep and walk. Dr. Sim related that, analgesic, TENS unit and exercise program help subside the pain. He reported that the x-ray of the LS spine in 1986 was reported to be normal. Dr. Sim diagnosed postlaminectomy syndrome, probable arachnoiditis with on/off acute exacerbation of pain. Recurrent central hernia was ruled out. In accessing appellant's disability status, Dr. Sim stated that there was an on/off acute exacerbation of low back pain associated with functional impairment with limited physical activities. He indicated that appellant was totally disabled for any type of job involving heavy lifting, prolonged ambulation, pushing/pulling and frequent bending and stair walking as he would have poor tolerance.

In a June 8, 1998 report, Dr. Margaret M. Cioffi, a psychiatrist, indicated that appellant had been in her care at the mental hygiene clinic. She indicated that from appellant's chart, it appears that appellant has developed chronic back pain with intermittent disability. She indicated that his disability can happen at any time; *i.e.*, in taking a shower or while trying to drive a car. Dr. Cioffi indicated that appellant was anxious and depressed and that he was under medication.

By decision dated July 7, 1998, the Office terminated appellant's medical benefits effective the same date and appellant's compensation benefits effective July 18, 1998.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. As Dr. Sim, appellant's treating physician, had submitted reports to the record for many years indicating that appellant was totally disabled due to subjective complaints, and as she had not identified any objective findings substituting continuation of the accepted conditions of lumbosacral strain and herniated disc or offered any medical rationale explaining how appellant's continuing symptoms were causally related to the accepted injury, the Office properly referred appellant to Dr. Godesky for a second opinion evaluation. He reviewed the entire medical record, examined appellant and thereafter concluded that appellant had no evidence of radiculopathy and there was no objective physical findings of any orthopedic disability. As Dr. Sim's OWCP-5 form reports only indicated that appellant could work a couple hours a day with limitations, the Office properly concluded that these form reports were of little probative value as they offered no medical explanation as to whether appellant had residuals of the accepted medical conditions causing continued disability and failed to provide any diagnoses.

The Office also properly concluded that the additional evidence appellant submitted was of little probative value. The progress notes written between 1987 and 1996 have no bearing on whether appellant is currently entitled to compensation and medical benefits due to his accepted employment injury. Likewise, Dr. Cioffi's June 8, 1998 report is of little probative value as she did not make a connection between appellant's reported inability to work, his anxiety and depression, and appellant's accepted conditions. Although Dr. Sim's June 5, 1998 report provides a history of injury and recites appellant's complaints of pain, the physician, herself, notes that there is a lack of objective physical findings in her statement that appellant has been having "minimal neurologic deficit with good muscle strength, reflexes and sensation." Although Dr. Sim's opined that appellant remained totally disabled, no explanation was offered as to how and why appellant's on/off acute exacerbation of low back pain was related to the accepted conditions or how appellant's reported inability to work was causally related. Moreover, Dr. Sim's opinion was not supported by objective physical findings.

Under the circumstances of this case, the Office properly determined that Dr. Godesky's report, which was based upon a proper factual background and was well rationalized, constituted the weight of the medical evidence. The Board has held that in assessing medical opinion evidence, the weight to be accorded such medical evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are factors which enter into this evaluation.⁵ The Office therefore met its burden of proof to terminate appellant's compensation benefits on the grounds that Dr. Godesky's report constituted the weight of the medical evidence.

⁵ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

The decision of the Office of Workers' Compensation Programs dated July 7, 1998 is hereby affirmed.

Dated, Washington, D.C.
January 19, 2000

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member