

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GILBERT V. FLORES and DEFENSE LOGISTICS AGENCY,
ADMINISTRATIVE SUPPORT CENTER WEST, Stockton, CA

*Docket No. 99-1823; Submitted on the Record;
Issued January 4, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant had disability on or after June 23, 1996 due to his October 24, 1995 employment injury.

The Board finds that appellant did not have disability on or after June 23, 1996 due to his October 24, 1995 employment injury.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.³ Once the Office of Workers' Compensation Programs has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

In the present case, the Office accepted that appellant, a warehouseman, sustained a low back strain at work on October 24, 1995. By decision dated June 4, 1996, the Office terminated appellant's compensation effective June 23, 1996 on the grounds that he had no disability due to his October 24, 1995 employment injury after that date. The Office based its termination on the opinion of Dr. David A. Roberts, a Board-certified orthopedic surgeon, to whom it referred appellant. By decision dated February 8, 1999, the Office denied modification of its June 4, 1996 decision.

The Board notes that the Office met its burden of proof to terminate appellant's compensation effective June 23, 1996 by determining that the weight of the medical evidence rested with the well-rationalized opinion of the Office referral physician, Dr. Roberts. The Board has carefully reviewed the March 18, 1996 report of Dr. Roberts and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Roberts' opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Roberts provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁷ Dr. Roberts provided medical rationale for his opinion by explaining that appellant did not exhibit any objective evidence of the low back strain which had resolved itself. He noted that appellant's continuing symptoms could be explained by his preexisting degenerative disc disease.⁸

After the Office's June 4, 1996 decision terminating appellant's compensation effective June 23, 1996, appellant submitted additional medical evidence which he felt showed that he was entitled to compensation after June 23, 1996 due to residuals of his October 24, 1995 employment injury. Given that the Board has found that the Office properly relied on the opinion of the Office referral physician, Dr. Roberts, in terminating appellant's compensation effective June 23, 1996, the burden shifts to appellant to establish that he is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that he had residuals of his October 24, 1995 employment injury after June 23, 1996.

In support of his reconsideration request, appellant submitted a November 25, 1996 report, in which Dr. Valdez described his back condition and suggested that he continued to have disability due to an HNP at L4-5 sustained on October 24, 1995. However, Dr. Valdez did not provide any medical rationale for his opinion that appellant sustained an employment-related

⁷ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁸ In reports dated May 20 and June 3, 1996, Dr. Daniel C. Valdez, an attending Board-certified orthopedic surgeon, had indicated that appellant continued to have disability due to an employment-related herniated nucleus pulposus (HNP) at L4-5. However, it has not been accepted that appellant sustained an HNP at L4-5 on October 24, 1995 and Dr. Valdez did not provide sufficient medical rationale in support of his opinion to establish such a finding; see *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

HNP and he did not otherwise provide a well-rationalized opinion that appellant had continuing disability due to the employment-related low back strain of October 24, 1995.

The decision of the Office of Workers' Compensation Programs dated February 8, 1999 is affirmed.

Dated, Washington, D.C.
January 4, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member