

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SYLVESTER CASIMIER, JR. and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 98-870; Submitted on the Record;
Issued July 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation benefits effective September 17, 1991; and (2) whether the Office properly determined that appellant failed to establish that he sustained an emotional condition causally related to his August 31, 1988 work injury.

This case was previously before the Board. In a decision dated August 12, 1997, the Board remanded the case for further development by the Office. The August 12, 1997 decision also sets forth the facts of the case and is incorporated by reference herein to supplement this decision.¹

On August 31, 1988 appellant, then a 41-year-old clerk, was injured at work when he fell off a chair and hit his head.² The Office accepted the claim for contusions of the head, right shoulder, right elbow and neck. Appellant received continuation of pay and compensation for total disability until he returned to part-time, limited duty on May 5, 1990. From May 5, 1990 to September 17, 1991, the Office paid appellant compensation for partial disability, representing four hours of wage loss per day.

Appellant initially sought treatment for his work injury at Hotel Dieu Hospital, where he came under the care of Dr. Roy Marrero, an orthopedist, for treatment of a cervical spine sprain and right lateral epicondylitis. Appellant was also treated by Dr. Joseph M. Epps, a Board-certified neurologist. In a January 6, 1989 report, Dr. Epps advised that a magnetic resonance imaging (MRI) scan revealed a herniation at C5-6 with compression of the spinal cord and the

¹ Docket No. 95-1104 (August 12, 1997).

² Appellant sustained a series of work-related injuries to his right arm resulting in bursitis. At the time of appellant's August 31, 1988 injury, he was on light duty with lifting and reaching restrictions associated with his right arm condition. Appellant indicated on his August 31, 1998 CA-1 form that he became dizzy on the medication he used for his arm and fell off his chair at work.

left nerve. Under Dr. Epps' direction, appellant underwent a course of physical therapy and steroid injections.

In a report dated August 29, 1989, Dr. Robert A. Steiner, a Board-certified orthopedic surgeon and Office referral physician, noted appellant's work injury and his complaints of neck and left arm pain. Dr. Steiner opined that appellant had "probable preexisting degenerative cervical disc condition at C5-6 which may or may not have been aggravated by his work injury." He thought it would be advantageous to review x-rays obtained at the time of injury from the Hotel Dieu Hospital. Dr. Steiner opined that appellant could probably work eight hours of restricted duty per day.

On January 5, 1990 Dr. Epps reviewed a job description of a position entitled "modified distribution clerk." He stated that appellant could perform the duties required of the job.³ Appellant eventually accepted a job offer for the modified distribution clerk position with the agreement that he have a two-week adjustment period to increase his hours from four to eight hours per week from May 5 to 18, 1990.

After the two-week adjustment period, however, appellant claimed that he could not work full time and filed Forms CA-8, claiming four hours per day of compensation.

In an unsigned report dated March 29, 1990, it was noted that appellant was treated for depression related to his fear of returning to work and sustaining future injuries.

In a report from Dr. Epps dated June 27, 1990, he reported that appellant could only work part time due to increased symptoms of headache and neck aches. He further diagnosed radiculopathy secondary to degenerative disc disease.

On October 2, 1990 the Office rejected appellant's claim for continuing compensation based on partial disability.

Appellant requested a hearing, which was held on March 18, 1991. In a decision dated July 17, 1991, an Office hearing representative remanded the claim for further medical development.

On remand, the Office referred appellant for an examination with Dr. George N. Bryam, Jr., a Board-certified orthopedist, who was to ascertain whether appellant was able to work full time, eight hours per day and whether appellant had a preexisting cervical condition, which was aggravated by his work injury. In a report dated September 17, 1991, he reviewed the medical record and noted physical and objective findings. Dr. Bryam opined that there was no evidence of any neurological or significant structural damage to the neck and no orthopedic reason why appellant could not perform his regular duties on a full-time basis. He also opined that there was "no evidence of a preexisting cervical condition" and that the cervical condition was not aggravated by appellant's August 31, 1988 work injury.

³ Dr. Epps ordered that appellant have an MRI prior to returning to work. An MRI scan dated February 8, 1990 revealed only minimal protrusion of the C5-6 disc and was noted as showing less protrusion than the December 1988 scan.

In a decision dated March 4, 1992, the Office found that the medical evidence failed to support disability beyond September 17, 1991, the date of Dr. Bryam's second opinion report and terminated benefits. Appellant received partial disability compensation for the period July 3, 1990 through September 17, 1991.

Appellant thereafter requested a review of the written record.

In a decision dated July 2, 1992, an Office hearing representative vacated the Office's March 4, 1992 decision. The Office hearing representative noted that a conflict existed in the record between appellant's treating physician, Dr. Epps and the Office referral physician, Dr. Bryam, as to whether he could work an eight-hour shift. The Office was directed on remand to prepare a complete statement of accepted facts that more fully outlined appellant's light-duty requirements. The Office was further directed to address appellant's contention that he developed an emotional condition as a result of his work injury.

On August 24, 1992 the Office referred appellant to Dr. James T. Williams, a Board-certified orthopedist, for an impartial medical evaluation.

In a report dated September 21, 1992, Dr. Williams noted appellant's work injury, x-ray evidence and physical findings. He opined that appellant had x-ray evidence of degenerative cervical disc disease that appeared to be long-standing and was probably present prior to the August 31, 1988 work injury. Dr. Williams noted that appellant should continue on medication for his herniated disc. He further stated that he saw "no orthopedic reason why appellant should not be able to work in any capacity, which did not require frequent or heavy lifting, bending, climbing or working with his arms overhead."

Dr. Williams prepared a work restriction evaluation on September 29, 1992 noting that appellant could work an eight-hour shift with limited standing up to four hours per day and sitting and walking no more than six hours per day.

The Office also referred appellant for a psychiatric evaluation with Dr. Beatrice M. Groene, a Board-certified psychiatrist, based on his complaints of anxiety and depression. Dr. Groene noted that appellant felt harassed by supervisor and coworkers who accused him of not wanting to work. She diagnosed dysthymic disorder and possible somatoform pain disorder, but indicated that it was impossible to say whether the August 1988 work injury caused those conditions as they are fairly common and rarely disabling. Dr. Groene further diagnosed that appellant suffered from depression possibly brought on by anti-hypertensive medication. She opined that appellant probably could work eight hours per day but stated that "[appellant] truly believes himself disabled, he is not likely to have full[-]time work hours as a priority and is not likely to work toward that end."

In a decision dated January 11, 1993, the Office again terminated appellant's compensation effective September 17, 1991.

In a decision dated July 6, 1993, an Office hearing representative set aside the Office's January 11, 1993 decision. The Office was directed to revise the statement of accepted facts such that it explained appellant's actual work tasks on and prior to August 31, 1988 and those

work tasks required by appellant's limited-duty position on or after May 5, 1990. The Office hearing representative ordered the Office to obtain the medical record and x-rays taken at Hotel Dieu Hospital on August 31, 1988 and to send those along with a revised statement of accepted facts to Dr. Williams for a supplemental opinion.

By letter dated August 12, 1993, the Office requested that appellant provide medical records and x-rays dated August 31, 1988 from the Hotel Dieu Hospital, but appellant did not respond to the request.

In a decision dated September 13, 1993, the Office terminated appellant's compensation effective September 17, 1991. The Office noted that the medical records and x-rays from Hotel Dieu Hospital were requested from appellant, but were not received. The Office declined to amend the statement of accepted facts and did not obtain a supplemental report from Dr. Williams as directed by the Office hearing representative.

By letter dated July 18, 1994, appellant requested reconsideration but the Office denied modification on September 30, 1994. Appellant filed a second reconsideration request that was also denied on November 28, 1994.

Appellant subsequently filed an application for review with the Board.

The Board issued a decision on August 12, 1997 that vacated the Office's September 13, 1993 decision. The Board specifically noted that the Office failed to follow the directives of the Office hearing representative.⁴

On remand, the Office prepared a revised statement of accepted facts outlining appellant's work duties as directed by the Board.

By letter dated September 23, 1997, the Office requested that Dr. Williams prepare a report that addressed the nature and extent of appellant's disability from work.

In a report dated November 17, 1997, Dr. Williams noted that appellant had degenerative disc disease that he believed was long-standing and was "probably present prior to the accident which occurred on August 31, 1988." He further stated, however, that "it [was] possible for a trauma to initiate or accentuate symptoms of a previously existing condition." Dr. Williams stated that, based on his September 16, 1992 examination, he saw no orthopedic reason why appellant could not perform the duties of a modified clerk working four hours per day five days a week "performing all of the duties outlined in your statement."

The Office sent a second letter to Dr. Williams on November 28, 1997 attempting to clarify whether appellant could work for eight hours per day in the modified distribution clerk position.

⁴ Docket No. 95-1104 (August 12, 1997).

In a December 11, 1997 letter, Dr. Williams referenced a work evaluation report he prepared in conjunction with his September 1992 evaluation and opined that appellant was capable of performing work for eight hours a day in the modified distribution clerk position.

In a decision dated December 23, 1997, the Office determined that based on the weight of the medical evidence appellant had no continuing disability or residuals related to the August 31, 1988 work injury and that appellant failed to establish that he sustained an emotional condition arising from that same injury.

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

Once the Office accepts a claim it has the burden of proof of justifying modification or termination of compensation. After it has been determined that an employee has disability casually related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.⁵

In the instant case, an Office hearing representative correctly determined that there was a conflict in the medical evidence as to whether appellant was capable of performing work for eight hours a day in the position of a modified clerk.⁶ The Office properly referred appellant for an impartial medical evaluation with Dr. Williams, a Board-certified orthopedic surgeon, who verified in a December 11, 1997 letter that appellant was capable of working eight hours a day in a modified job. Dr. Williams' opinion was based on a complete record and an accurate factual history.

Where there exists a conflict in the medical opinion evidence and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, is entitled to special weight.⁷ The Board, therefore, finds that Dr. Williams' opinion is entitled to controlling weight on the issue of the extent of appellant's disability from work and that the Office properly terminated appellant's wage-loss compensation.

The Board, however, concludes that the Office failed to meet its burden of proof in terminating appellant's medical benefits.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ To terminate authorization for medical treatment, the

⁵ *Frank J. Mela, Jr.*, 41 ECAB 115 (1989); *Mary E. Jones*, 40 ECAB 1125 (1989).

⁶ The Federal Employees' Compensation Act provides that, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8128.

⁷ *Leanne E. Maynard*, 43 ECAB 482 (1992).

⁸ *Furman G. Peake*, 41 ECAB 361 (1990).

Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.

The Office in this case did not meet its burden of proof to terminate medical benefits since Dr. Williams was only able to make an equivocal statement in his December 11, 1997 report that appellant's degenerative disc disease was "probably" present prior to appellant's August 31, 1988 work injury. Furthermore, he acknowledged that a trauma could aggravate a preexisting degenerative condition. However, Dr. Williams did not fully address whether appellant's work injury aggravated his preexisting degenerative back condition. He did not state that appellant's residuals from the August 31, 1988 injury had resolved. Because Dr. Williams' report is equivocal⁹ and does not provide a definitive statement as to whether or not appellant continues to suffer residuals from his August 31, 1988 work injury, the Board finds that the Office erred in terminating medical treatment.

Additionally, the Board finds the evidence to be insufficient to establish that appellant sustained an emotional condition as a consequence of his August 31, 1988 injury or factors of appellant's employment. Dr. Groene's report is the only signed doctor's report of record and it attributes appellant's depression to anti-hypertension medication and not his work injury. In an unsigned March 29, 1990 report, it was noted that appellant's emotional problems were attributable to his fear of future injury while working. Since fear of future injury is not a compensable factor of appellant's employment, appellant is unable to establish that he is entitled to compensation based on an emotional condition.¹⁰

⁹ *Arthur P. Vilet*, 31 ECAB 366 (1979).

¹⁰ *See Joseph G. Cutrufello*, 46 ECAB 285 (1994); *Michael L. Malone*, 46 ECAB 957 (1995).

The decision of the Office of Workers' Compensation Programs dated December 23, 1997 is hereby affirmed in part and reversed in part, as to termination of medical benefits.

Dated, Washington, D.C.
July 3, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member