

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM L. GOLDSTEIN and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 99-2350; Submitted on the Record;
Issued July 25, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On August 3, 1981 appellant, a welder, sustained a low back injury in the performance of his duties while lifting hoses. The Office accepted his claim for lumbar sprain and herniated nucleus pulposus at the L5 level and authorized a discectomy and posterior fusion. He received compensation for temporary total disability on the periodic rolls beginning January 28, 1982.

Appellant returned to full-time restricted duty as a welder in the private sector in 1984. The Office determined his wage-earning capacity and paid compensation accordingly. On June 10, 1990 appellant injured his low back while lifting objects in his private-sector employment. He stopped work and did not return.

On February 17, 1998 the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Steven J. Valentino, a Board-certified orthopedic surgeon, to clarify the nature and extent of his injury-related impairment. In a report dated March 4, 1998, Dr. Valentino related appellant's complaints, history and treatment. He reviewed diagnostic studies, appellant's medical records and his job description. After reporting his findings on physical examination, Dr. Valentino diagnosed resolved lumbar herniated disc and healed posterior lumbar interbody fusion. He addressed the issue of residuals as follows:

“Based on the review of the medical records, diagnostic studies, comprehensive history and physical exam[ination] performed this date, I find [appellant] has fully recovered from his work injury of August 3, 1981 and the surgery of October 14, 1992 without functional residual. He clearly had returned to gainful employment which involved significant activity directed toward the previous injured area. Today's evaluation revealed no lingering effects of the work injury of

August 3, 1981. He is not in need of ongoing supervised medical care referable to that injury.

“His current symptomatology is related to another work-related injury which occurred at Woodhavens Foods. This, however, has no causal relationship to the work injury of August 3, 1981. Additionally, [appellant] has a psychiatric history which is also unrelated to the work history of August 3, 1981. While these may impose a degree of restriction upon his ability to function or work, they cannot be apportioned to his employment at the Navy Yard. This is consistent with the statement of accepted facts. Based on the recovered work injury of August 3, 1981 he is capable of returning to gainful employment without restriction.”

In a decision dated July 31, 1998, the Office terminated appellant’s compensation benefits effective August 16, 1998 on the grounds that the weight of the medical evidence established that his injury-related disability ceased no later than that date.

Appellant requested a hearing before an Office hearing representative, which was held on February 22, 1999. His attorney appeared and argued his case. Following the hearing appellant submitted a deposition of Dr. Valentino taken on April 29, 1999. Dr. Valentino explained that, when he first examined appellant in 1991, appellant still had some chronic radiculopathy based on the original work injury that occurred in 1981; he still had some positive findings on neurological examination, though they were minimal. When he examined appellant in 1998, however, his neurological examination was normal and showed complete recovery not only from the employment injury of August 3, 1981 but also from the subsequent surgery. Appellant did have subjective complaints in 1998, but objectively Dr. Valentino found nothing.

In a decision dated June 17, 1999, an Office hearing representative found that the weight of the medical evidence rested with the opinion of Dr. Valentino. This evidence, the Office found, established that appellant no longer suffered from any compensable condition that was causally related to the accepted employment injury of August 3, 1981.

The Board finds that the Office properly terminated appellant’s compensation benefits.

It is well established that, once the Office accepts a claim, it has the burden of proof 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

The weight of the medical evidence rests with the opinion of Dr. Valentino, the Office referral physician. The Office provided Dr. Valentino with appellant’s medical record and a statement of accepted facts. He prepared a thorough report that included appellant’s complaints,

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

history of injury, treatment, diagnostic results, medical history, job description and findings on physical examination. Finding no objective evidence of residuals, Dr. Valentino diagnosed resolved lumbar herniated disc and healed posterior lumbar interbody fusion. Dr. Valentino based his opinion on an accurate factual and medical background. He also supported his opinion with sound medical reasoning. As there is no contemporaneous probative medical opinion to the contrary, Dr. Valentino's opinion is sufficient to justify the Office's decision to terminate compensation benefits for the accepted employment injury and subsequent surgery. The Office has met its burden of proof.

The June 17, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
July 25, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member