

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND J. BULLARD and DEPARTMENT OF THE NAVY,
NAVAL SUBMARINE BASE, Bremerton, WA

*Docket No. 99-866; Submitted on the Record;
Issued June 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective October 10, 1998.

On June 8, 1986 appellant, then a 37-year-old painting worker, filed a claim for an injury to his back and neck sustained on May 31, 1986 when he slipped and fell on wet paint in a ballast tank. The Office accepted that appellant sustained lumbar subluxations and later accepted that he sustained a temporary aggravation of his spondylolisthesis at L5-S1 and a temporary aggravation of a chronic pain syndrome.

Appellant received continuation of pay from May 31 to August 20, 1986, followed by compensation for temporary total disability until he returned to light duty on October 14, 1986. Appellant's temporary appointment expired on November 3, 1986 and his employment was terminated on the basis that there was insufficient work to warrant his continued employment. The Office resumed payment of compensation for temporary total disability on November 3, 1986.

On June 3, 1990 appellant returned to work at the employing establishment as a tool and parts attendant and the Office reduced his compensation to partial disability based on his actual earnings. On December 14, 1991 the employing establishment again terminated appellant's employment on the basis that there was no light duty available and the Office resumed payment of compensation for temporary total disability.

On August 13, 1998 the Office issued a notice of proposed termination of compensation on the basis that appellant no longer had any residuals of his May 31, 1986 employment injury. By decision dated September 16, 1998, the Office terminated appellant's compensation effective October 10, 1998 on the basis that he had no residuals of his May 31, 1986 employment injury. Appellant requested reconsideration and submitted additional evidence. By decision dated

December 10, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹

The Board finds that the Office properly terminated appellant's compensation effective October 10, 1998.

The Office's determination that appellant had no residuals of his accepted physical conditions was based on a report dated July 7, 1998 from Dr. Larry K. Brinkman, a Board-certified orthopedic surgeon. In this report, he accurately set forth appellant's history, reviewed the prior medical evidence and described his findings on physical examination of appellant. Dr. Brinkman diagnosed: "1. Muscular back sprain secondary to industrial injury of [May, 31, 1986,] resolved, without permanent residual. 2. Spondylolisthesis, L5-S1, isthmic type, preexisting the industrial injury of [May 31, 1986,] temporarily aggravated by that injury but that aggravation has now resolved. 3. Degenerative disc disease, L4-5, preexisting the industrial injury of [May 31, 1986,] temporarily aggravated by that injury with no permanent residual as a result of that aggravation." Dr. Brinkman explained:

"The patient has obvious evidence of preexisting back conditions in the medical records indicating degenerative disc disease of L4-5 and spondylolisthesis of L5-S1 which were even symptomatic and probably treated by Dr. Debban² with the original injury while the patient was working for the Port of Shelton as a maintenance supervisor. At this time, the patient has no obvious neurological deficits to physical exam[ination] as evidenced by the fact that he has symmetrical musculature, intact reflexes, negative straight leg raising and basically normal muscular strength to manual muscle testing. This patient is exhibiting the natural history of degenerative disc disease and spondylolisthesis with recurrent episodes of pain and radiculopathy which get worse with time, which is precisely what has happened to the patient. Given the fact that he continues to be neurovascularly intact, I can find no evidence that indicates the injury of [May 31, 1986] has left any permanent residuals."

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

² This is the chiropractor who initially treated appellant after his May 31, 1986 employment injury and who, according to appellant, also treated him about three years before the employment injury.

The Board finds that this report is sufficient to justify the termination of appellant's compensation, as it is based on an accurate history³ and provides rationale for its conclusion that appellant no longer has residuals of his May 31, 1986 employment injury. This report is consistent with prior reports of specialists to whom the Office referred appellant. In a report dated April 16, 1987, Dr. Gordon Philip, a Board-certified orthopedic surgeon, concluded that appellant had no work restrictions and no need for treatment as a result of his May 31, 1986 employment injury, that he had no neuromuscular dysfunction and that "he remains symptomatic secondary to preexisting anatomical changes of the lumbosacral spine, in addition to degenerative disc disease." In a report dated September 30, 1987, Dr. Bruce E. Bradley, Jr., a Board-certified orthopedic surgeon, concluded that appellant's lumbar strain related to his May 31, 1986 employment injury had resolved, and that his congenital spondylolisthesis and degenerative disc disease were not related to this injury. In a report dated September 7, 1988, Dr. Donald R. Gunn, an orthopedic surgeon, stated that appellant's preexisting spondylolisthesis and degenerative changes at L4-5 were temporarily exacerbated by his May 31, 1986 employment injury, but that he was not precluded from returning to work by this injury. In a clarifying report dated November 8, 1988, Dr. Gunn stated that appellant's poor general condition was related to his lack of activity following his May 31, 1986 injury and that he, therefore, had residuals of that injury. However, by the time of the Office's termination of appellant's compensation on October 10, 1998 there was no medical evidence indicating that appellant was precluded from working or continued to need treatment for this residual of his employment injury. In a report dated January 2, 1990, Dr. Stanley A. Bigos, a Board-certified orthopedic surgeon, stated that there was no objective data that appellant had residuals of his May 31, 1986 employment injury, although it was possible he exacerbated his spondylolisthesis. In addition, Dr. Richard Wohns, a Board-certified neurosurgeon who examined appellant for a surgical consultation, stated in a November 26, 1997 report that appellant's increasing mechanical back pain and increasing numbness in his lower legs were secondary to his mild L3-4, L4-5 stenosis and his L5 spondylolysis with Grade I L5-S1 spondylolisthesis.

Support for appellant's contention that he continues to be physically disabled by residuals of his May 31, 1986 employment injury is found in the reports of his attending physicians. In a report dated September 29, 1998, Dr. Michael J. Jarvis, a physiatrist, stated: "It would be my opinion that [appellant] experienced a low back injury of [May 31, 1986] at work. By history, he has had continued low back pain since then, with some progression in regard to lower extremities complaints. He has underlying spinal pathology at the L4-5-S1 levels. There appears to be a clear history for progression in regard to his condition, dating back to [May 31, 1986.]" This report is entitled to less probative value than the report of Dr. Brinkman because, unlike Dr. Brinkman's report, it does not provide rationale for the conclusion expressed. While Dr. Jarvis notes that appellant's condition had progressed since May 31, 1986, he did not explain why he believed this progression was related to the May 31, 1986 employment injury, rather than

³ Appellant pointed out some inaccuracies in the statement of accepted facts provided to Dr. Brinkman, specifically that he was not involved in a July 1979 motor vehicle accident and that his June 22, 1995 motor vehicle accident did not result in a diagnosed condition of fractured ribs. However, there is no indication in Dr. Brinkman's reports that the doctor relied upon these inaccuracies in describing appellant's history or in reaching his conclusions.

to the natural progression of his preexisting congenital and degenerative conditions. Dr. Ken S. Yonemura, a Board-certified neurosurgeon, to whom Dr. Jarvis referred appellant for a surgical consultation, posited contrary conclusions in his reports. In a report dated August 26, 1998, Dr. Yonemura stated, "His current condition is solely related to his industrial injury that occurred on May 31, 1986, based on history taken in my office in January 1998." In his January 15, 1998 report, Dr. Yonemura stated that appellant's recent increase in low back and lower extremity symptoms was most likely due to his spondylolisthesis. In a report dated September 29, 1998, Dr. Yonemura stated, "Based on his ability to resume a light-duty position for approximately 10 years, I am unable at this time to clearly associate the injury of 1986 with his current symptoms." This last report from him appears to be based on an inaccurate history that appellant returned to light duty for 10 years, but overall, Dr. Yonemura's reports add little support to appellant's claim of continuing disability due to his May 31, 1986 employment injury.

In a report dated July 7, 1987, Dr. John R. Richardson, a Board-certified neurologist, stated that the abnormalities on appellant's computed tomography (CT) scan were consistent with trauma and that his symptoms and problems were related to his on-the-job injury. This report, however, was prepared more than 11 years before the Office terminated appellant's compensation, and has little bearing on whether appellant's disability and need for treatment ended by October 10, 1998. In a report dated December 2, 1987, Dr. Sander E. Bergman, a Board-certified neurologist, stated: "I feel the patient's lumbar pain is related to disc-joint strain introduced by his accident of May 1986. When we view the spondylolysis-spondylolisthesis, it is evidence that there was a congenital predisposing pathology, which made this man no doubt more at risk for pain and subsequent impairment than the same fall on another back would have. By the same token though I am hearing that this man had not visited a chiropractor or any clinician to treat his lumbar spine the six years preceding his industrial accident. Based on that it is hard to deny, particularly with an element of changes at the L4-5 level, the contribution of the industrial accident." Like the report of Dr. Richardson, Dr. Bergman's report was prepared many years before the Office's termination of appellant's compensation and has little bearing on his condition in October 1998. Moreover, Dr. Bergman's conclusion on causal relation is directly based on an inaccurate history that appellant was not treated for back problems for six years before his May 31, 1986 employment injury. Appellant acknowledged that he was treated by a chiropractor three years prior to this injury. In a report dated October 19, 1990, Dr. Martin Mankey, a Board-certified orthopedic surgeon, to whom the Office referred appellant to resolve a conflict of medical opinion, stated that appellant's condition was exacerbated by his May 31, 1986 fall, but that it was difficult to say if the effect was temporary or permanent. This report also has little bearing on the question of whether the residuals of appellant's May 31, 1986 employment injury ended by October 10, 1998. The weight of the medical evidence establishes that the physical residuals of appellant's May 31, 1986 employment injury resolved by October 10, 1998.

The Board further finds that the weight of the medical evidence establishes that the aggravation of appellant's chronic pain syndrome ended by October 10, 1998.

In a report dated July 13, 1998, Dr. Sean M. Killoran, a Board-certified psychiatrist, to whom the Office referred appellant for a second opinion evaluation, noted the diagnosis of chronic pain syndrome first appearing in 1994, and stated that "a more accurate description of

the claimant's psychopathology might be that of a pain disorder with both physiological and psychological factors and in terms of this diagnosis there is no obvious temporary aggravation evident at the present time." Dr. Killoran also stated, "The claimant's present condition does not appear to represent a normal progression of the underlying condition but rather is maintained by his hostile dependency and need for secondary gain." Regarding appellant's ability to work, Dr. Killoran stated, "From a psychiatric point of view, there is no absolute contraindication to the claimant returning to employment and in fact history suggests that he does much better from a psychological point of view when gainfully employed." Dr. Killoran's conclusion on appellant's ability to work is similar to that of another Board-certified psychiatrist to whom the Office referred appellant. In a report dated October 19, 1990, Dr. Jed A. Myers stated, "From a purely psychiatric perspective, there is no basis for imposing any limitations on his work duties." Dr. Joseph Dubey, another Board-certified psychiatrist, to whom the Office referred appellant, stated in a January 2, 1990 report that appellant had no current psychiatric condition and that his employment-related condition, which Dr. Dubey characterized as an adjustment reaction with depressed mood in 1987 and 1988, had resolved with no residuals.

In his September 29, 1998 report, Dr. Jarvis stated, "[Appellant] has a pain disorder associated with psychological factors and his chronic medical treatment, directly related to his [May 31, 1986 injury.]" The opinion of Dr. Jarvis, however, is entitled to less probative value than that of Dr. Killoran, as Dr. Killoran, unlike Dr. Jarvis, is a specialist in the field of medicine relevant to the question of whether appellant has a psychological condition causally related to his employment.⁴ Dr. Gunn, whose December 27, 1998 report apparently was the basis of the Office's acceptance of aggravation of chronic pain syndrome, stated in this report that the contribution by the May 31, 1986 injury to this condition was temporary and that improvement was anticipated if appellant returned to work. Appellant did return to work after being seen by Dr. Gunn and only Dr. Jarvis suggests that appellant's chronic pain syndrome subsequent to this return to work was still related to his May 31, 1986 employment injury.

⁴ The opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians. *Elmer L. Fields*, 20 ECAB 250 (1969).

The decisions of the Office of Workers' Compensation Programs dated December 10 and September 16, 1998 are affirmed.

Dated, Washington, D.C.
June 20, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member