

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EUGENE PERKINS and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 98-1548; Submitted on the Record;  
Issued March 3, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective December 12, 1993 on the grounds that appellant no longer had any disability causally related to his June 4, 1986 employment injury.

The Board has duly reviewed the case record in this appeal and finds that the Office properly terminated appellant's compensation effective December 12, 1993 on the grounds that appellant no longer had any disability causally related to his June 4, 1986 employment injury.

On June 4, 1986 appellant, then a 30-year-old pipefitter, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured the middle right side of his back when he backed onto a beam wing tank.

The Office accepted appellant's claim for low back strain and sprain contusion of the right arm.

In a notice of proposed termination of compensation dated October 12, 1993, the Office advised appellant that it proposed to terminate his compensation based on the medical opinion of Dr. William H. Simon, a Board-certified orthopedic surgeon and second opinion physician, that appellant no longer had any disability due to his June 4, 1986 employment injury. The Office also advised appellant to submit additional medical evidence supportive of his continued disability within 30 days. In an October 2, 1993 response letter, appellant submitted medical evidence.

By decision dated November 15, 1993, the Office terminated appellant's compensation benefits effective December 12, 1993 on the grounds that appellant no longer had any disability causally related to his June 4, 1986 employment injury. In a December 11, 1993 letter, appellant requested an oral hearing before an Office representative.

By decision dated March 17, 1995, the hearing representative vacated the prior decision and remanded the case to the Office for further development of the record. On remand, the Office referred appellant along with a statement of accepted facts, medical records and a list of specific questions to Dr. Simon for a medical evaluation.<sup>1</sup>

In a notice of proposed termination of compensation dated August 1, 1995, the Office advised appellant that it proposed to terminate his compensation based on Dr. Simon's June 7, 1995 medical opinion that appellant no longer had any disability due to his June 4, 1986 employment injury. The Office also advised appellant to submit additional medical evidence supportive of his continued disability within 30 days.

In a December 3, 1996 decision, the Office terminated appellant's compensation benefits based on Dr. Simon's medical opinion.<sup>2</sup> In a December 11, 1996 letter, appellant, through his counsel, requested an oral hearing before an Office representative.<sup>3</sup> In a May 2, 1997 letter, appellant, through his counsel, requested that his previous request for an oral hearing be changed to a request for a review of the written record. In a July 14, 1997 letter, appellant, through his counsel, submitted arguments to reinstate his compensation benefits.

By decision dated April 9, 1998, the hearing representative affirmed the Office's decision.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.<sup>4</sup> 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.<sup>5</sup>

The Office terminated appellant's compensation benefits based on the medical opinion of Dr. Simon. In a June 7, 1995 medical report, Dr. Simon noted his previous findings of appellant based on physical, objective and neurological examination. He further noted a review of medical records which indicated normal findings. Dr. Simon opined that "[a] review of the extensive

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<sup>1</sup> The record reveals that the Office advised appellant by letter dated May 4, 1995 that Dr. Simon would review his medical records rather than conduct an actual examination due to his alleged inability to travel to Dr. Simon's office.

<sup>2</sup> By decision dated December 3, 1996, the Office found that the compensation appellant received during the period August 1, 1988 through December 31, 1989 was forfeited on the grounds that appellant failed to report his self-employment. By decision of the same date, the Office finalized its preliminary determination that appellant was at fault in the creation of an overpayment in the amount of \$16,037.44.

<sup>3</sup> In his December 11, 1996 letter, appellant also requested, through his counsel, an oral hearing regarding the Office's December 3, 1996 decision regarding the overpayment. The record, however, does not reveal a final decision concerning reconsideration of the overpayment issue.

<sup>4</sup> *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163 (1987).

<sup>5</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

medical information does not supply any evidence that this [appellant] is impaired at the present time from any injury he sustained on June 4, 1986. He is completely relieved and cured of any soft tissue injuries such as acute lumbar strain and sprain diagnosed by Dr. [Henry] David as having occurred on June 4, 1986. The acute lumbar strain and sprain would leave [no] residuum.” The Board finds that Dr. Simon’s opinion is rationalized, and based on an accurate factual and medical background.

The Office received the August 22, 1995 medical treatment notes of Dr. Ronald E. DiSimone, a Board-certified orthopedic surgeon and appellant’s treating physician, indicating appellant’s continuing back pain, a review of objective test results and his findings on physical examination. Dr. DiSimone diagnosed a disc bulge at L4-5 and chronic myoligamentous strain of the lumbar spine. He noted appellant’s physical restrictions and medical treatment. Dr. DiSimone’s medical report is insufficient to establish continued employment-related disability inasmuch as it failed to address whether appellant’s back condition was caused by the June 4, 1986 employment injury.

The Office also received an October 11, 1995 medical report of Dr. Louis W. Conway, a Board-certified neurosurgeon, to whom Dr. DiSimone referred appellant, revealing a history of appellant’s June 4, 1986 employment injury and medical treatment, and his findings on physical and objective examination. Dr. Conway opined that he agreed appellant was suffering from low back pain related to his injury nine years ago. He also noted appellant’s future medical treatment. Further, Dr. Conway noted that appellant’s fall within two days of his examination did not adversely influence his back condition. His medical report is insufficient to establish continued employment-related disability because it failed to provide any medical rationale explaining how or why appellant’s back condition was caused by his June 4, 1986 employment injury.

Further, the Office received Dr. Conway’s October 15, 1995 medical report providing a diagnosis of low back pain. Additionally, the Office received Dr. Conway’s January 4, 1996 medical treatment notes indicating his findings on physical and objective examination. Dr. Conway recommended that appellant undergo magnetic resonance imaging (MRI) testing due to spondylosis in his thoracic spine. In his June 11, 1996 medical treatment notes, Dr. Conway indicated that appellant’s symptoms were basically unchanged and that he was undergoing an MRI scan. The June 13, 1996 MRI scan of the thoracic spine performed by Dr. Bernard L. Butkiewicz, a Board-certified radiologist, revealed that there was no definite focal herniation at the thoracic spine. Dr. Butkiewicz also noted changes of degenerative spondylosis especially at the lower half of the thoracic spine. Dr. Conway’s June 19, 1996 medical treatment notes indicated a review of the June 13, 1996 MRI scan and that appellant’s examination was unchanged from a previous examination. The medical evidence from Dr. Conway and Dr. Butkiewicz is insufficient to establish continued disability inasmuch as it failed to address a causal relationship between appellant’s back condition and the June 4, 1986 employment injury.

The Board finds that Dr. Simon’s June 7, 1995 medical report constitutes the weight of the evidence in this case. Therefore, the Office properly terminated appellant’s compensation

effective December 12, 1993 on the grounds that appellant no longer had any disability due to his June 4, 1986 employment injury.

The April 9, 1998 of the Office of Workers' Compensation Programs' hearing representative is hereby affirmed.

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

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member