

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL CHUCK and U.S. POSTAL SERVICE,
POST OFFICE, Kearny, NJ

*Docket No. 98-1691; Submitted on the Record;
Issued March 14, 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 benefits effective December 18, 1996.

On March 31, 1996 appellant, then a 55-year-old mechanic, filed a notice of traumatic injury alleging that he sustained a sharp pain in his lower back when he reached to open a control room door. The Office accepted the claim for lumbar strain and appellant received compensation for total temporary disability.

On September 25, 1996 the Office referred appellant, along with a statement of accepted facts, to Dr. Walter M. Flax, a Board-certified orthopedic surgeon, for a second opinion examination.

On October 24, 1996 Dr. Flax indicated that appellant's chief complaint was constant severe pain in the lower back. Upon examination, he found a normal cervical curve with no spasm or tenderness. With respect to appellant's back, Dr. Flax stated that appellant's spine was midline with normal lumbar curve with no spasm or tenderness of the paravertebral muscles, he noted that appellant flexed to 90 degrees and resumed the upright position slowly. He further noted that his hyperextension and lateral flexions to the left and right were complete and unrestricted. Dr. Flax also found that appellant's Laseque's, Patrick's and Ely's tests, as well as his straight leg test, were normal and equal bilaterally. Dorsiflexion of both large toes was also normal as were the reflexes of his knees and ankles. He stated that his examination of appellant "was grossly within normal limits and I find no evidence of functional loss, residuals or disability as a result of the incident of March 31, 1996. Treatment is not indicated. He is capable of working with no restrictions or limitations."

On November 18, 1996 the Office issued a "notice of proposed termination of medical benefits." The Office indicated that the medical evidence showed that appellant's work injury had resolved. Appellant was given 30 days to submit additional argument or evidence.

By decision dated January 7, 1997, the Office finalized its proposed termination of benefits effective on December 18, 1996. In an accompanying memorandum, the Office stated that the weight of the evidence demonstrated that appellant no longer sustained residuals of his March 31, 1996 work-related injury.

In a medical report received by the Office on January 13, 1997 and dated December 27, 1996, Dr. Martin L. Sorger, appellant's treating physician Board-certified in orthopedic surgery, stated:

“[Appellant] presents today continuing to complain of significant pain in his c-spine radiating to his shoulders and upper thoracic spine. It is severe enough so that he has been using a TENS unit and occasionally takes Hydrocodone pills and has found it difficult to do any work. His low back discomfort, which is still intermittently present, is better than it was before.... “[B]ut I certainly do believe that his neck problem present is severe enough to limit his ability to return to work.”

In a letter dated January 13, 1997 and received by the Office on January 16, 1997, appellant, through counsel, requested an oral hearing. Appellant's hearing was held on November 18, 1997 at which time appellant submitted additional evidence. In a March 22, 1996 medical report, Dr. Sorger referred only to appellant's cervical spine condition. In an April 2, 1996, Dr. Sorger noted that appellant was symptomatic with cervical neck pain and also noted appellant's complaints of low back pain caused by an incident at work “last week.” Dr. Sorger then stated that appellant was unable to return to regular work. In a February 17, 1997 medical report, Dr. Ronald C. Reese, Board-certified in diagnostic radiology, stated that a magnetic resonance imaging (MRI) scan taken that day revealed “minimal degenerative disc disease with right and left-sided annular rents at L4-5. Disc herniation is not seen at this or any other level, however.” In a June 26, 1997 medical report, Dr. Sorger stated that he had treated appellant in April 1996 for severe low back pain. He noted that appellant's “skeletal disability has worsened significantly enough so that he will never again be able to return to regular work. Dr. Sorger has great difficulty in sitting for more than 45 minutes at a time, is unable to do any heavy lifting, and his cervical pain is accentuated by any attempt at lateral bend or rotation.” He further noted that appellant, in a 1994 accident, had a significant aggravation of his neck pathology. Dr. Sorger added: “The absence of specific disc herniation by MRI does not preclude symptom complex severe enough to cause the disability that (appellant) now demonstrates.”

By decision issued on January 29, 1998 and finalized on February 2, 1998, the Office hearing representative affirmed the Office's January 7, 1997 decision terminating compensation benefits effective December 18, 1996. The Office hearing representative determined that the weight of the medical evidence rested with Dr. Flax who concluded that there was no objective medical evidence to support appellant's back pain complaints. Further, the hearing representative noted that Dr. Sorger reported appellant's cervical strain but failed to establish that his condition was causally related to his lower back pain. The Office hearing representative, therefore, found that the weight of the evidence failed to support a condition or disability related to appellant's March 31, 1996 work-related lower back pain.

The Board finds that the Office met its burden in terminating appellant's compensation effective December 18, 1996.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.² Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.³ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁴

In the present case, Dr. Flax, a Board-certified orthopedic surgeon and second opinion physician, provided a well-reasoned opinion stating that appellant's complaints were unsubstantiated by any objective medical symptoms. Dr. Flax stated that upon examination appellant's spine was midline with normal lumbar curve with no spasm or tenderness of the paravertebral muscles, and that appellant was able to flex to 90 degrees although he resumed his upright position slowly. He further noted that appellant's hyperextension and lateral flexions were normal, and that all diagnostic tests, including Laseque's, Patrick's, Ely's and straight leg tests, were normal. Dorsiflexion of large toes and knee and ankle reflexes were also normal. On the other hand, Dr. Sorger, appellant's treating physician, attributed appellant's disability to his cervical neck condition⁵ and not to his lower back condition. Although Dr. Sorger refers to appellant's lower back pain as causing intermittent pain, he provides no rationalized medical opinion attributing appellant's condition to the March 31, 1996 lower back work-related injury. Consequently, Dr. Sorger's opinion is insufficient to establish that appellant has a condition or disability related to an accepted employment injury. The weight of the evidence, therefore, lies with the well-rationalized opinion of Dr. Flax finding that appellant's employment-related lower back condition had resolved.

¹ *Frederick Justiniano*, 45 ECAB 491 (1994).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

⁵ Appellant filed a claim on his cervical neck condition which is not before the Board in this appeal.

The decision of the Office of Workers' Compensation Programs dated February 2, 1998 is affirmed.

Dated, Washington, D.C.
March 14, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member