

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK W. WELLS and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, San Diego, CA

*Docket No. 99-578; Submitted on the Record;
Issued November 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant is entitled to compensation after April 30, 1995 due to his July 20, 1977 employment injury.

The Board finds that appellant is not is entitled to compensation after April 30, 1995 due to his July 20, 1977 employment injury.

On July 20, 1977 appellant, then a 51-year-old immigration examiner, sustained an employment-related lumbar and thoracic sprain.¹ He stopped work on that date and did not return; he received compensation for periods of disability. By decision dated April 26, 1995, the Office of Workers' Compensation Programs terminated appellant's compensation effective April 30, 1995 on the grounds that he no longer had disability due to his July 20, 1977 employment injury. The Office based its termination on the November 1, 1994 report of Dr. Roman B. Cham, a Board-certified orthopedic surgeon, who served as an Office referral physician. By decisions dated May 15, 1996, January 21, 1997, January 23 and September 17, 1998, the Office affirmed its prior decisions.²

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to

¹ Appellant sustained a thoracic sprain on April 7, 1976 but later returned to work for the employing establishment.

² By decisions dated August 26, 1996 and May 22, 1997, the Office denied appellant's requests for merit review.

³ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁴ *Id.*

prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.⁵

The Office met its burden of proof to terminate appellant's compensation effective April 30, 1995 by determining that the weight of the medical evidence rested with the well-rationalized opinion of the Office referral physician, Dr. Cham.⁶

In his November 1, 1994 report, Dr. Cham indicated that on straight leg testing appellant exhibited marked differences between seated and supine testing which suggested a nonorganic and histrionic basis for his complaints. Dr. Cham diagnosed degenerative disc disease of the lumbar spine and indicated that appellant did not demonstrate objective findings which substantiated his subjective complaints. He noted that appellant's July 20, 1997 soft-tissue injury resolved six to eight weeks after the injury and that he could return to his usual and customary work.

The report of Dr. Cham has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Cham's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Cham provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant's condition which comported with this analysis.⁷ Dr. Cham provided medical rationale for his opinion by explaining that appellant did not exhibit any objective signs of his employment injury and that his employment injury was the type of injury that would have resolved a long time prior. He also noted that role of nonorganic factors and nonwork-related conditions in appellant's problems.⁸

After the Office's April 26, 1995 decision terminating appellant's compensation effective April 30, 1995, appellant submitted additional medical evidence which he felt showed that he was entitled to compensation after April 30, 1995 due to residuals of his July 20, 1977 employment injury. Given that the Board has found that the Office properly relied on the opinion of the Office referral physician, Dr. Cham, in terminating appellant's compensation, the burden shifts to appellant to establish that he is entitled to compensation after April 30, 1995.

⁵ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁶ The Office also referred appellant for psychiatric evaluation. In reports dated in November 1994, Dr. Donald Strobl, a Board-certified psychiatrist, and Dr. Alfred Nigl, a clinical psychologist, determined that appellant did not have any disabling psychiatric condition. The Office has not accepted that appellant has an employment-related psychiatric condition.

⁷ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁸ The record contains very little medical evidence from appellant's attending physicians close to the time of Dr. Cham's evaluation. Appellant's condition was evaluated in an August 31, 1992 report of Dr. Louis Lurie, a Board-certified orthopedic surgeon, and a June 29, 1993 report of Dr. Arthur Silverman, a Board-certified internist. However, these physicians did not provide a clear opinion that appellant had a continuing employment-related disability.

The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that he had residuals of his July 20, 1977 employment injury after April 30, 1997.

In a report dated November 29, 1995, Dr. David Subin, an attending Board-certified orthopedic surgeon, indicated that appellant's duties had aggravated his underlying degenerative condition. In a report dated November 10, 1995, Dr. Michael Lenihan, an attending Board-certified orthopedic surgeon, indicated that he could not dispute Dr. Subin's contention that "there was work[-]related injury." These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain a clear opinion that appellant had disability due to his July 20, 1977 employment injury after April 30, 1995.⁹ Appellant submitted other medical evidence from this period but it did not contain an opinion on causal relationship.

In a report dated January 13, 1997, Dr. Paul Rafter, an attending Board-certified neurologist, stated that appellant's current symptoms reflected "20 years of wear and tear superimposed on the original problem." In a report dated January 8, 1998, Dr. Denise Rubino, an attending Board-certified orthopedic surgeon, noted that the findings supported that appellant's condition was employment related. In reports dated March 18, 1997 and January 12, 1998, Dr. Carl Maguire, an attending Board-certified orthopedic surgeon, indicated that appellant's continuing symptoms were related to his industrial injury. In a report dated May 16, 1998, Dr. Raymond Press, an attending Board-certified internist, indicated that 70 percent of appellant's symptoms represented "exacerbation, acceleration and progression of the injuries from the industrially-related accident."

The Board has carefully reviewed these reports and notes that they are of limited probative value on the relevant issue of the present case in they did not provide adequate medical rationale in support of their conclusions on causal relationship.¹⁰ None of appellant's attending physicians described the July 20, 1977 injury in any detail or explained the process through which such a soft-tissue injury, lumbar and thoracic sprain, could cause disabling residuals approximately 20 years later. Several of the physicians made note of appellant's continuing symptoms, however, they did not explain why his continuing symptoms would not be due to his underlying degenerative disc disease.

⁹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

The decisions of the Office of Workers' Compensation Programs dated September 17 and January 23, 1998 are hereby affirmed.

Dated, Washington, DC
November 15, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member