

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARVEY LYN HUSTON and DEPARTMENT OF THE ARMY,
SIERRA ARMY DEPOT, Herlong, CA

*Docket No. 00-1568; Submitted on the Record;
Issued April 12, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's benefits effective October 5, 1998.

On August 25, 1998 appellant, then a 49-year-old industrial equipment repair leader, stated that on the prior day he hurt his lower back while in the performance of duty. He stopped work on September 16, 1998.

On November 2, 1998 the Office approved medical treatment for low back pain.

By letter dated December 1, 1998, the Office asked Dr. E. Gary Starr, appellant's treating physician and Board-certified in physical medicine and rehabilitation, to provide an opinion regarding the causal relationship between appellant's work-related injury of August 24, 1998 and his current medical condition.

In a December 7, 1998 report, Dr. Starr stated that appellant's light-duty restrictions were "based more on subjective complaints rather than objective findings since all of the testing to this point has been relatively unremarkable."

In a report dated January 12, 1999, Dr. Patrick J. Osgood, Board-certified in orthopedic surgery, stated that he had examined appellant that day in relation to his back injury of August 24, 1998. Upon review of medical records including a November 6, 1998 magnetic resonance imaging scan and x-rays taken that day, he determined that appellant had low back pain with facet arthropathy of the lower lumbar spine. Dr. Osgood noted that appellant's pain is in reaction to facet arthropathy and "perhaps a component of lumbosacral strain." He added that appellant did not show signs of nerve root irritation.

In a report dated February 2, 1999, Dr. Osgood stated:

“To a reasonable degree of medical probability [appellant’s] low back pain is secondary to a direct cause from pulling on the chain causing a lumbar strain. He has an underlying degenerative condition of facet arthropathy in the lower lumbar spine. The component of his back pain secondary to his facet arthropathy would be an acceleration of his facet arthropathy from the work injury.”

Dr. Osgood added that appellant’s back injury, as represented by the facet arthropathy, would be temporary and would reach maximum medical improvement in one year’s time. He also stated that appellant had no objective findings of an industrial injury.

On March 11, 1999 the Office referred appellant to a second opinion physician.

In a report dated April 8, 1999, Dr. Aubrey A. Swartz, Board-certified in orthopedic surgery, examined appellant and reported the following findings: range of motion of the lumbar spine: flexion at 90 degrees, extension at 10 degrees; right lateral bending at 15 degrees; left lateral bending at 15 degrees; right rotation at 45 degrees; and left rotation at 45 degrees. He stated that appellant’s neurological examination revealed good reflexes and good sensation and that he had 5 by 5 motor function. Straight leg raise was negative bilaterally and appellant had good painless range of motion of both hips.

Dr. Swartz noted that appellant had a chronic disc bulge in his lumbar spine which was considered normal for his age and that he “appears to have sustained a lumbar strain which appears to have practically resolved.” He stated that the lumbar strain was medically connected to the work-related injury by direct cause, but the disc bulge was not. Dr. Swartz noted that appellant’s subjective complaints were several, but “there are no objective findings.” He added that appellant’s period of total disability would have been six weeks from the date of his injury and that appellant no longer had residuals of his 1998 work-related injury.

On May 14, 1999 the Office proposed termination of compensation from six weeks from the date of the work-related injury.

By decision dated June 18, 1999, the Office terminated appellant’s compensation effective October 5, 1998.

By letter dated June 18, 1999, appellant, through counsel, requested reconsideration and submitted progress notes from Dr. Janie Bryant and an audiotape of appellant’s examination with the second opinion physician.

By merit decision dated September 1, 1999, the Office denied modification of appellant’s request for reconsideration.

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

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 this case, Dr. Starr, appellant's treating physician, stated that appellant's light-duty restrictions were based on subjective complaints rather than objective findings since appellant's test results were unremarkable. Dr. Osgood related no objective findings of an industrial injury. Dr. Swartz stated that appellant had a lumbar strain which appeared to have practically resolved. He added that there were no objective findings of disability as a result of his work-related injury.

The Board finds the medical evidence sufficient to establish that appellant had no residual medical condition causally related to his August 24, 1998 injury after October 5, 1998.

The September 1 and June 18, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 12, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

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

² *Id.*

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

⁴ *Id.*