

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EILEEN M. GRAU, Administratrix for the Estate of DAVID J. GRAU and  
DEPARTMENT OF THE ARMY, DEPARTMENT OF DEFENSE POLICE, Fort Dix, NJ

*Docket No. 00-1648; Submitted on the Record;  
Issued August 3, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of the employee's benefits effective May 6, 1999.

On July 29, 1994 appellant, then a 48-year-old maintenance mechanic, sustained an umbilical hernia while lifting a trash can. Appellant stopped work on July 29, 1994 and returned on September 12, 1994 to a light-duty position. The Office authorized surgical repair of the hernia which was performed in June 1998. Appellant was paid appropriate compensation.

Accompanying his claim, appellant submitted medical records from Dr. Stephen S. Falkowski, an osteopath. In a September 14, 1994 duty status report, Dr. Falkowski noted appellant's treatment for an umbilical hernia and stated that he could return to restricted duty on September 12, 1994.

Thereafter, appellant submitted various medical records from Dr. Falkowski noting that his employment injury remained at least partially disabling and that he would require surgery.

The employing establishment referred appellant for a fitness-for-duty examination to Dr. John Coumbis, Board-certified in preventative medicine. The Office provided Dr. Coumbis with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated February 4, 1998, Dr. Coumbis indicated that he reviewed the medical records provided to him and performed a physical examination of appellant. He noted appellant sustained a work-related umbilical hernia. Dr. Coumbis noted that appellant had been precluded from obtaining surgery to repair the hernia because of medical complications, which stem from chronic alcoholism, esophageal varix rupture and chronically depressed blood platelets. He indicated appellant had been able to perform his employment duties during the past four years. Dr. Coumbis noted the hernia was stable and did not present an immediate threat of medical emergency and, therefore, appellant could return to his employment without restrictions.

In a letter dated May 8, 1998, the Office authorized surgical repair of appellant's umbilical hernia and surgery was performed on June 10, 1998. The hospital records indicated a routine repair was performed; however, following the procedure appellant suffered from diarrhea, nausea and vomiting. On June 20, 1998 appellant was readmitted to the hospital with a diagnosis of hypernatremia, hepatic encephalopathy, dehydration, laennec's cirrhosis, status post repair of umbilical hernia. Appellant underwent a series of diagnostic tests which revealed end stage liver cirrhosis and gallstones.

On June 22, 1998 appellant filed a CA-2a, notice of recurrence of disability. Appellant indicated a recurrence of injury on June 1, 1998 causally related to the employment injury of July 29, 1994. Appellant stopped work on June 1, 1998 and did not return. Accompanying appellant's claim were supplemental reports from Drs. Joseph Savon, a Board-certified internist and Phillip Z. Aronow, a Board-certified surgeon. Dr. Savon's report dated July 14, 1998, indicated that appellant was being treated for nausea and vomiting with a concurrent disability of cirrhosis. He indicated appellant was disabled from June 1 to August 15, 1998. Dr. Savon's report dated July 17, 1998 indicated a diagnosis of liver cirrhosis and hyponatremia. He noted that the condition was not caused or aggravated by an employment activity and indicated appellant was totally disabled from the time of the surgery to August 15, 1998. The CA-7 dated July 7, 1998, noted appellant had a continuing disability from June 1, 1998. Dr. Aronow's report dated July 21, 1998, diagnosed umbilical hernia and noted appellant had a continual disability from June 10, 1998. Dr. Aronow's report of July 28, 1998, indicated a diagnosis of umbilical hernia and noted appellant had a continual disability from June 1, 1998.

In an attending physician's report dated August 11, 1998, Dr. Savon diagnosed abnormal liver function tests, cirrhosis and encephalopathy. He noted that the conditions were not caused or aggravated by an employment activity. Dr. Savon noted appellant was totally disabled from July 1 to August 11, 1998. The physician also indicated that appellant would need a liver transplant.

An additional medical report was submitted from Dr. David S. Soowal dated September 29, 1998. Dr. Soowal indicated that he had initially treated appellant in August 1994 for an umbilical hernia. He next treated appellant in March 1998. Dr. Soowal noted knowledge of appellant's umbilical hernia surgery and the complications thereafter. He indicated appellant had a history of alcohol-related cirrhosis. Dr. Soowal noted that he could not offer further comment regarding appellant's disability other than the fact that appellant was disabled from the time of his surgery through his hospitalization. He further noted that he generally keeps an individual out of work for four to six weeks following this type of surgery.

In a letter dated October 13, 1998, the Office requested that Dr. Falkowski reevaluate appellant's status and consider appellant for return to duty. He submitted a duty status report dated October 21, 1998, indicating a diagnosis of umbilical hernia and electrolyte imbalance which he indicated was work related. Dr. Falkowski noted nonrelated disabling conditions of cirrhosis, edema, ascites and hepatic encephalopathy. He indicated a period of total disability from June 1 to August 1, 1998. Dr. Falkowski noted appellant experienced a period of postoperative complications including diarrhea, nausea, vomiting and change in mental status, which prevented appellant from performing any employment duties from June to July 1998.

In a December 22, 1998 report, Dr. Savon indicated that appellant was suffering from cirrhosis of the liver and was a liver transplant candidate.

The Office referred appellant for a second opinion to Dr. Kenneth Leese, a Board-certified surgeon. The Office provided Dr. Leese with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated January 20, 1999, Dr. Leese indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted that appellant did not suffer residuals from the condition of umbilical hernia. Dr. Leese noted that the condition was corrected by the surgical procedure and, therefore, was resolved. He indicated appellant had reached maximum medical improvement. Dr. Leese also noted appellant required a liver transplant. He diagnosed appellant with an inguinal hernia, which was not work related and noted that appellant suffered from intermittent encephalopathy. Dr. Leese indicated that appellant could not return to employment due to his encephalopathy, fatigue and edema. He indicated that the encephalopathy was a result of appellant's severe liver disease which is associated with significant fatigue. Dr. Leese noted appellant also suffered from diabetes mellitus.

In a supplemental report dated February 19, 1999, Dr. Leese noted objective findings upon examination of ascites, an enlarged spleen, a healed scar from a recent surgery with no evidence of recurrence, a right inguinal hernia and pitting edema of the legs. He opined that appellant showed evidence of end-stage liver disease with ascites, hypoproteinemia, jaundice, thrombocytopenia and hepatic encephalopathy. Dr. Leese reviewed diagnostic studies and noted that gallstones were found which were associated with diabetes and cirrhosis. He indicated that appellant was totally disabled due to the ascites, inguinal hernia and the encephalopathy.

On April 1, 1999 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Leese's February 19, 1999 report established no continuing disability as a result of the July 29, 1994 employment injury. The Office provided 30 days in which appellant could respond to this notice.

In a letter dated April 7, 1999, appellant's attorney indicated that appellant's work-related injury and subsequent surgery aggravated appellant's preexisting liver disease. He contended that Dr. Leese in his report of February 19, 1999 confirmed that appellant sustained an aggravation of his liver condition as a result of the complications of the hernia surgery. He noted that appellant was given too much anesthesia and subsequently had to be readmitted to the hospital.

By decision dated May 6, 1999, the Office terminated appellant's benefits effective May 6, 1998 on the grounds the weight of the medical evidence established that appellant had no continuing disability resulting from his July 29, 1994 employment injury.

By letter dated May 10, 1999, appellant's attorney requested a hearing before an Office hearing representative. Appellant submitted an addendum report from Dr. Savon dated May 10, 1999. He indicated that appellant had a history of Laennec's cirrhosis and that his course had been complicated by esophageal varices, ascites and hepatic encephalopathy.

Dr. Savon noted that appellant's condition took a turn for the worse after the work-related herniorrhaphy which occurred July 29, 1994. He noted appellant had problems with hyponatremia and mental status changes, which had not occurred prior to the herniorrhaphy. Dr. Savon noted "I cannot explain the exact relationship between the changes; however, it certainly bears a temporal relationship." He indicated appellant was permanently disabled.

The hearing was held on October 26, 1999. Appellant's attorney indicated that appellant had died on June 18, 1999.

In a decision dated January 3, 2000, the hearing representative affirmed the decision of the Office dated May 6, 1999, on the grounds that appellant had no continuing work-related disability on or after May 6, 1999.

The Board finds that the Office has met its burden of proof to terminate benefits effective May 6, 1999.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>1</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>2</sup>

In this case, the Office accepted that appellant sustained an umbilical hernia on July 29, 1994 and paid appropriate compensation. Appellant's attending physician, Dr. Savon indicated that a "routine [umbilical hernia] repair was performed;" however, following the procedure appellant suffered complications. Supplemental report's from his physician indicated a diagnosis of liver cirrhosis and hyponatremia. Dr. Soowal, appellant's other treating physician, noted in his September 29, 1998 report that he "cannot offer any further comment regarding [appellant] and his disability, other than the fact that he was definitely disabled from the time of his surgery through and including the time of his hospitalization." Neither of appellant's treating physicians provided a rationalized opinion specifically addressing how any continuing residual condition was causally related to the July 29, 1994 work injury.<sup>3</sup> Although Drs. Savon and Soowal noted appellant suffered complications from the hernia surgery, both physicians opined that appellant was concurrently suffering from cirrhosis of the liver and hyponatremia.

The Office referred appellant for a second opinion to Dr. Leese who issued two reports dated January 20 and February 19, 1999. He reviewed appellant's history, reported findings and noted that appellant sustained a hernia in 1994. Dr. Leese's physical examination revealed ascites, an enlarged spleen, a healed scar from a recent surgery with no evidence of recurrence, a right inguinal hernia and pitting edema of the legs. He indicated that appellant did not suffer

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Vivian L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

residuals from the condition of umbilical hernia. Dr. Leese noted that the condition was corrected by the surgical procedure and, therefore, was resolved. He indicated that appellant had reached maximum medical improvement. Dr. Leese opined that appellant showed evidence of end-stage liver disease with ascites and required a liver transplant, hypoproteinemia, jaundice, thrombocytopenia and hepatic encephalopathy. He indicated that appellant was totally disabled due to the ascites, inguinal hernia and the encephalopathy.

The Board finds that, under the circumstances of this case the opinion of Dr. Leese is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and established that appellant's work-related condition has ceased. He indicated that appellant did not suffer residuals from the condition of umbilical hernia. Dr. Leese noted that the condition was corrected by the surgical procedure and, therefore, was resolved.

After issuance of the pretermination notice, appellant's attorney submitted a letter dated April 7, 1999, which indicated that appellant's work-related injury and subsequent surgery aggravated his preexisting liver disease and that this contention was supported by Dr. Leese. However, in his January 20 and February 19, 1999 reports specifically noted that appellant did not suffer residuals from the umbilical hernia condition and that this condition was resolved. Therefore, this contention is not substantiated by the record.

After the Office properly terminated compensation benefits, the burden of proof was on appellant to show any continuing entitlement.<sup>4</sup> However, medical evidence submitted by appellant after termination of benefits either did not specifically address how any continuing condition was due to the July 29, 1994 work injury or duplicated evidence previously considered by the Office. Dr. Savon's report of May 10, 1999 noted that appellant's condition took a turn for the worse after the work-related herniorrhaphy which occurred July 29, 1994. However, Dr. Savon has offered only speculative support for causal relationship by opining that "I cannot explain the exact relationship between the changes, however, it certainly bears a temporal relationship." The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.<sup>5</sup>

The Board finds that Dr. Leese's opinion constitutes the weight of the medical evidence and is sufficient to justify the Offices's termination of benefits. For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

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<sup>4</sup> See *Beverly J. Duffey*, 48 ECAB 569 (1997).

<sup>5</sup> See *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

The January 3, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
August 3, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member