

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE F. MAISANO and DEPARTMENT OF VETERANS AFFAIRS,
LONG BEACH VETERANS ADMINISTRATION MEDICAL CENTER,
Long Beach, CA

*Docket No. 01-876; Submitted on the Record;
Issued August 30, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective December 3, 2000.

On June 6, 1986 appellant, then a 34-year-old housekeeping aid, was pushing a bed when he felt pain in his lower back. He stopped work on June 6, 1986 and on July 15, 1986 he returned to his regular duties. On September 11, 1986 appellant stopped work and did not return.¹ The Office accepted the claim for lumbar sprain. Appellant was paid appropriate compensation.

On December 4, 1997 the Office referred appellant for a second opinion to Dr. Mark E. Frankel, a Board-certified orthopedic surgeon, to determine if appellant had any continuing disability causally related to his accepted employment injury. The Office provided Dr. Frankel 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 May 4, 1998, Dr. Frankel indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted the history of appellant's condition. Dr. Frankel noted that upon examination appellant's neck and back moved through full range of motion; he experienced 18 inches of forward limitation; there was tenderness to fist percussion; straight leg raises produced discomfort; his joints were supple and moved through full range of motion; motor manual testing revealed no weakness; grip strength was essentially normal; and the sensory examination revealed decreased sensation of the dorsum of the left foot. He indicated that he reviewed the radiographs of the lumbar spine, left hip, left foot and knee dating from March 18, 1991 to January 26, 1998, which revealed no abnormalities. Dr. Frankel indicated that there were no objective findings to substantiate appellant's complaints

¹ The record indicates that appellant was convicted of 47 counts of interfering with judicial proceedings of a prior conviction and imprisoned from February 14, 1990 to December 24, 1998.

and he noted appellant's lumbar strain had resolved. He further noted that there was no objective evidence that appellant suffered any residuals of his on-the-job injury.

Thereafter, appellant submitted medical records dated January 17 and February 8, 1999. The medical records from January 17, 1999 indicated that appellant was experiencing low back pain which had persisted for several years, originating in 1986. The medical records from February 8, 1999 indicated that appellant was being treated for chest pain, shortness of breath and dizziness.

On July 31, 2000 the Office referred appellant for a second opinion to Dr. Boris Stojic, a Board-certified orthopedic surgeon. The Office provided Dr. Stojic 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 August 15, 2000, Dr. Stojic indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's injury. Dr. Stojic noted that upon physical examination the neck revealed normal alignment and normal range of motion with mild tenderness upon palpation; no evidence of muscle spasm; the lumbosacral spine revealed a limitation of motion for approximately 80 percent of the normal range with tenderness upon palpation; straight leg raises were accomplished to 90 degrees; there was generalized giveaway weakness of the lower extremities; there was no focal motor weakness and sensory examination was essentially normal; no measurable atrophy in the upper and lower extremities; the right and left hip revealed normal range of motion with appellant complaining of pain in the lower back; and no objective evidence of radiculitis or radiculopathy of the upper extremities. He diagnosed appellant with chronic low back pain with no objective evidence of radiculitis and/or radiculopathy involving the lower extremities; neck pain without objective evidence of radiculitis and/or radiculopathy; and depression. Dr. Stojic indicated that appellant's subjective complaints were not substantiated by physical findings. He noted that appellant "probably sustained a lumbosacral sprain/strain which has resolved." Dr. Stojic further noted that appellant did not suffer residuals from the condition of lumbar strain.

On October 30, 2000 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Stojic's August 15, 2000 report established no continuing disability as a result of the June 6, 1986 employment injury. The Office provided 30 days in which appellant could respond to this notice.

Appellant submitted a general medical evaluation dated February 11, 1999; emergency room records dated August 13, 2000; a narrative statement dated November 15, 2000; and a marriage certificate. The general medical evaluation dated February 11, 1999 was prepared by Dr. Kirk Williams, a specialist in otolaryngology, and indicated that appellant was being treated for low back pain secondary to an industrial injury. Dr. Williams diagnosed appellant with discogenic disorder/unstable. He noted with a checkmark "yes" that appellant had a mental or physical incapacity, which prevented him from performing his employment duties. Dr. Williams indicated that appellant could return to work in February 2000. The emergency room records dated August 13, 2000 indicated that appellant was being treated for left-sided chest pain and burning on the bottom of his left foot. The records indicated a history of appellant's back problems. The diagnostic tests did not reveal any significant abnormalities. The narrative

statement dated November 15, 2000 noted that appellant contested Dr. Stojic's findings and indicated that he was unable to work due to his employment-related injury.

By decision dated December 1, 2000, the Office terminated appellant's benefits effective December 3, 2000 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from his June 6, 1986 employment injury.

The Board finds that the Office met its burden of proof to terminate benefits effective December 3, 2000.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has a 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.³

In this case, the Office accepted appellant's claim for a lumbar sprain, and paid appropriate compensation. In July 2000, the Office referred appellant for a second opinion to Dr. Stojic. In his report dated August 15, 2000, he diagnosed appellant with chronic low back pain with no objective evidence of radiculitis and/or radiculopathy involving the lower extremities; neck pain without objective evidence of radiculitis and/or radiculopathy; and depression. He indicated that appellant's subjective complaints were not substantiated by physical findings. Dr. Stojic noted that appellant "probably sustained a lumbosacral sprain/strain which has resolved." He further noted that appellant did not suffer residuals from the condition of lumbar strain.

The Board finds that the opinion of Dr. Stojic 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. Dr. Stojic indicated that appellant did not suffer residuals from the condition of lumbar strain. He noted that the condition was resolved.

After issuance of the pretermination notice, appellant submitted a general medical evaluation dated February 11, 1999; emergency room records dated August 13, 2000; a narrative statement dated November 15, 2000; and a marriage certificate. The general medical evaluation dated February 11, 1999, prepared by Dr. Williams, indicated that appellant was being treated for low back pain secondary to an industrial injury. Although Dr. Williams' opinion somewhat supports causal relationship in a conclusory statement, he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁴ Additionally, Dr. Williams' evaluation indicated with a checkmark "yes" that appellant had a mental or physical incapacity, which prevented him from performing his employment duties and could not return to work until February 2000. The Board has held that an opinion on causal relationship which consists only of

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *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).

a physician checking “yes” to a medical form report question on whether the claimant’s condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁵ Therefore, this report is insufficient to overcome that of Dr. Stojic. Additionally, the emergency room records dated August 13, 2000 noted that appellant was being treated for left-sided chest pain and burning on the bottom of his left foot. Neither of these conditions were accepted by the Office nor was there evidence to suggest that they were causally related to appellant’s accepted employment injury. Appellant’s narrative statement indicated that he was unable to work due to his employment-related injury; however, two second opinion physicians, Drs. Frankel and Stojic, both indicated that appellant had no residuals from his accepted employment injury of June 6, 1986 and noted the lumbar strain had resolved. The Board notes that appellant has not submitted a physician’s report, which provided a rationalized opinion specifically addressing if appellant had any continuing residual condition and whether it was causally related to the June 6, 1986 work injury.⁶

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

For these reasons, the Office met its burden of proof in terminating appellant’s compensation benefits.⁷

The decision of the Office of Workers’ Compensation Programs dated December 1, 2000 is hereby affirmed.

Dated, Washington, DC
August 30, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁵ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

⁶ *Supra* note 4.

⁷ With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).