

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD D. JENKERSON and DEPARTMENT OF AGRICULTURE,
APACHE-SITGREAVES NATIONAL FOREST, Springerville, AZ

*Docket No. 01-1212; Submitted on the Record;
Issued December 26, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant had any disability after April 25, 1999, the date the Office of Workers' Compensation Programs terminated his monetary compensation entitlement, causally related to his July 21, 1997 employment injuries.

The Office accepted that on July 21, 1997 appellant, then a 60-year-old temporary fire lookout, sustained a fracture of his right femur when he slipped on a flight of stairs on the lookout tower. Appellant underwent arthroscopic surgery on July 22, 1997. The Office subsequently expanded his claim to include deep vein thrombophlebitis of the right leg.

On a work restriction evaluation form dated February 24, 1999, Dr. Abdul Memon, appellant's treating physician, released appellant to working eight hours per day with no restrictions.

On March 12, 1999 the Office issued appellant a notice of proposed termination of compensation on the grounds that the medical evidence of record showed that he was no longer disabled as a result of his employment injuries. The Office noted that appellant's treating physician, Dr. Memon, released him to work eight hours per day with no restrictions.

In a letter dated April 2, 1999, appellant disagreed with the Office's proposal to terminate his wage-loss compensation since he was still on medication for the prevention of further blood clots and that vocational rehabilitation tried to place him in a teaching position even though he had explained that his teaching certification had expired in May 1999.

By decision dated April 15, 1999, the Office finalized the notice of proposed termination of compensation finding that appellant's disability as a result of his right leg fracture and deep vein thrombophlebitis had ceased no later than April 25, 1999. The Office found Dr. Memon's medical report releasing him to work to be the weight of the medical evidence as there was no contrary medical evidence.

Appellant requested reconsideration by letter dated June 23, 1999 alleging that a thrombosis was discovered on June 3, 1999 and requested his compensation be reinstated due to his total disability. In support of his request, he submitted a March 17, 1999 ultrasonography of the right lower extremity by Dr. E. Jay Pringle, a Board-certified radiologist, notes dated April 20 and June 28, 1999 by Dr. Memon, April 26 and June 28, 1999 clinical notes by Dr. John A. Connolly, a Board-certified orthopedic surgeon, dated May 3 and June 3, 1999 right leg sonovenograms by Dr. A.E. Noyes.

Dr. Pringle, in the March 17, 1999 ultrasonography, noted:

“All observed veins, including deep collateral vessels, appear to be normally compressible without specific evidence of active thrombus. The findings likely represent chronic residua of previous thrombosis, with recanalization and collateral flow about an obstructed mid thigh segment. This might predispose the patient to recurring disease although he denies current symptoms.”

Dr. Memon in an April 20, 1999 script diagnosed deep venous thrombosis in the right leg, supra condyle fracture of the right femur and opined that appellant was temporarily disabled. Dr. Memon noted appellant’s complaints of recurrence of his right leg pain, appellant’s request for an orthopedic consultation and that the physician “would like to request for temporary disability until consultation is done.”

Dr. Connolly, in clinical notes dated April 25 and June 28, 1999, noted appellant’s complaints of pain, but provided no diagnosis or opinion as to the cause of appellant’s complaints.

In a right leg sonovenogram dated May 3, 1999, Dr. Noyes, diagnosed “chronic disease, primarily in the superficial femoral vein, with collateralization in the upper right leg and prominent flow in the deep system similar to reviewed study of March 17, 1999.” Dr. Noyes noted “persistent mid right superficial femoral vein chronic phlebothrombosis, showing no change since March 17, 1999” in the June 3, 1999 right leg sonovenogram.

In a June 28, 1999 note, Dr. Memon stated that appellant was placed on Coumadin for the next 12 months.

In a merit decision dated September 20, 1999, the Office denied appellant’s request for modification on the basis that the evidence was insufficient.

On June 13, 2000 appellant requested reconsideration of the denial of his claim and submitted evidence supporting his total disability due to his thrombosis. Subsequent to his request, medical records for the period September 20, 1999 through April 21, 2000 were submitted. Dr. Memon in the medical records for the period September 20, 1999 through April 21, 2000 detailed the treatment for appellant’s deep vein thrombophlebitis, which included prescribing Coumadin.

By merit decision dated June 23, 2000, the Office denied appellant’s request for modification as appellant failed to submit any rationalized medical evidence supporting that his current disability was employment related.

In a letter dated August 16, 2000, appellant requested reconsideration to cover dates of total disability. He submitted an August 22, 2000 note by Dr. Memon, an August 3, 2000 note by Dr. Memon and an August 18, 2000 right lower extremity doppler ultrasound by Dr. Jennifer J. Kottra, a Board-certified radiologist, were submitted in support of his request.

Dr. Memon, in his August 3, 2000 note, diagnosed a deep venous thrombosis. In the August 22, 2000 note, the physician recalled appellant for a recurrence of his deep venous thrombosis in this right leg.

Dr. Kottra found no evidence of any deep vein thrombosis in the August 18, 2000 ultrasound.

By merit decision dated November 28, 2000, the Office denied appellant's request for modification.¹

The Board finds that appellant has not established any disability after April 25, 1999 causally related to his July 21, 1997 employment injuries.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² 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.³

The Board finds that the Office met its burden of proof to terminate appellant's monetary compensation entitlement based upon the reports of appellant's treating physician, Dr. Memon. In a February 24, 1999 work restriction form, Dr. Memon released appellant to working was eight hours per day with no restrictions. As he was appellant's treating physician and there was no contrary medical evidence, the Office properly found that appellant was no longer totally disabled due to his employment injuries.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.⁴ Thus, appellant must establish that his continuing disability was causally related to his accepted July 21, 1997 employment injuries by the weight of the reliable, probative and substantial evidence.⁵

¹ The Board notes that Office appears to have made typographical errors in referring to a Dr. Mitchell and disability after May 8, 1998.

² *Gloria J. Godfrey*, 52 ECAB ____ (Docket No. 00-502, issued August 27, 2001).

³ *Lynda J. Olson*, 52 ECAB ____ (Docket No. 00-2085, issued July 11, 2001).

⁴ *Franklin D. Haislah*, 52 ECAB ____ (Docket No. 01-208, issued August 1, 2001).

⁵ *Talmdge Miller*, 47 ECAB 673 (1996).

Appellant has not met his burden to establish any continuing disability due to his accepted employment injuries.

Appellant has submitted various medical reports from Dr. Memon, detailing findings of a deep vein thrombosis and the treatment he received. However, none of the medical evidence he has submitted details whether appellant is totally disabled due to his deep vein thrombosis or provides any medical rationale showing how appellant's disability was causally related to his accepted employment injury.

As appellant has submitted no further rationalized medical evidence supporting that he continues to be disabled to some degree due to his accepted employment-related injuries, he has not met his burden of proof to establish his claim subsequent to the Office's termination of compensation.

The decision dated November 27, 2000 of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 26, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member