

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN C. KNECHT and DEPARTMENT OF DEFENSE,
DEFENSE ACCOUNTING & FINANCIAL SERVICES, Denver, CO

*Docket No. 99-742; Submitted on the Record;
Issued January 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective December 23, 1996; (2) whether the Office properly terminated appellant's medical benefits; and (3) whether appellant met his burden of proof to establish that he had any disability or medical condition after December 23, 1996.

On June 5, 1996 appellant, then a 54-year-old accountant, sustained a low back strain in the performance of duty. By decision dated January 9, 1997, the Office terminated appellant's compensation benefits and medical benefits effective December 23, 1996. By decision dated August 11, 1997, the Office denied modification of its January 9, 1997 decision. By decision dated August 8, 1998, the Office denied modification of its August 11 and January 9, 1997 decisions.

With regard to compensation for wage loss, the Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.¹

In a narrative report dated December 23 1996, Dr. Stephen Dinenberg, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's condition, a history of his course of treatment and findings on examination. He noted that a July 1, 1996 computerized tomography (CT) scan of the lumbar spine showed chronic degenerative changes.

¹ See *Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990).

Dr. Dinenberg diagnosed chronic degenerative disc disease of the lumbar spine, most noted at L1-3 and L5-S1. Dr. Dinenberg stated:

“[Appellant] appears quite physically fit and throughout the course of the physical examination grunts ... to demonstrate pain from time to time. He otherwise has a general demeanor of comfort as he sits in the examining chair. [He] is asked to stand and does so with normal body mechanics. He is asked to lean forward at the waist and bends forward about 20 degrees ... before he says his low back hurts.... He toe walks and heel walks in a normal fashion.”

* * *

“[Appellant] is asked to get on an examining table and does so with normal body mechanics. Straight leg raising on the left and right are positive at about 15 degrees with [appellant] reporting low back pain on the left ... and in his 4th toe on the right. Foot dorsiflexion does not confirm the sciatic stretch demonstrated by the straight leg raising.”

* * *

“This chronic degenerative disc disease precedes the injury on June 5, 1996 by many years. The incident of June 5, 1996 sounds like a mild strain at worse. A strain can be thought to cause a flare-up in preexisting chronic degenerative disc disease. A flare-up from such an incident can be expected to exist for approximately three weeks.

“[Appellant] is not experiencing residuals from the work incident of June 5, 1996. There are no objective findings in reference to the incident of June 5, 1996. I feel [appellant] is able to return to his preinjury job as an accountant without restriction. I feel that no specific therapy is indicated for [appellant] as total recovery from chronic degenerative disc disease does not occur.... [Appellant’s] prognosis for continued back pain with or without pain in the lower extremities and numbness and tingling in the lower extremities is one of almost absolute certainty that this will continue for the rest of his life. Again, this is not related to the incident of June 5, 1996.”

The Board finds that the thorough and well-rationalized report of Dr. Dinenberg establishes that appellant’s disability and medical condition causally related to his June 5, 1996 employment-related low back strain had resolved by December 23, 1996. Therefore, in basing its January 9, 1997 decision to terminate appellant’s compensation benefits on Dr. Dinenberg’s report, the Office met its burden of proof.

The reports from appellant’s attending physicians received by the Office prior to issuance of its January 9, 1997 decision are not sufficient to establish any continuing disability or medical condition causally related to the June 5, 1996 employment injury.

In a form report dated June 20, 1996, Dr. Jerald J. Tantillo, appellant's Board-certified internist, diagnosed a severe low back sprain sustained on June 5, 1996 when appellant was pushing chairs and a table at work. He indicated that appellant would be able to resume regular work on July 8, 1996. However, in a disability certificate dated July 9, 1996, Dr. Tantillo indicated that appellant was off work indefinitely pending a neurosurgical consultation.

In a report dated August 23, 1996, Dr. Stephen H. Shogan, a Board-certified neurosurgeon, provided a history of appellant's condition and findings on examination and stated that a CT scan of the low back revealed no significant abnormality with the exception of mild degenerative changes. He recommended physical therapy. However, Dr. Shogan did not indicate that appellant was disabled or that his condition was causally related to the June 5, 1996 employment injury.

In form reports dated September 4 and October 3, 1996, Dr. Tantillo diagnosed low back strain and indicated that appellant was totally disabled. He indicated by checking the block marked "yes" that appellant's condition was causally related to the June 5, 1996 employment injury. However, the Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.² Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.³

In a report dated October 7, 1996, Dr. Tantillo related that appellant had sustained an injury to his low back on June 5, 1996 resulting in persistent low back pain. He stated that appellant was unable to sit or stand for long periods of time due to pain which made him unable to work. However, Dr. Tantillo provided insufficient medical rationale explaining how appellant's condition was causally related to the June 5, 1996 employment injury.

In a form report dated December 18, 1996, Dr. Shogan indicated that appellant was totally disabled due to low back and bilateral lower extremity pain. He indicated by checking the block marked "yes" that appellant's condition was causally related to the June 5, 1996 employment injury. However, as noted above, an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value and is not sufficient to establish causal relationship.

The reports of Drs. Tantillo and Shogan are insufficient to establish causal relationship between appellant's complaints of back pain and his June 5, 1996 employment injury. Therefore, the Office met its burden of proof in terminating appellant's compensation benefits based upon the well-rationalized opinion of Dr. Dinenberg that appellant's work-related lumbar strain had resolved.

A separate issue is raised, however, with regard to termination of appellant's medical benefits. The January 9, 1997 Office decision clearly terminates medical benefits as of

² *Donald W. Long*, 41 ECAB 142 (1989).

³ *Id.*

December 23, 1996. The record transmitted to the Board does not contain any indication that a pretermination notice was sent to appellant.

The Office's procedures state in pertinent part:

"b. *Notice Required To Terminate Medical Benefits.* The [Office of Workers' Compensation Programs] must provide notice before terminating any of the following:

- (1) *An authorization for treatment (e.g., Form CA-16) which was issued 60 days or less in the past.*
- (2) *The services of a specific physician....*
- (3) *A specific service which the claimant has received, or expects to receive, on a fairly regular ... basis for 60 days or more and for which Office.*
- (4) *All medical treatment.* Such terminations are usually associated with disallowance of all compensation benefits because the claimant is not longer disabled, or the disability is not longer related to the work injury.... The claims examiner should include specific reference to medical benefits in preparing the pretermination notice."

* * *

"d. *Notice Not Required To Terminate Medical Benefits*

Pretermination notice is not needed when:

- (1) *The physician indicates that further medical treatment is not necessary or that treatment has ended.*
- (2) *The Office denies payment for a particular charge on an exception basis.*"⁴

In the present case, the January 9, 1997 decision terminated all medical benefits which requires that a pretermination notice be issued under Office procedures. Neither of the exceptions to the requirement for a pretermination notice are present here. The Board notes that none of appellant's attending physicians indicated that all treatment for an employment-related condition had ended as of December 23, 1996.

The Board accordingly finds that under the Office's procedures a pretermination notice should have been sent to appellant advising that the Office proposed to terminate medical benefits and allowing appellant an opportunity to respond. Since the Office did not provide

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2. 1400.6(b)(4) (March 1997).

appellant with a pretermination notice and an opportunity to respond prior to termination of medical benefits, the termination of medical benefits was improper in this case.

The Board further finds that appellant failed to meet his burden of proof to establish that he sustained any disability or medical condition after December 23, 1996, the date the Office terminated his compensation benefits.

By letters dated June 30, 1997 and July 2, 1998, appellant requested reconsideration and submitted additional evidence.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. The Office is not required to reinstate compensation merely because the claimant subsequently submits new evidence which is of such nature as to lead the Office to conclude that further inquiry is needed.⁵

The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that appellant had residuals of his employment injury after December 23, 1996.

In a report dated December 24, 1996, received by the Office on January 23, 1997, Dr. Shogan related that appellant continued to experience low back pain and pain in his lower extremities following his June 5, 1996 employment injury and that the pain was exacerbated with any type of activity. However, he failed to provide sufficient medical rationale showing causal relationship between appellant's complaints of pain and his June 5, 1996 employment injury and, therefore, this report does not establish any work-related disability or medical condition after December 23, 1996.

In a report dated February 6, 1997, Dr. Carol Phelps provided a history of appellant's condition and findings on examination and noted that his muscular tone and development were good overall. She stated her impression of nonspecific mechanical back pain following a back strain, which had progressed to chronic back pain syndrome of eight months' duration. However, Dr. Phelps did not provide a rationalized medical opinion explaining how appellant's chronic pain syndrome was related to the June 5, 1996 employment injury. Therefore, this report is insufficient to establish a work-related disability or medical condition after December 23, 1996.

In reports dated May 1 and October 28, 1997, Dr. Tantillo described appellant's course of treatment and opined that his low back pain was due to the June 5, 1996 employment injury. However, he provided insufficient medical rationale in support of his opinion. This lack of rationale is particularly important in light of the fact that, in his June 20, 1996 report, Dr. Tantillo indicated that appellant would be able to resume regular work on July 8, 1996. As noted above, the Office is not required to reinstate compensation merely because the claimant subsequently submits new evidence which is of such nature as to lead the Office to conclude that

⁵ *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

further inquiry is needed. Therefore, these reports are not sufficient to discharge appellant's burden of proof.

In a report dated April 8, 1998, Dr. Tantillo stated:

“[Appellant] has chronic persistent low back pain which actually has increased over the past month with right sciatic pain all the way to the level of his right foot which is daily and constant, occasional left sciatic pain. The sciatic pain increases with sitting, he cannot sit for the more than two hours at a time, he could only sleep two to three hours per night because of the pain.... He has constant pain in the proximal palms in both hands, left worse than right, it is difficult for him to grip and the left palm radiates up to his forearm to his elbow.”

Dr. Tantillo provided findings on examination and stated that appellant could not sit for more than two hours and could not drive for more than one to two hours. He indicated that appellant could not grip a keyboard and had difficulty writing because grasping a pen or pencil created increased pain in his left hand.⁶ Dr. Tantillo stated that appellant was totally disabled and could not work in any activity or occupation. However, he failed to provide sufficient medical rationale explaining how appellant’s disability was causally related to the June 5, 1996 employment injury. Therefore, this report is not sufficient to establish that appellant had any disability or medical condition after December 23, 1996 causally related to his June 5, 1996 employment injury.

In a report dated June 26, 1998, Dr. Tantillo noted that a magnetic resonance imaging scan of the lumbosacral spine performed on February 10, 1997 showed diffuse bulging of the lumbar intervertebral discs, most prominently at the C3-4 level. He stated that these findings in no way excluded the fact that the June 5, 1996 injury was the cause of his ongoing symptoms. Dr. Tantillo repeated his opinion that appellant’s June 5, 1996 employment injury was the cause of his continued back and his permanent disability. However, he provided insufficient medical rationale on the issue of causal relationship and, therefore, this report does not discharge appellant’s burden of proof.

⁶ The record shows that appellant sustained bilateral carpal tunnel syndrome in the performance of duty on September 8, 1995.

The decision of the Office of Workers' Compensation Programs dated August 8, 1998 is affirmed with respect to termination of compensation benefits for wage loss and reversed with respect to termination of medical benefits.

Dated, Washington, DC
January 17, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member