

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES W. JONES and DEPARTMENT OF THE AIR FORCE,
MAXWELL AIR FORCE BASE, AL

*Docket No. 00-2802; Submitted on the Record;
Issued July 17, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective April 11, 2000; and (2) whether the Office properly denied appellant's request for surgery.

On September 8, 1999 appellant, then a 52-year-old packing and crating supervisor, sustained a lumbar strain and herniated disc at L4-5 in the performance of duty.

Effective October 28, 1999, appellant was placed on the periodic compensation rolls to receive compensation benefits for temporary total disability.

By letter dated February 29, 2000, the Office advised appellant that it proposed to terminate his compensation benefits.

By decision dated April 11, 2000, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence established that he had no continuing disability causally related to his September 8, 1999 employment injury.

By decision dated May 22, 2000, the Office denied appellant's request for surgery on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. John D. Crompton, a Board-certified orthopedic surgeon and Office referral physician, established that appellant's request for surgery was not causally related to his September 8, 1999 employment injury.¹

¹ Subsequent to the issuance of the May 22 and April 11, 2000 Office decisions, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

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.²

In a report dated November 30, 1999, Dr. Crompton provided findings on examination and diagnosed degenerative disc disease. He also provided a list of work restrictions and stated:

"I believe that this patient's injury is causally related to his current pain given the fact that he (according to him) has no history of previous pain and certainly there would have been at least a temporary aggravation of his underlying degenerative disc disease and possible mild spinal stenosis by this particular injury. However, the treatment given the fact that he does not have any specific neurologic symptoms as far as the lower extremity goes, would not necessarily be work related given the fact that the degenerative disc disease was present and would have been present whether he had the injury or not.

"I do believe [appellant] has conditions not related to the injury and [these are] degenerative disc disease and mild spinal stenosis.

"I do not believe surgery is warranted at this point. I believe the patient should have further conservative treatment to include the possibility of the epidural steroid injection, facet injections, etc. My reasoning behind this is the fact that the patient has absolutely no radicular symptoms whatsoever and adamantly denies them stating that he has only back pain. Certainly, his treatment would not be just a lumbar laminectomy or decompression alone if his pain was back pain only with no neurologic symptoms. I am fearful that he might ... need further treatment such as an interbody fusion. This would require further evaluation to determine this.

"... I would recommend that the patient be evaluated further by discogram evaluation of [the] lumbar spine. I would recommend that he undergo the possibility of an epidural steroid injection or at least facet injections to see if this will help with his pain. Certainly, do at least this as a minimum prior to proceeding with surgery. Again, I am fearful that a minimal lumbar laminectomy or minimal decompression alone will only result in further problems as early as a year or so [down] the road.

"I believe the patient would have a significant period of disability after his surgery, if, in fact, he did have some type of fusion, he may have some permanent

² See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

restrictions and permanent immobilities such as restriction of his weight lifting ... etc. The bottom line is that I feel the patient needs further evaluation and/or treatment.”

In a supplementary report dated February 1, 2000, Dr. Crompton indicated that the work restrictions he recommended were solely due to appellant’s nonwork-related preexisting conditions, that appellant had no residuals from his September 9, 1999 employment injury and the recommendations for conservative treatment were not due to appellant’s employment injury.

The Board finds that the weight of the medical evidence is represented by the thorough and well-rationalized report of Dr. Crompton which establishes that appellant had no further disability or medical condition on or after April 11, 2000 causally related to his September 8, 1999 employment injury and that appellant’s continuing back problems were due solely to his preexisting degenerative disc disease and spinal stenosis. Based upon Dr. Crompton’s November 30, 1999 report, the Office met its burden of proof in terminating appellant’s compensation benefits.

In reports dated October 6 and 20, 1999, Dr. Patrick G. Ryan, appellant’s attending Board-certified neurosurgeon, provided findings on examination and diagnosed a disc herniation at L4-5. He indicated that appellant was totally disabled and wished to proceed with surgery. However, Dr. Ryan did not provide a well-rationalized medical opinion explaining how appellant’s disability was causally related to his September 8, 1999 employment injury.

The Board further finds that the Office properly found that appellant’s surgery was not causally related to his September 8, 1999 employment injury.

In a memorandum dated October 14, 1999 regarding appellant’s request for surgery, an Office medical adviser noted that there were minimal neurological signs and minimal magnetic resonance imaging findings scan in Dr. Ryan’s October 6, 1999 report. He recommended conservative treatment rather than surgery.³

In a form report dated October 22, 1999, Dr. Ryan diagnosed a disc herniation at L4-5 and recommended surgery. However, he did not explain how the surgery was causally related to appellant’s September 8, 1999 employment injury.

As appellant failed to provide sufficient medical documentation that his requested surgery was causally related to his September 8, 1999 employment injury, the Office properly denied his request for surgery.

³ As noted above, Dr. Crompton stated in his November 30, 1999 report that surgery was not warranted.

The May 22 and April 11, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 17, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member