

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RANDALL A. SKAGGS and DEPARTMENT OF JUSTICE,
FEDERAL PRISON SYSTEM, El Reno, OK

*Docket No. 99-1558; Submitted on the Record;
Issued July 17, 2001*

DECISION and ORDER

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

The issue are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's wage-loss compensation as of September 10, 1998; and (2) whether appellant has established that he has an emotional condition causally related to his June 26, 1984 employment injury.

On June 26, 1984 appellant, then a 28-year-old utility systems repair foreman, sustained a cervical and left elbow sprain when he slipped and fell while in the performance of duty. He stopped working on June 27, 1984, receiving continuation of pay until August 9, 1984. Appellant returned to work on August 10, 1984 and stopped again on August 12, 1984. He received compensation for total disability from August 13, 1984 through June 23, 1985. Appellant returned to regular-duty work on June 24, 1985.

Appellant stopped work on November 10, 1985, alleging a recurrence of disability. The record reflects that he underwent surgery on December 30, 1985 for arthroplastic release of the extensor lateral epicondyle of the left elbow. The Office expanded its acceptance of appellant's claim for left lateral epicondylitis.¹ Appellant has been in receipt of compensation since that time.

Appellant came under the treatment of Dr. Michael M. Moore, an attending orthopedic surgeon. On August 16, 1993 appellant was referred for diagnostic evaluation of his left upper extremity. Electrodiagnostic testing revealed normal nerve conduction studies of the left ulnar and medial nerves with no evidence of compression. He underwent additional surgery by Dr. Moore for a left elbow medial epicondylectomy on April 28, 1994.

¹ On September 27, 1986 appellant sustained injuries in a nonemployment-related automobile accident, in which he sustained injury to his chest, both wrists, head, low back and left knee. He underwent surgery for repair of a torn tendon of the left knee.

By letter dated July 31, 1995, the Office requested that Dr. Moore submit an undated medical report concerning appellant's disability for work and capacity for employment. In a September 19, 1995 work restriction evaluation form (OWCP-5), Dr. Moore indicated that appellant had no restrictions for work and could perform repetitive motions of the left wrist and elbow. He indicated that appellant was last seen on August 1, 1994 and ultimately released by his office for not keeping follow-up appointments.

Appellant came under the treatment of Dr. Kenneth K. Vest, a Board-certified psychiatrist, and Dr. Douglas A. Stephens, a clinical psychologist. In an October 23, 1995 note, Dr. Vest indicated that he began treatment of appellant in July 1993, stating, "I feel that the patient's difficulties are a result of the injury he sustained while employed, as it has directly contributed to his feelings of worthlessness and helplessness and also burdened him with chronic pain." Dr. Stephens stated that he began treatment of appellant upon referral of Dr. Vest.

On June 17, 1998 the Office referred appellant for examination to Dr. Joe Walter Crow, a Board-certified orthopedic surgeon. In a June 29, 1998 report, Dr. Crow stated that he examined appellant on June 26, 1998 and reviewed appellant's history of injury. Dr. Crow noted that appellant had since undergone multiple surgeries on both elbows and a left carpal tunnel release in November 1996. He reviewed appellant's medical treatment following the employment injury and listed current symptoms as a dull, deep aching pain of the neck and numbness of the left hand, primarily in the ring and small fingers. Appellant also described right arm weakness and low back pain on the right side into the buttocks. On examination, Dr. Crow stated that appellant was cooperative and walked with a normal gait, including heel and toe, and could do a full squat. He described range of motion evaluation of appellant's low back, cervical spine and both shoulders, noting no crepitation was found on either side. Neurological evaluation of the upper and lower extremities was described as normal as to motor strength, reflexes, and sensory examination. No atrophy or deformity was found in any of the extremities. Dr. Crow obtained x-rays of the left elbow and cervical spine. The left elbow was described as normal with the cervical spine showing a mild limitation in forward flexion but with normal bony alignment and no sign of disc degeneration or narrowing. Dr. Crow diagnosed a history of chronic spinal strain, bilateral elbow contusions with cervicoscapular myofascial pain; history of carpal tunnel release and bilateral epicondylitis and left medial epicondylitis, status post-surgical releases; and a history of depression. Dr. Crow found that appellant was not disabled due to any residuals of his accepted conditions. In an attached work restriction evaluation, Dr. Crow opined that appellant could work for eight hours a day, subject to specified physical limitations on reaching above the shoulder, repetitive motions of the wrist, climbing and lifting limited to 30 pounds.

On August 10, 1998 the Office notified appellant that it proposed terminating his wage-loss compensation. It was noted that the Office had accepted appellant's claim in 1984 for a cervical sprain, left elbow sprain and lateral epicondylitis of the left elbow with an epicondylectomy. The Office advised appellant that his claim had not been accepted for an employment-related emotional condition. Appellant was advised that Dr. Crow's medical report was the only recent orthopedic evaluation of record and that he was entitled to continuing medical care for treatment of his cervical sprain.

Appellant submitted the August 20, 1998 report of Dr. Vest, who noted treatment for recurrent depression, obsessive-compulsive personality disorder and generalized anxiety

disorder. He noted that appellant had required several hospitalizations “over the course of the years” and was in therapy for stress management. Dr. Vest indicated that, during the course of his care, appellant was consistent in his complaints of pain in his neck and shoulders and recommended further medical examination. With regard to causal relationship, Dr. Vest stated, “I feel that the patient’s history of depression dates back to his original injury in mid 1980’s, as apparently the patient was functioning in a relatively stable fashion at that point.”

On September 10, 1998 the Office issued a decision in which it terminated appellant’s wage-loss compensation. Appellant was advised that he was entitled to continuing medical treatment for his accepted injury-related conditions.

Appellant requested reconsideration and submitted additional medical evidence to the record. An October 19, 1998 note from Dr. Vest noted that he referred appellant to Dr. Melody D. St. John, a Board-certified internist specializing in rheumatology, for management of continuing pain.² In an October 16, 1998 report, Dr. St. John listed appellant’s preexisting conditions and diagnoses as some degenerative joint disease, fibromyalgia and severe depression “that seems to be preceded by an injury at work.” She noted that it was her understanding that appellant did not suffer from any health problems until he suffered an accident at work and that “his injury appears to be causal.” Dr. St. John indicated, however, that appellant was not totally disabled due to the diagnosed conditions, noting that he should be able to perform mild to moderate activity. The September 28, 1998 report of Dr. Glenn L. Smith, an osteopath, listed his findings on examination of appellant’s cervical spine and left elbow. He recommended rehabilitation for work hardening. Appellant returned for treatment on October 20, 1998 and was released from Dr. Smith’s care. A September 15, 1998 report from Rita W. McClure, a licensed social worker, addressed appellant’s mental health treatment and opined that he was unable to work.

By decision dated December 14, 1998, the Office denied modification of the September 10, 1998 decision.

The Board finds that the Office of Workers’ Compensation Programs met its burden of proof to terminate appellant’s wage-loss compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation benefits.³ After determining 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.⁴ Whether a particular injury causes an employee disability for employment is a medical issue that must be resolved by competent medical evidence.⁵

² The record indicates that appellant was involved in a second motor vehicle accident on October 19, 1995.

³ *Donald W. Woodall*, 49 ECAB 415 (1998); *Teresa B. Russ*, 47 ECAB 444 (1996).

⁴ *Wiley Richey*, 49 ECAB 166 (1997).

⁵ *Maxine J. Sanders*, 46 ECAB 835 (1995).

Appellant sustained an injury on June 26, 1984 when he slipped on oil at the employing establishment and fell to the floor, sustaining a cervical and left elbow strain. His claim was subsequently accepted for left lateral epicondylitis, for which appellant underwent multiple surgeries.

The Board finds that the weight of medical opinion consists of the report of Dr. Crow, a Board-certified orthopedic surgeon who examined appellant upon referral of the Office. The record indicates that appellant was last seen by Dr. Moore for treatment of his left elbow condition on August 1, 1994, when released from active treatment. The Office properly referred appellant to Dr. Crow in 1998 for an updated evaluation of appellant's medical status. Dr. Crow provided a thorough examination of appellant and review of the medical evidence of record. He set forth appellant's physical symptoms and complaints, and described the range of motion findings pertaining to appellant's accepted cervical and left elbow conditions. Neurological examination of appellant was described as normal with regard to motor strength, reflexes and sensory evaluation. No atrophy or deformity was found in any of appellant's extremities. Dr. Crow noted that appellant had objective evidence of a chronic cervical sprain based on limitation of reversal of lordosis as found on x-ray in forward flexion. The physician noted, however, that this was not a disabling condition. Dr. Crow noted that there was no objective evidence that appellant's accepted left elbow strain or lateral epicondylitis conditions were active or caused any disability for work. Dr. Crow noted that appellant could work 8 hours a day, subject to specified prophylactic restrictions limiting lifting to 30 pounds and limiting the hours of repetitive movements of the wrists and elbows.

The Board finds that Dr. Crow's conclusions are well rationalized and based upon an accurate factual and medical background of appellant's accepted injuries and treatment history. The reports of the physician are sufficiently probative on the issue of continuing disability for work to support the termination of appellant's wage-loss benefits for the accepted conditions.

Following notification of the proposed termination of his wage-loss benefits, appellant submitted medical evidence from Dr. Vest, a psychiatrist, and Dr. Stephens, a clinical psychologist who examined appellant upon referral by Dr. Vest. The Board notes that the Office has never accepted an appellant's emotional condition as employment related. For this reason, appellant bears the burden of proof of establishing by substantial and probative medical evidence that his emotional condition is causally related to the accepted injury of June 26, 1984.⁶ As part of this burden of proof, appellant must submit rationalized medical evidence which is based upon an accurate history.⁷ The Board finds that the reports of Dr. Vest are not sufficiently well rationalized to sustain appellant's burden of proof. In an October 23, 1995 report, Dr. Vest noted that he began treating appellant in 1993 for his emotional complaints. He stated, "I feel that the patient's difficulties are a result of the injury he sustained while employed, as it directly contributed to his feelings of worthlessness and helplessness and also burdened him with chronic pain." Dr. Vest's notation did not provide any history of appellant's accepted employment injury, detail any examination of appellant or provide a factual or medical background for his stated opinion on causal relationship. Dr. Vest did not explain how appellant's injury in 1984

⁶ *Diane Williams*, 47 ECAB 613 (1996).

⁷ *Richard A. Weiss*, 47 ECAB 182 (1995).

and subsequent period of disability would cause or contribute to disability commencing in 1993. Other factors, such as appellant's automobile accidents or family history were not described or discussed by the physician. In an August 20, 1998 report, Dr. Vest stated that appellant had been hospitalized on several occasions over the years, but did not describe the factual background for any of appellant's hospitalizations, admitting or discharge diagnosis, or explain how appellant's accepted conditions caused or contributed to his treatment. Dr. Vest stated, "I feel that the patient's history of depression dates back to his original injury in mid 1980's, as apparently the patient was functioning in a relatively stable fashion at that point." The Board finds that Dr. Vest's statement on causal relationship is not well rationalized, as the physician did not explain the basis for his stated conclusion. On October 19, 1998 Dr. Vest referred appellant to Dr. St. John for treatment.

The October 16, 1998 report of Dr. St. John listed appellant's preexisting conditions as some degenerative joint disease, fibromyalgia and severe depression. She did not specifically address the June 26, 1984 injury or appellant's treatment for his accepted conditions arising from that injury. With regard to the diagnosis she made, however, Dr. St. John indicated that appellant was not totally disabled. The Board finds that Dr. St. John's report is of diminished probative value and insufficient to create a conflict in medical opinion with the report of Dr. Crow. Dr. St. John's report does not set forth thorough findings on physical examination of appellant or show a complete knowledge of the factual history or medical treatment in this case. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be probative, the physician must provide a reasoned opinion based on an accurate factual and medical history and provide rationale for the conclusions reached.⁸

Similarly, the September 28, 1998 report of Dr. Smith, an osteopath, noted only his findings on examination of appellant's cervical spine and left elbow. The physician recommended a work hardening program. His medical report did not address the relevant issue in this case of appellant's continuing disability for work due to the accepted 1984 employment injury. On October 20, 1998 Dr. Smith released appellant from his care.⁹

The Board concludes that the evidence of record is insufficient to establish that appellant's emotional condition is causally related to his June 26, 1984 employment injury. For this reason, the decisions of the Office will be affirmed.¹⁰

⁸ See *Jean Culliton*, 47 ECAB 728 (1996).

⁹ The report from Ms. McClure, a licensed social worker, does not constitute medical evidence as it is not the report of a "physician" as defined under section 8101(2) of the Federal Employees' Compensation Act. *Frederick C. Smith*, 48 ECAB 132 (1996).

¹⁰ Appellant submitted additional evidence to the record following the December 14, 1998 decision of the Office. As this evidence was not before the Office at the time of its final decision, the Board may not review it for the first time on appeal. See 20 C.F.R. § 501.2(c).

The September 10 and December 14, 1998 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