

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE A. GILLOOLY and U.S. POSTAL SERVICE,
POST OFFICE, Southeastern, PA

*Docket No. 00-373; Submitted on the Record;
Issued May 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective September 21, 1998.

The Office accepted appellant's claim for a lumbosacral strain and sprain, which resulted from an injury on March 17, 1990 when a leg of the chair appellant was sitting on broke and he landed on his back. Appellant returned to light-duty work on March 18, 1991, had several recurrences of disability and eventually resumed full-time employment performing light work. However, due to problems with management whereby appellant stated that his supervisors kept demanding that he perform work beyond his physical restrictions, he was dismissed from work on three occasions and on December 13, 1996 he was told to leave and not come back. Appellant has not worked since December 13, 1996.

In a report dated December 11, 1995, a referral physician, Dr. Armando A. Mendez, a Board-certified general surgeon, reviewed appellant's history of injury, performed a physical examination and opined that appellant had a contusion to his lumbar spine as a result of his March 17, 1990 employment injury. He stated that the contusion represented a soft tissue injury, which should have resolved over a three to six-month period of time. Dr. Mendez stated that his only significant finding on physical examination was nerve root irritation on the left side with straight leg raising. He opined that appellant could perform sedentary work 8 hours a day with no repetitive bending, repetitive twisting or repetitive lifting over 10 pounds. Dr. Mendez stated that if a magnetic resonance imaging (MRI) scan showed a herniated disc that would be a positive finding but if it showed disc degeneration, that would be a negative finding consistent with the aging process and expected of someone of appellant's size. He stated that, in the absence of any significant abnormality on the electromyogram (EMG) or MRI scan, he would conclude that appellant had a soft tissue injury which should have resolved.

By decision dated June 21, 1996, the Office terminated appellant's compensation benefits, effective June 21, 1996, stating that the evidence of record established that the residuals of the accepted injury had resolved.

Appellant requested an oral hearing before an Office hearing representative, which was held on September 24, 1997. He described the history of his employment with the employing establishment and the circumstances of the March 17, 1990 employment injury. Appellant stated that he had his first injury with the employing establishment when he injured his ankle in November 1987 and a week later he injured his right knee and right wrist at work. He underwent surgery on his knee on September 16, 1988. Appellant stated that, after the surgery, he performed light duty but returned to full-time work prior to the March 17, 1990 employment injury.

Appellant also stated that he was in a nonwork-related car accident on April 27, 1995 in which he injured his left ankle, had stiffness in his neck and had a headache which lasted for about two months. He stated that he missed work for six months and returned to work on November 11, 1995 but was told that the light-duty job he had been performing was no longer available and he must work full time without restrictions. Appellant stated that he was continually threatened everyday by different supervisors to perform his usual work. He stated that he filed a grievance for management's first removal of him in December 1995, management dismissed him again on July 10, 1996 and then again on August 18 and October 20, 1996 and permanently dismissed him on December 13, 1996. Appellant testified that he continued to have pain going down his left leg, that the pain had gotten worse and he gained weight through inactivity. He also stated that he did not hurt his back in the car accident. Appellant stated that he was currently taking medication for his back condition and had difficulty sitting for prolonged periods of time.

Appellant submitted additional medical evidence including a medical report dated November 24, 1997 and disability notes from his treating physician, Dr. Joseph P. Quintiliani, an osteopath, and diagnostic tests consisting of an MRI scan dated August 2, 1996 and an EMG dated December 31, 1996. In his November 24, 1997 report, Dr. Quintiliani reviewed appellant's history of injury and performed a physical examination. He stated that, over the past seven years, appellant continued to suffer from problems with his back, left shoulder and post-traumatic anxiety. Dr. Quintiliani stated that appellant's injuries directly resulted from the March 17, 1990 employment injury and that appellant could perform light-duty work 6 hours a day, 4 days a week, with no lifting greater than 10 pounds and no prolonged sitting and standing.

In a disability note dated July 2, 1996, Dr. Quintiliani stated that appellant could return to work four days a week six hours a day performing light duty. A disability note dated December 18, 1995 from Dr. Quintiliani reiterated those restrictions and additionally proscribed lifting over 10 pounds and prolonged sitting, standing and step climbing.

The August 2, 1996 MRI scan showed multilevel degenerative disc disease, a disc bulging at L3-4 without evidence of disc herniation, a small left paracentral osteophyte and/or disc protrusion at L4-5 and a bulging disc at L5-S1 without definite disc herniation. In a report dated August 6, 1996, Dr. E. James Kohl, a Board-certified orthopedic surgeon, informed Dr. Quintiliani that the MRI scan showed some bulging at the L3 level but no foraminal encroachment.

In a report dated December 31, 1996, Dr. Steven M. Kiel, a Board-certified psychiatrist and neurologist, who performed the EMG stated that the absence of sural nerve latencies and

bilateral H reflexes suggested the presence of a proximal abnormality but the test was essentially unremarkable.

By decision dated December 10, 1997, the Office hearing representative found that Dr. Mendez's December 11, 1995 report was equivocal since he made his conclusion contingent on results of diagnostic tests he did not have, and remanded the case for Dr. Mendez to reevaluate appellant and review the MRI scan and EMG, and instructed appellant to submit any additional, relevant medical evidence to the Office.

In a report dated August 28, 1998, Dr. Mendez considered appellant's medical and employment history since the last examination and performed a physical examination in which he noted that appellant tended to favor the left side "somewhat" when he walked but there was not an obvious gait disturbance. He stated that appellant complained of low back discomfort with straight leg raising on the left above 60 degrees. Dr. Mendez noted that the EMG was normal and the MRI scan showed multilevel degenerative disc disease at L3-4, L4-5 and L5-S1 with disc bulging and no evidence of herniation. He concluded that appellant's March 17, 1990 employment injury had resolved based on the diagnostic studies, which showed no evidence of herniation or radiculopathy. Dr. Mendez stated that the evidence showed degenerative disc disease, which was a "consistent expected finding of someone of his size." He opined that appellant's best medicine might be his losing weight because he believed that appellant's chronic low back complaints were due to appellant's obesity and degenerative disc disease, which were unrelated to the 1990 fall. Dr. Mendez stated that appellant could return to work without restrictions.

By decision dated September 21, 1998, the Office terminated appellant's compensation benefits, effective September 21, 1998, stating that the evidence of record established that appellant recovered from the lumbar strain.

By letter dated September 24, 1998, appellant requested an oral hearing before an Office hearing representative, which was held on March 23, 1999. His attorney appeared on his behalf. Appellant's attorney contended that Dr. Mendez's report was incomplete because he did not consider the effect of appellant's 1987 work-related knee injury or his 1995 car accident on his work-related back condition. He also stated that Dr. Mendez found that appellant favored his left side when he walked, and Dr. Mendez found some objective evidence of continuing disability based on positive findings of the low back and restrictions of motion of the low back. The attorney argued that Dr. Mendez did not provide any medical rationale as to how appellant's back condition had resolved but only presented a conclusion. He stated that there was a conflict of opinion as to whether appellant had recovered from his March 17, 1990 employment injury between Dr. Mendez and appellant's treating physicians, and the case should be remanded for an impartial medical specialist to resolve the conflict.

By decision dated July 9, 1999, the Office hearing representative affirmed the Office's September 21, 1998 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹ The right to medical benefits for an accepted condition is not limited to a period of entitlement for disability. To terminate authorization for medical benefits, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.² The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.³

In the present case, in his August 28, 1998 report, the referral physician, Dr. Mendez, opined that, based on his physical examination of appellant, the normal EMG and the MRI scan showing multilevel disc degeneration but no evidence of herniation, appellant's accepted injury of lumbosacral sprain and strain had resolved. Dr. Mendez stated that degenerative disc disease was consistent with someone of appellant's size and believed appellant's complaints of low back pain were due to his obesity and degenerative disc disease and were not related to the March 17, 1990 employment injury. In his December 11, 1995 report, he also stated that a finding of degenerative disc disease on the MRI scan would be consistent with the aging process. Dr. Mendez therefore concluded that appellant could return to his regular duty full time without restriction. At the first hearing, appellant testified that he had returned to his regular duties full time after the 1988 work-related knee injury and his 1995 car accident did not affect his back. Therefore, Dr. Mendez properly did not discuss these incidents in his report.

In his November 24, 1997 report, appellant's treating physician, Dr. Quintiliani, stated that appellant's accepted condition had not resolved and appellant continued to require restrictions but provided no rationalized medical explanation for his opinion. His opinion is therefore insufficient to create a conflict with Dr. Mendez's opinion.

Dr. Mendez's report which is based on his physical examination of appellant and the MRI scan and EMG results is complete and well rationalized. His opinion therefore justifies the Office's termination of benefits.

¹ *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

² *Mary A. Low*, 52 ECAB ____ (Docket No. 99-1507, issued January 19, 2001).

³ *Larry Warner*, 43 ECAB 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

The decision of the Office of Workers' Compensation Programs dated July 9, 1999 is hereby affirmed.

Dated, Washington, DC
May 17, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member