U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY D. GUEST and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, OK

Docket No. 00-1481; Submitted on the Record;
Issued November 27, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation as of July 15, 1999; and (2) whether the Office abused its discretion by refusing to reopen appellant's case for further review of the merits.

Appellant, then a 43-year-old letter carrier, filed an occupational disease claim on October 10, 1991 after experiencing muscle spasms in his lower back due to repetitive lifting and loading mail. The Office accepted appellant's claim for lumbar strain and temporary aggravation of preexisting degenerative lumbar disc disease. Appellant returned to full duty.

On February 17, 1992 appellant injured his middle back when he stumbled while exiting an elevator. The Office accepted his claim for aggravation of cervical disc disease at C4-5. Appellant did not stop working due to this injury, but subsequently claimed intermittent disability from June 22 through December 24, 1994. Appellant stopped working due to pain from his work injuries on May 28, 1994. He returned to limited duty, four hours a day, from November 23, 1996 through April 14, 1997, when he stopped working and did not return.

In a July 13, 1998 report, Dr. Christine E. Codding, Board-certified in internal medicine, stated findings on examination and advised that appellant still had pain in his neck and lumbar regions. She stated that appellant had pain in his neck and lumbar region with bilateral cervical spasm and diagnosed neck spasm with disc disease and lumbar strain.

To determine whether appellant currently suffered from residuals of his accepted employment injuries, the Office referred appellant for a second opinion examination by Dr. Michael H. Wright, a Board-certified orthopedic surgeon.[1] In a report dated November 18, 1998, Dr. Wright advised that appellant had degenerative disc disease of the subaxial spine and inferior lumbar spine but noted that appellant admitted to engaging in heavy manual labor on occasion and running his own tow truck business. He stated that appellant was capable of returning to his job as a mail carrier, noting that appellant admitted to being able to lift up to 100 pounds. Dr. Wright further stated:

> "After discussing his activities with him and reviewing his lengthy medical records, it appears to me that this gentleman has been capable of returning to work for some time now and had actively engaged in running a tow truck business, performing much of the mechanic work himself."

Dr. Wright concluded that he would let appellant return to work with a prophylactic work restriction of no lifting greater than 50 pounds.

In a report dated February 24, 1999, Dr. Wright stated:

> "By history, [appellant] has been able to return to work lifting objects as much as [100] pounds and has been actively gainfully employed in what I would consider relatively heavy manual labor. He has some intermittent symptoms of mechanical low back pain. At the time of my last examination, he was completely asymptomatic with a normal examination. I see no objective evidence of an ongoing physical injury or disability related to his reported work injuries.

On March 4, 1999 the Office referred appellant to Dr. Phillip McCown, a Board certified orthopedic surgeon. In a report dated April 14, 1999, Dr. McCown stated that appellant had a normal examination of the cervical and lumbar spine and concluded:

> "Despite extensive medical records where numerous subjective symptoms are described, none of his medical records demonstrates any objective evidence of a significant problem with his neck and back. In my opinion, he has a very normal cervical and lumbar spine evaluation and studies. There has been a lot of confusion about work restrictions applied to this man throughout his medical records. In my opinion, these work restrictions are unnecessary and out of proportion to any demonstrated problems. There are no signs of permanent injury or on-going impairment to his neck or back from the lifting activities in 1987 through 1991, or the elevator incident of [February 17, 1992]. I think it [i]s important that the degenerative disease present on his MRI [magnetic resonance imaging] scan studies are very minor and nothing more than the normal age-related changes that everybody gets as they get older.… In my opinion,

[1] The statement of accepted facts presented to Dr. Wright indicates that the employing establishment undertook an investigation of appellant in 1997, which revealed that he was engaged in several business enterprises. The investigation showed that appellant was working on vehicles, cleaning his convenience store, scraping tile, replacing racks, lifting heavy boxes, riding a jet ski, bowling, roller blading, clearing trees and planting a garden.

> subjective symptoms with no objective abnormalities demonstrated should not dictate work restrictions when there has been such extensive medical evaluations that do n[o]t show any problems. In my opinion, I think he [ha]s been off work far too long and should be allowed to return to full work duty activities with no restrictions. I think there is every chance that he may complain of symptoms when he goes back to work, because I get the impression he does not want to go back to work."

On June 7, 1999 the Office issued a proposed notice of termination based on the opinions of Drs. Wright and McCown that appellant had no residuals or continuing disability causally related to his accepted employment injuries and that he was able to return to full duty. The Office informed appellant that he had 30 days in which to submit additional legal argument or medical evidence in opposition to the proposed termination. Appellant contested the proposed termination, but did not submit any additional legal argument or medical evidence.

By decision dated July 15, 1999, the Office found that appellant no longer had any condition, disability or residuals causally related to his employment injuries. The Office found that the weight of the medical evidence, as represented by the opinions of Drs. Wright and McCown, established that his employment-related conditions had resolved.

By letter dated November 29, 1999, appellant requested reconsideration. Appellant submitted a July 6, 1999 report from Dr. Codding, who stated findings on examination but did not render an opinion as to whether appellant had employment-related residuals which prevented him from returning to work.

By decision dated December 16, 1999, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as of July 15, 1999.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify 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]

In this case, the Office relied on the opinions of Drs. Wright and McCown to terminate appellant's compensation. Dr. Wright stated in his November 18, 1998 report that although appellant had degenerative disc disease in his subaxial spine and inferior lumbar spine, he was capable of returning to full duty as a mail carrier. He noted that appellant, by his own admission, had been engaged in heavy manual labor on occasion, was running his own tow truck business

[2] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[3] *Id.*

and was able to lift up to 100 pounds. In his February 24, 1999 report, Dr. Wright noted that although appellant had some intermittent symptoms of mechanical low back pain, he had been actively gainfully employed in relatively heavy manual labor. He stated that appellant was completely asymptomatic with a normal examination and found no objective evidence of an ongoing physical injury or disability related to his reported work injuries.

Dr. McCown opined that none of appellant's medical records demonstrated any objective evidence of a significant problem with his neck and back and stated that work restrictions were unnecessary and disproportionate to any demonstrated problems. He advised that appellant had no indications of permanent injury or ongoing neck or back impairment resulting from his 1991 and 1992 employment injuries and that his MRI scan results were very minor and reflected changes caused by the aging process. Appellant did not submit any countervailing medical evidence to support his continuing entitlement to disability compensation. Thus, the opinions of Drs. Wright and McCown constituted the weight of the medical evidence of record.

The Board finds that the Office properly found that the opinions of Drs. Wright and McCown, negating a causal relationship between appellant's claimed current condition and his October 1991 and February 1992 employment injuries and that he no longer had any residuals from the employment injury, was sufficiently probative, rationalized and based upon a proper factual background. Accordingly, the Board finds that the opinions of Drs. Wright and McCown constituted sufficient medical rationale to support the Office's July 15, 1999 decision terminating appellant's compensation. The Board, therefore, affirms the July 15, 1999 Office decision.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's case for further review of the merits.

Under section 8128(a) of the Federal Employees' Compensation Act and its implementing regulation, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office.[4] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[5]

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law, he has not advanced a relevant legal argument not previously considered by the Office and he has not submitted relevant and pertinent evidence not previously considered by the Office. Dr. Codding's July 6, 1999 report is not relevant and pertinent because it did not contain an opinion as to whether appellant had employment-related residuals which prevented him from returning to work. Appellant's reconsideration request did not provide any new or relevant evidence for the Office to review. Additionally, appellant's November 29, 1999 letter failed to show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally

[4] *See generally* 5 U.S.C. § 8128(a); 20 C.F.R. § 10.607(b)(1).

[5] *Howard A. Williams*, 45 ECAB 853 (1994).

contended that he was still experiencing residuals from his work-related back conditions, which rendered him totally disabled from work, he failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The December 16 and July 15, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 27, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member