

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS G. TRUMAN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Hot Springs, SD

*Docket No. 00-911; Submitted on the Record;
Issued October 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation for wage loss effective August 16, 1998.

In the present case, the Office accepted that appellant sustained a lumbar strain on January 11, 1983 in the performance of duty. The Office also accepted that appellant sustained duodinitis as a consequence of medication for this employment injury. Appellant returned to part-time work in private employment in 1987; his compensation was reduced to reflect his wage-earning capacity.

By letter dated May 11, 1998, the Office advised appellant that it proposed to terminate compensation for wage loss on the grounds that his employment-related disability had ceased. By decision dated July 27, 1998, the Office terminated compensation effective August 16, 1998. In a decision dated August 24, 1999, an Office hearing representative affirmed the termination.

The Board finds that the Office met its burden of proof to terminate compensation in this case.

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 was no longer related to the employment.¹

The Office referred appellant, along with medical records and a statement of accepted facts, to Dr. Jeffrey Hrutkay, a Board-certified orthopedic surgeon, for evaluation. In a report dated April 17, 1998, Dr. Hrutkay provided a history and results on examination. He noted that appellant reported low back pain, but found that there was no objective radiologic evidence of

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

lumbar disc pathology, nor did physical examination reveal any objective evidence. Dr. Hrutkay further stated, “[b]ased purely upon objective findings, the claimant does not appear to be disabled from performing his job as a nurse. However, by subjective complaints [appellant] relates inability to perform the heavier lifting required as a nurse. Therefore, based on purely objective findings, there are no specific work restrictions for this individual.” Dr. Hrutkay also completed an OWCP-5c form (work capacity evaluation) indicating that appellant did not have employment-related work restrictions.

The Board finds that Dr. Hrutkay provided a reasoned medical opinion, based on a complete background, that appellant did not have any continuing employment-related disability. Dr. Hrutkay noted that appellant felt he had continuing work restrictions, but the physician found that appellant had no objective findings and no employment-related disability.

Appellant submitted a June 10, 1998 report from Dr. Jessie Easton, a physiatrist, who provided results on examination and stated that appellant had residuals of poliomyelitis, with fatigue and muscle weakness. Dr. Easton further stated that appellant “also has residuals of his back injury, in pain and sensory loss. I do not think his overall condition has changed appreciably between November 1996 and this visit, nor has his disability.” This report is of little probative value without supporting medical rationale for the opinion that appellant continued to have disabling residuals of the employment injury. Dr. Easton did not provide a diagnosis, discuss the medical history, objective findings, or explain why appellant had a continuing disability causally related to the January 11, 1983 employment injury. For example, Dr. Easton had briefly indicated in a September 25, 1987 report that appellant’s back injury was complicated by muscle weakness due to the poliomyelitis, but the 1998 report does not discuss the course of appellant’s employment-related back condition or a possible relationship with poliomyelitis.

Based on the medical evidence of record, the Board finds that the report of Dr. Hrutkay represented the weight of the probative medical evidence in this case. The Office therefore met its burden of proof in terminating compensation for wage loss effective August 16, 1998.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.²

In a report dated June 22, 1999, Dr. Susan Assam, an internist, indicated that appellant was at risk for injury with any kind of heavy lifting, given his history of polio, and it would be hard to retrain appellant given his age. Dr. Assam does not provide a reasoned medical opinion that appellant remained disabled due to his employment injury.³ In a brief report dated June 29,

² *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

³ The Board notes that the possibility of a future injury does not constitute an injury under the Federal Employees’ Compensation Act, and therefore no compensation can be paid for such a possibility. *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

1999, Dr. Gail Benson, an orthopedic surgeon, diagnosed degenerative disc at L4-5 and found that appellant was disabled. Dr. Benson did not describe the employment injury or provide a reasoned opinion on causal relationship between appellant's current condition and the 1983 employment injury.

Accordingly, the Board finds that the evidence submitted after the July 27, 1998 decision was of limited probative value to the issue presented. Appellant did not meet his burden of proof to establish entitlement to compensation for wage loss after August 16, 1998.

The decision of the Office of Workers' Compensation Programs dated August 24, 1999 is affirmed.

Dated, Washington, DC
October 5, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member