

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALEX JACKSON, Jr. and DEPARTMENT OF THE INTERIOR, NATIONAL  
PARK SERVICE, Washington, D.C.

*Docket No. 01-564; Submitted on the Record;  
Issued October 17, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the basis that he no longer suffered from residuals of his accepted August 10, 1999 employment injury.

The Board has reviewed the case record and finds that the Office properly terminated compensation for wage loss and medical benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to justify termination or modification of compensation.<sup>1</sup> 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.<sup>2</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>4</sup>

On August 11, 1999 appellant, then a 45-year-old temporary laborer, alleged that on August 10, 1999 he injured his right hand, wrist and fingers while in the performance of duty. He stopped work the next day and received continuation of pay to September 24, 1999.

The Office accepted appellant's claim for right wrist sprain, right carpal tunnel syndrome and right carpal tunnel release and paid appropriate compensation to January 1, 2000.

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<sup>1</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>2</sup> *Id.*

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>4</sup> *Id.*

In a report dated January 27, 2000, Dr. Linda Kirilenko, appellant's treating orthopedic surgeon, stated that appellant was partially disabled from January 27 to February 17, 2000 and that he could return to light duty with restrictions on January 28, 2000.<sup>5</sup>

In a report dated February 17, 2000, Dr. Kirilenko released appellant to return to full duties, noting that "this will not ensue for perhaps a month and in the interim, he can pursue some sort of rehabilitative work hardening activities."

In a report dated February 22, 2000, Dr. Kirilenko stated that appellant "continues with some significant difficulty when doing strenuous activities involving the operated right hand. He continues in therapy. Mesh gloves have been recommended. This has been prescribed. He will continue with therapy. We will also recommend that he continue [to] pursue a work hardening type program, as he remained somewhat symptomatic." She added: "Certainly, after the surgery, I would prefer to get him back to a light duty type capacity with transitioning to full duty over a period of six months postoperative." She noted that appellant was symptomatic with "some pillar pain and some sensitivity." Dr. Kirilenko stated that while appellant progressed through a work hardening program, he would be released to light duties, "minimizing strenuous and repetitive use of this hand initially and then progressing as his rehabilitation permits."

In a report dated March 14, 2000, Dr. Kirilenko stated that appellant had been released from her care, but that he was symptomatic with "exquisite scar hypersensitivity." She prescribed a pain management program and noted that appellant was normal in other post surgical respects. Dr. Kirilenko referred appellant to Dr. Martin R. McLaren, Board-certified in anesthesiology, for pain management.

In a report dated April 3, 2000, Dr. McLaren examined appellant and noted no significant swelling around appellant's wrist, but some limitation in flexion and extension with pain and discomfort. He stated that appellant should remain on a home-directed exercise program but could return to work "and proceed with caution in activities concerning his wrist."

In a report dated May 11, 2000, Dr. McLaren released appellant to return to full duty without restriction.

In a report dated May 30, 2000, Dr. Kirilenko stated that appellant remained symptomatic with pain over his scar. She requested additional electromyography (EMG) and nerve conduction tests "to confirm adequacy of the decompression."

In a report dated June 12, 2000, Dr. Daniel R. Ignacio, Board-certified in physical medicine and rehabilitation, stated that appellant's EMG and nerve conduction tests were normal. However, he suspected "an associated reflex sympathetic dysfunction with tenosynovitis of the right wrist" and recommended an infared imaging examination.

In a report dated June 22, 2000, Dr. Kirilenko stated that appellant's EMG was normal. She also noted that, although appellant remained hypersensitive, he wanted to return to work. Dr. Kirilenko noted that based on the test results and "well-healed status of the wound, as well as

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<sup>5</sup> Dr. Kirilenko performed right carpal tunnel release on November 17, 1999.

full range of motion and a full digital range of motion,” there were “no medical or surgical contraindications to [appellant] assuming ... employment.”<sup>6</sup>

In a report dated July 6, 2000, Dr. McLaren noted tenderness in appellant’s right hand, decreased strength in the right wrist and some tenderness in the right thenar eminence. He released appellant “to work with some restrictions.”

On July 28, 2000 the Office proposed termination of appellant’s compensation and medical benefits on the grounds that the medical evidence from appellant’s treating physicians, Drs. Kirilenko and McLaren, released him to return to full duty.

By decision dated September 23, 2000, the Office terminated appellant’s compensation and medical benefits effective that date.<sup>7</sup>

By letter dated November 7, 2000, appellant requested reconsideration.

In a report dated November 7, 2000, Dr. Kirilenko stated that appellant’s recovery from surgery had been complicated by persistent chronic pain-type syndrome, noting that appellant “has significant discomfort whenever he uses his hand in a stressful situation.”

In a December 8, 2000 decision, the Office denied modification of its prior decision.

In this case, Dr. Kirilenko, appellant’s treating surgeon, stated in a February 22, 2000 report that appellant could return light-duty transitioning to full duty in six months from the date of surgery. In reports dated March 14 and June 22, 2000, Dr. Kirilenko noted that appellant’s post surgical condition was normal, that an EMG test revealed “a well-healed status of the wound,” and that appellant had full range of wrist and digital motion. Dr. Kirilenko found no medical or surgical restrictions preventing appellant from resuming employment. Further, Dr. McLaren, Board-certified in anesthesiology and a specialist in pain management, released appellant to return to full duty, noting caution in activities concerning his wrist.

The Board finds that these reports from appellant’s treating physicians are sufficient to meet the Office’s burden of proof in terminating appellant’s compensation. The reports establish that appellant’s accepted employment injuries have healed without residuals.

Dr. Kirilenko’s October 10, 2000 report stated that appellant remained symptomatic with pain from his surgical scar and that “the persistence of this local discomfort has made [return to work] impossible.” However, she reported no objective findings to account for appellant’s pain and noted that his EMG demonstrated adequate decompression of his carpal tunnel syndrome. Thus, this report does not change her opinion that appellant has no residuals of his accepted work

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<sup>6</sup> In a report dated June 13, 2000, Susan A. Joyce, a registered nurse, who was assigned to work with appellant as part of the nurse intervention program, stated that appellant was a temporary employee of the employing establishment and that “[T]hey do not have a position for him at this time.” Appellant’s position description lists him as “Laborer.”

<sup>7</sup> In both its proposed termination notice and its decision, the Office referred to appellant’s date of injury as June 10, 1997.

injuries. Similarly, Dr. McLaren's reports dated October 23 and November 7, 2000, noting that appellant continued to have sensitivity with generalized pain and could not be involved with heavy lifting and hand manipulation, do not detract from his opinion that appellant's work injuries had resolved and that he was capable of returning to duty.

The December 8 and September 23, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
October 17, 2001

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member