

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of WARDEL MADDOX and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION HOSPITAL, Lyons, NJ

*Docket No. 01-1023; Submitted on the Record;  
Issued October 19, 2001*

---

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation.

The Board has duly reviewed the entire case record in this appeal and finds that the Office met its burden of proof in terminating appellant's compensation.

It is well established that 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<sup>1</sup> or that it is no longer related to the employment.

On April 26, 1972 appellant, then a 37-year-old nursing assistant, sustained a lumbosacral strain, contusion of the right inguinal area, laceration of the small right finger, and a meniscal tear of the right knee in the performance of duty. He stopped work on that date and did not return to work. Effective August 29, 1972, appellant was placed on the periodic compensation roll to receive compensation for temporary total disability.

By letter dated November 20, 2000, the Office advised appellant that it proposed to terminate his compensation on the grounds that the evidence of record established that he had no continuing medical condition or disability causally related to his April 26, 1972 employment injury.

By decision dated December 29, 2000, the Office terminated appellant's compensation.<sup>2</sup>

---

<sup>1</sup> See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

<sup>2</sup> The record contains additional evidence which was not before the Office at the time it issued its December 29,

In a work capacity evaluation dated August 18, 2000, Dr. Jerome O. Spruill indicated that appellant could not work eight hours a day due to pain. However, there is no indication that appellant was being treated for his work-related back and right knee conditions by Dr. Spruill. Furthermore, he did not provide any findings on examination to support his opinion that appellant could not work eight hours a day. Due to these deficiencies, this work capacity evaluation does not establish that appellant had any continuing disability or medical condition causally related to his April 26, 1972 employment injury.

In a report dated November 11, 2000, Dr. Andrew P. Bush, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition, a review of the medical records, and findings on examination. He stated that appellant had subjective complaints of pain in the back and right knee but no objective findings. Dr. Bush stated:

“Based on the records provided, there is no objective evidence why [appellant] has been out of work for almost thirty years. There are also inconsistencies as to when the “injuries” were reported and if the symptoms that [appellant] was presenting with were a result of the 1972 incident.”

\* \* \*

“Based on the medical records provided, there is ample documentation of the concerns of physicians reviewing this case as to the medical validity of the case. However, there are no records that this was ever investigated and [appellant] was kept on disability for almost thirty years. At this point in time (thirty years later) ... there is almost no potential for this individual to return to gainful employment. Counseling and a work conditioning program may be the only way to assist [appellant] in the readjustments that he will need to return to the work force. Also, although it is my opinion that he has no orthopedic reason for not returning to work, his overall medical condition needs to be addressed prior to his return to duty. He has a number of medical problems that may make it hazardous for him to return to the labor force and may make him eligible for retirement under other disability programs.”

Dr. Bush stated that appellant had no residual medical condition or disability causally related to his April 26, 1972 employment injury.

The Board finds that the Office met its burden of proof in terminating appellant's compensation based on the thorough and well-rationalized opinion of Dr. Bush that appellant had no residual disability or medical condition causally related to his April 26, 1972 employment injury.

---

2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

The decision of the Office of Workers' Compensation Programs dated December 29, 2000 is affirmed.

Dated, Washington, DC  
October 19, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member