

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICK BECK and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION NATIONAL CEMETARY, Farmingdale, NY

*Docket No. 01-1785; Submitted on the Record;
Issued October 26, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits, causally related to his accepted employment injuries; and (2) whether appellant had any continuing disability or residuals after November 5, 2000, the date the Office terminated his compensation benefits.

Appellant, then a 30-year-old cemetery caretaker, sustained injuries in the performance of duty on May 16 and December 8, 1975. On May 16, 1975 appellant was "tampering around a headstone" when he hit a rock with his pitchfork and twisted his right hand. The Office accepted appellant's claim for trauma to the right palm and wrist. Appellant filed a second claim on December 8, 1975 and the claim was accepted for contusion of the right hand, crush injury and tendinitis of the right elbow.

Appellant received compensation for loss of wages until 1986, at which time he was rated for a wage-earning capacity. The most recent medical reports of record are appellant's attending physician were dated March 11, 1996 and May 6, 1997.

On April 17, 2000 the Office requested that appellant submit a current narrative medical report from his attending physician in support of his continuing compensation benefits. When no new evidence was submitted, the Office referred appellant to Dr. Chris P. Tountas, a Board-certified orthopaedic hand specialist, for a second opinion examination.

Dr. Tountas examined appellant on July 26, 2000 and submitted a report dated the same day. Dr. Tountas stated that the contusion and crush injury of appellant's right hand sustained on December 8, 1975 had resolved and that the tendinitis of his right elbow had healed. He also noted that appellant had no ongoing medical restrictions related to his December 8, 1975 injury or any other work-related injuries.

The Office issued a notice of proposed termination of compensation on September 12, 2000. Appellant was given 30 days to submit additional evidence from his physician if he disagreed with the proposed action.

By decision dated October 18, 2000, the Office terminated appellant's compensation benefits based on Dr. Tountas' July 26, 2000 report. A corrected decision was issued on November 3, 2000 to reflect the effective date of termination as November 5, 2000.

By letter received on November 17, 2000, appellant requested reconsideration. In support of his request, appellant submitted a November 6, 2000 report from Dr. Richard A. Ritter, an associate of Dr. Finkelstein, appellant's attending physician.

In a merit decision dated December 21, 2000, the Office denied modification of the prior decision.

The Board has duly reviewed the case record on appeal and finds that the Office properly terminated appellant's compensation benefits effective November 5, 2000.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to employment.³ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.⁴ In order to prevail, he must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.⁵

The Office terminated appellant's compensation benefits based on the July 26, 2000 second opinion report from Dr. Tountas. At the time of termination, the only medical reports of record from appellant's treating physician, Dr. Leon Finkelstein, a Board-certified orthopedic surgeon, were dated March 11, 1996 and May 6, 1997. The Office allowed appellant 30 days after the notice of proposed termination to submit current medical evidence from his attending physician but no new evidence was submitted. The Office correctly determined that Dr. Finkelstein's reports were of limited probative value since they were more than four years old and that a current medical opinion was necessary in order to justify appellant's continuing compensation benefits.

Dr. Tountas' July 26, 2000 report carried the weight of the medical evidence as it was well rationalized and was the only current medical evidence of record. In his report, Dr. Tountas

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

³ *Id.*

⁴ *Virginia Davis-Banks*, 44 ECAB 389 (1993).

⁵ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

discussed appellant's accepted employment injuries and appellant's medical history. After examining appellant and the medical evidence of record, he opined that appellant's subjective complaints outweighed the objective findings relative to the accepted injuries or prior diagnoses. He found that the contusion and crush injury of appellant's right hand had resolved and that the tendinitis of his right elbow had full range of motion and provocative testing was negative. Dr. Tountas indicated that the source of appellant's pain was related to the base of his right thumb where he noted degenerative changes at the 5th metacarpal carpal joint, but found that the records did not indicate fractures until 1982. He stated that he was unable to correlate the fracture diagnosis with prior medical complaints or x-rays. Dr. Tountas concluded by stating that appellant did not have any ongoing restrictions related to his December 8, 1975 work-related injury or any other work-related injuries.

The weight of medical evidence at the time of termination was the well-rationalized report from Dr. Tountas and the Office properly terminated appellant's compensation benefits effective November 5, 2000.

The Board finds that appellant has failed to establish that he has continuing disability causally related to his accepted employment injuries.

In support of his claim after the termination, appellant submitted a November 6, 2000 report from Dr. Ritter, who stated that appellant is "still having problems referable to his right hand." He stated that appellant's history is "unchanged from his previous exam[ination]s" and that his pain is mostly on the ulnar aspect of his right hand, most notably over the fourth and fifth metacarpals. Dr. Ritter continued by noting:

"[Appellant] has some pain elicited with gripping maneuvers. He has fairly good grip strength, but this is decreased compared to the left side. [Appellant] also has good motion of his fingers, but not as complete as the left side.

"His exam[ination] is essentially unchanged from previous exam[ination]s and we feel that he continues to be disabled for heavy manual labor that involves gripping and heavy lifting. [Appellant's] status is essentially unchanged."

The Board finds that Dr. Ritter's opinion is insufficient to establish that appellant has continuing employment-related disability. Dr. Ritter's report is vague and does not mention appellant's employment injuries of May 16 and December 8, 1975 or correlate appellant's pain to either of these incidents. He does not provide a history of appellant's injuries nor does he explain how his history is "unchanged from other exam[ination]s" and what the findings of these examinations were. Dr. Ritter did not provide medical rationale to support appellant's contention that his ongoing pain is a direct result of his employment injuries occurring in 1975. Since Dr. Ritter did not provide a complete history of appellant's condition and did not address the causal relationship between appellant's continuing pain in his right hand and the 1975 accepted employment injuries, his report is of little probative value.⁶

⁶ *Lourdes Davila*, 45 ECAB 139 (1993).

As appellant has failed to submit rationalized medical evidence establishing that he has any condition or disability causally related to his accepted employment injury, he has not met his burden of proof in establishing further entitlement to compensation.

The December 21 and November 3, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 26, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member