

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD A. COOKE and DEPARTMENT OF THE NAVY,
MARINE CORPS BASE, Camp Pendleton, CA

*Docket No. 01-98; Submitted on the Record;
Issued September 17, 2001*

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 and medical benefits.

The Office accepted that on May 22, 1989 appellant, then a 34-year-old fire department operator, sustained a concussion with vertigo and migraines when he hit his head on a shelf as he was emptying trash containers. He stopped work following the injury, returned to work on May 31, 1989, claimed a recurrence of disability a year later and returned to light duty in 1991. After the light duty was terminated, he received wage-loss compensation benefits.

On October 5, 1992 Dr. Mark S. Stern, a Board-certified neurosurgeon, opined that appellant was able to return to work immediately without restrictions. This was based upon a July 9, 1992 examination during which he found full range of neck motion, no evidence of neurological deficit on testing, normal motor and sensory testing, normal reflexes and normal sensory function.

On February 9, 1993 Dr. Neil T. Tarzy, a Board-certified general practitioner and appellant's treating physician, completed a work restriction evaluation indicating that appellant could work 8 hours a day with lifting limited to 50 pounds and no high speed stressful work. Dr. Tarzy opined that appellant had reached maximum medical improvement.

As part of appellant's vocational rehabilitation, he returned to school studying accounting. Appellant completed his studies on July 20, 1994 with an Associate of Science degree in accounting and computer software technology. However, appellant sustained a nonwork-related myocardial infarction in October 1994 and underwent two angioplasties. Job placement efforts for the position of accounting clerk were terminated in October 1994 due to appellant's cardiac status.

By decision dated September 27, 1995, the Office reduced appellant's wage-loss compensation benefits based upon his ability to earn wages as an accounting clerk.

On April 15, 1997 the Office referred appellant, a statement of accepted facts, questions to be addressed and the relevant case record to Dr. Jonathan Licht, a Board-certified neurologist.

In a report dated May 19, 1997, Dr. Licht reviewed appellant's factual and medical history, discussed his present complaints, reviewed the results of his physical examination and diagnosed "vascular-type headaches, no evidence of neurological abnormality in relation to the work injury of May 22, 1989." Dr. Licht answered the Office's questions noting as follows:

"There is no evidence of neurological abnormality in relation to the work injury of May 22, 1989. There are no neurologic or focal abnormalities elicited on examination. There are no sensory changes or cerebellar abnormalities. Cranial nerves are intact. Coordination was normal. *** On testing there is no immediate problem with vertigo or nystagmus, but there is a markedly delayed response where [appellant] feels symptomatic and dizzy. [Appellant's] symptoms rapidly cleared, however."

Dr. Licht continued:

"There are no objective findings on eye movements.

"[Appellant] currently has vascular-type headaches which are related to his heart disease, as well as idiopathic vertigo. *** [Appellant] does not have any objective findings that are related to his injury, or to the headaches or vertigo which he complains of."

Dr. Licht opined that appellant's current limitations were related to his nonindustrial medical conditions. He opined that appellant had no physical limitations resulting from his May 22, 1989 employment injury and that any activity limitations would be due to his nonwork-related conditions. Dr. Licht noted that appellant did not continue to suffer residuals of his May 22, 1989 work injury and that there were no findings to support his complaints of headaches from a neurological standpoint. Dr. Licht opined that any further medical treatment would be due to his nonindustrial conditions of myocardial infarction, small bowel ulceration, reflux with hiatal hernia and fatigability. On physical capacities evaluation form, Dr. Licht stated that appellant could work full time eight hours a day with the only restriction being that he should not work at unprotected heights.

By letter dated February 5, 1999, the Office requested that appellant provide a rationalized medical report from his treating physician discussing his current treatment and supporting his continued disability.

In a report dated July 8, 1998, Dr. Stanley H. Weinberg, a Board-certified family practitioner, noted as follows:

"[Appellant] has been a patient of mine for many years. He has a history of extremely high cholesterol and he has had multiple heart problems including chronic angina and has had heart attacks in the past. He has been put on a low sodium, low cholesterol diet with less than 20 percent fat per day. This is a necessity."

The Office subsequently referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Robert Moore, a Board-certified neurologist.

In a report dated April 28, 1999, Dr. Moore reviewed appellant's factual and medical history, including the previous medical reports of record and diagnosed "post-traumatic headaches and vertigo." Dr. Moore noted that appellant's electrodiagnostic studies between 1989 and 1991 were normal, and that his neurological examination of that date was entirely within normal limits. Dr. Moore indicated that appellant had no objective residuals or findings of disability from his 1989 injury but had subjective factors of headache and vertigo. Dr. Moore opined that there were no cognitive impairments and that appellant could perform both simple and complex tasks. He noted:

"As a result of [appellant's] May 1989 injuries, there would be no restrictions in [his] ability to push or pull, operate hand controls or use tools, or to use his hands and fingers. He is able to sit in an unrestricted manner. Because of the inordinate vertigo, he could occasionally experience difficulty with the operation of machinery involving foot controls. He should not work at unprotected heights. There are felt to be no restrictions [of appellant's] ability to lift and carry from a neurological standpoint."

Dr. Moore reviewed the job description of an accounting clerk and stated, "I see no reason why [appellant] cannot perform the usual and customary job duties of a clerk with the above-functional limitations. If [appellant's] job as a dispatcher does not require working at unprotected heights, I see no reason why [he] could not perform those usual and customary duties." Dr. Moore opined, "I see no reason why [appellant] could not compete in the open labor force with the above-functional limitations."

An attached work capacity evaluation indicated that appellant could work eight hours a day performing both simple and complex tasks with the restrictions that he not work at unprotected heights.

On July 21, 2000 the Office issued a notice of proposed termination finding that appellant had no further disability causally related to his May 22, 1989 work injury. The Office advised appellant that he had 30 days within which to submit argument or medical evidence to support his continued disability. Nothing further was received from appellant.

By decision dated August 22, 2000, the Office finalized its termination decision finding that the thorough and well-rationalized reports of Drs. Licht and Moore constituted the weight of the medical opinion evidence and established that appellant had no further injury-related disability for work and no further need for injury-related medical treatment.

Appellant submitted a letter dated August 10, 2000 but not received by the Office until August 21, 2000. Appellant claimed that in February 1992 he was taken off full-time light duty because of the multiple medications he was taking for migraines and vertigo. He claimed that his frequent migraines kept him disabled, and that because of his heart condition he could not take the newer migraine medication.

By decision dated September 5, 2000, the Office affirmed its August 22, 2000 termination decision, finding that appellant's letter was insufficiently relevant or probative to affect the weight of the medical opinion evidence of record.

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss and medical benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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.² Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁴

In this case, the reports of Drs. Stern, Tarzy, Licht and Moore explicitly support that appellant can return to work for eight hours a day with few restrictions. Dr. Moore even affirmatively stated that appellant can perform the duties of the full-time position of accounting clerk. There is no evidence to support that appellant continued to have any injury-related disability which affected his ability to perform full-time work.⁵ Therefore, the opinions of these physicians constitute the weight of medical opinion evidence of record and establish that appellant had no further injury-related disability for work.

Further, Dr. Stern found no injury residuals requiring further treatment upon examination and testing. Dr. Licht also found no injury-related neurological residuals or objective abnormalities which required further medical treatment, and he specifically stated that any further medical treatment required by appellant would be for his nonwork-related cardiovascular problems and gastrointestinal conditions. Dr. Moore found that appellant had no objective injury-related residuals which required further medical treatment. The only medical evidence which identified the need for continued medical treatment was the report from Dr. Weinberg which addressed only appellant's cardiovascular condition and its ongoing treatment requirements. This report is irrelevant to appellant's accepted employment injuries.

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁴ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

⁵ Dr. Weinberg's report is irrelevant to this issue as it does not address appellant's injury-related condition or its effects.

The decisions of the Office of Workers' Compensation Programs dated September 5 and August 22, 2000 are hereby affirmed.

Dated, Washington, DC
September 17, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member