

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM T. BAYLISS and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

*Docket No. 01-2061; Submitted on the Record;
Issued August 26, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective August 4, 2000 on the grounds that his work-related disability had ceased on or before that date.

On September 30, 1996 appellant, then a 47-year-old letter carrier, filed an occupational disease claim (Form CA-2), alleging that he had developed urticaria as a result of prolonged periods on his feet while working. The Office accepted appellant's claim for temporary aggravation of idiopathic urticaria.¹ Appellant missed intermittent time from work and the Office paid appellant appropriate compensation benefits.²

Appellant was treated by various physicians for his urticaria, including Dr. Richard Taylor, Board-certified in allergy and immunology and internal medicine,³ who reported on August 12, 1998 that the claimant's idiopathic urticaria was permanent and that standing, walking, or pressure to the soles or bottoms of the feet could aggravate it. Dr. Taylor stated that any episode of the condition should be considered temporary. He opined that the underlying cause of appellant's condition would be recurrent and, therefore, his disability was permanent in nature.

¹ The record also reflects that appellant accepted a limited-duty job offer from his employer and his position was changed from letter carrier to clerk, eight hours per day, assembling training manuals and other duties as assigned within his restrictions.

² On June 26, 1997 appellant filed a claim for recurrence, which was also accepted for the same condition.

³ The record also reflects that appellant was treated by a psychiatrist. However, as the Office hearing representative remanded the matter regarding the psychiatric condition and the Office is currently determining whether this condition would be related to the accepted condition, the Board will only address those reports relating to the aspects of appellant's claim relating to his urticaria at this time.

In a March 19, 1999 report, Dr. Taylor explained that he had referred the claimant to Dr. Mitchell Liester, a Board-certified psychiatrist and neurologist, for the diagnosis of chronic depression secondary to steroid withdrawal.

In an April 23, 1999 report, Dr. Liester listed several diagnoses that he believed were aggravated by the idiopathic urticaria and its treatment, including steroid use. He also stated that appellant's employment exacerbated his preexisting emotional conditions. Dr. Liester noted that the claimant had a 20-year history of panic attacks and that he related having been depressed his entire life.

In disability certificates and duty status reports dating from April to September 1999, Dr. Liester indicated that appellant was unable to resume work due to medical complications arising from his workman's compensation injury. (Angiodema urticaria).⁴

On September 17, 1999 the Office referred appellant along with a statement of accepted facts and a copy of the case record to Dr. Scott Bennion, Board-certified in dermatology and internal medicine, for a second opinion evaluation as to the nature and extent of appellant's work-related disability.⁵ In an October 25, 1999 report, Dr. Bennion examined appellant and noted the history of injury and treatment dating back to 1993 or 1994 of intermittent urticaria over his body and on his feet. He conducted a physical examination and noted that appellant had no evidence of either urticaria or pressure urticaria. Dr. Bennion found that the examination of the feet revealed no evidence of gout, arthritis or other inflammatory conditions. He indicated that, on deep palpation, the patient had tenderness along the plantar surface of both feet and there was, however, no evidence of this pain being secondary to urticaria. Dr. Bennion opined that it was his impression that appellant might have chronic urticaria and/or pressure urticaria. He noted that the difficulties with his foot symptoms appeared to be more than just that caused by chronic urticaria. Dr. Bennion indicated that pressure urticaria seemed to be an aggravating factor in his chronic foot pain. However, he noted an underlying problem which, was most consistent with plantar fasciitis and stated that there were no other objective findings on examination. He noted further that appellant's pressure induced symptoms should have resolved immediately upon reassignment to a sedentary job.⁶ Dr. Bennion stated that chronic urticaria could last indefinitely and was not necessarily a permanent condition and there was no evidence of urticaria at the time of his examination.

On January 3, 2000 the Office issued a proposed notice of termination of compensation. The Office advised appellant that his compensation for wage-loss and medical benefits was

⁴ The record reflects that Dr. Liester also provided copies of all of his treatment notes.

⁵ The Office also arranged a second opinion psychiatric examination with Dr. Edmund Casper, a psychiatrist, on December 15, 1999. In a narrative report, Dr. Casper discussed the claimant's records, history and examination findings. He noted that the claimant was mildly depressed and that he had a long-time history of depression. He opined that the claimant did not suffer a psychiatric condition related to steroids or steroid withdrawal. As the hearing representative remanded the claim regarding the psychiatric aspects, the Board will not address those matters at this time.

⁶ With respect to appellant's psychiatric condition, he opined that the chronic prednisone therapy steroids may be causing the mental aspects of his condition.

being terminated because he no longer had any continuing injury-related disability. The Office indicated that the weight of the medical evidence, as demonstrated by the opinion of Dr. Bennion demonstrated that appellant's work injury had resolved. Appellant was given 30 days to submit additional evidence or argument.⁷

By decision dated August 4, 2000, the Office finalized its proposed termination of benefits. The Office indicated that Dr. Bennion's opinion remained the weight of the medical evidence.

On August 28, 2000 appellant requested an oral hearing, which was held on March 1, 2001.

By letter dated March 16, 2001, appellant's representative indicated that appellant's urticaria had not resolved, and noted that, while appellant might not have exhibited symptoms on the date of Dr. Bennion's examination, this was not evidence that the condition was not present, as it was permanent.⁸

In an April 5, 2001 letter, appellant's representative enclosed additional reports.⁹

In a report dated March 23, 2001, Dr. Taylor indicated that it was reasonable to conclude that "prolonged standing by [appellant] could cause and certainly aggravate, [appellant's] condition. There has not been enough research concerning prolonged walking to make a statement regarding causation, but it is my experience that this activity could aggravate the condition. He further opined that: "[u]ndoubtedly plantar fasciitis may be present and could possibly contribute to [appellant's] pain, however, he has been worked up by the Allergy Department at National Jewish Hospital in Denver, a world-wide authority, and the diagnosis of DPU was agreed upon."

⁷ The record contains evidence from Dr. Liester regarding appellant's psychiatric condition. In a January 23, 2000 report, he asserted that the steroid use and withdrawal was a significant factor in exacerbating the claimant's emotional conditions. He commented that the claimant's emotional problems were long standing; yet until the aggravation of urticaria he had been able to continue working. Dr. Liester added, however, that the claimant had improved to the point where he could work part-time limited duties. The Office determined that there was a conflict in medical opinion between Drs. Liester and Casper with regard to whether the claimant's psychiatric condition was causally related to the accepted condition and arranged an impartial examination with Dr. Elliot Cohen, a Board-certified psychiatrist, who examined appellant on May 9, 2000 and reviewed appellant's history of injury and treatment. He opined that he did not agree with Dr. Taylor's conclusion that the patient developed chronic depression secondary to steroid withdrawal and that Dr. Liester's notes showed an orderly progression of slow withdrawal from Prednisone. Dr. Cohen opined that the signs and symptoms appellant showed were related to a history of recurrent depression and recurrent panic. He noted a strong family history of this. Dr. Cohen also observed that appellant had preexisting conditions of depression, panic, anxiety and alcoholism. He explained that appellant's Prednisone dose was minimal and was unlikely to cause any psychiatric condition.

⁸ Additionally, he opined that with regard to appellant's psychiatric condition, he argued that Dr. Cohen's opinion was flawed. The Board however, is not addressing the psychiatric condition at this time as this is currently being reviewed by the Office.

⁹ The March 24, 2001 report will not be addressed at this time as it refers to appellant's psychiatric condition.

In an April 10, 2001 report, Dr. Taylor indicated that he could state, with a reasonable degree of confidence, that prolonged standing “probably is aggravating [appellant’s] condition with probable being more likely than not or 51 percent likely.” He stated further that causation was more difficult, but he opined that “prolonged standing probably was the cause of [appellant’s] condition with probable being once again ‘more likely than not’.”

By letter dated April 11, 2001, the employing establishment submitted comments to which appellant’s representative replied.

In a decision dated May 17, 2001, the Office hearing representative affirmed the Office’s August 4, 2000 termination of benefits.¹⁰

The Board finds that the Office met its burden of proof in terminating appellant’s compensation benefits effective August 4, 2000 on the grounds that his work-related disability had ceased by that date.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹¹ 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.¹² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.¹³ 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.¹⁴

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician’s knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion are facts which determine the weight to be given each individual report.¹⁵

In the present case, Dr. Taylor, appellant’s treating physician, indicated in his report, dated August 12, 1998, that appellant’s idiopathic urticaria was permanent and that standing,

¹⁰ The record reflects that with respect to appellant’s aggravation of urticaria, the hearing representative affirmed the prior decision. The hearing representative remanded the case on the issue of whether appellant’s aggravation of urticaria itself was causally related to appellant’s psychiatric condition and whether the psychiatric condition was causally related to his accepted condition.

¹¹ *Lawrence D. Price*, 47 ECAB 120 (1995).

¹² *Id.*; see *Patricia A. Keller*, 45 ECAB 278 (1993).

¹³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹⁴ *Id.*

¹⁵ See *Connie Johns*, 44 ECAB 560 (1993).

walking, or pressure to the soles or bottoms of appellant's feet could aggravate it. However, he did not distinguish the long-standing problems from his accepted injury for temporary aggravation of urticaria. Additionally, Dr. Taylor failed to discuss how or why appellant continued to be disabled due to his April 26, 1994 accepted employment injury, when his last date worked was March 10, 1999. He also offered an equivocal opinion concerning whether appellant's current condition was related to his accepted injury.¹⁶ Additionally, Dr. Taylor did not explain the process of how urticaria cause disability for more than five years.¹⁷

In this case, the Office accepted that appellant sustained aggravation of urticaria. The Office paid appropriate medical benefits and subsequently referred appellant to Dr. Bennion for a second opinion evaluation. The Board finds that at the time the Office terminated medical benefits, the weight of the medical evidence rested with Dr. Bennion who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that appellant had no continuing disability from his accepted employment injury. Dr. Bennion examined appellant and noted the history of injury and treatment dating back to 1993 or 1994 of intermittent urticaria over his body and on his feet. He conducted a physical examination and noted that appellant had no evidence of either urticaria or pressure urticaria. Dr. Bennion found that the examination of the feet revealed no evidence of gout, arthritis or other inflammatory conditions. He indicated that, on deep palpation, the patient had tenderness along the plantar surface of both feet and there was, however, no evidence of this pain being secondary to urticaria. Dr. Bennion opined that it was his impression that appellant might have chronic urticaria and/or pressure urticaria. He noted that the difficulties with his foot symptoms appeared to be more than just that caused by chronic urticaria. Dr. Bennion indicated that pressure urticaria seemed to be an aggravating factor in his chronic foot pain. However, he noted an underlying problem which, was most consistent with plantar fasciitis and stated that there were no other objective findings on examination. Dr. Bennion noted further that appellant's pressure-induced symptoms should have resolved immediately upon reassignment to a sedentary job. He stated that chronic urticaria could last indefinitely and was not necessarily a permanent condition and there was no evidence of urticaria at the time of his examination. Because Dr. Bennion provided the only rationalized medical opinion of record addressing whether appellant continued to suffer residuals of his accepted employment injury, his opinion constitutes the weight of the medical evidence.¹⁸

The Board therefore finds that Dr. Bennion's report established, at that time, that appellant ceased to have any disability or condition causally related to his employment injuries, thereby justifying the Office's August 4, 2000 final termination of medical benefits for aggravation of urticaria.

¹⁶ *Roger Dingress*, 47 ECAB 123 (1995).

¹⁷ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.)

¹⁸ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

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.¹⁹

Appellant submitted additional reports from Dr. Taylor. In a March 23, 2001 report, he opined that it was “reasonable to conclude that prolonged standing by [appellant] could cause, and certainly aggravate, [appellant’s] condition. He did not explain how appellant’s condition was aggravated when he had not worked since March 1999. Dr. Taylor opined that there was not enough research concerning prolonged walking to make a statement regarding causation, but that it was his experience that this activity could also aggravate the condition. He stated further that “plantar fasciitis may be present and could possibly contribute to [appellant’s] pain, however, he has been worked up by the Allergy Department at National Jewish Hospital in Denver, a world-wide authority, and the diagnosis of DPU²⁰ was agreed upon.” In his April 10, 2001 report, Dr. Taylor added that prolonged standing probably aggravated appellant’s condition. He opined that the question of causation was difficult to answer but the “prolonged standing probably was the cause of [appellant’s] condition.” The Board finds that the opinions expressed by Dr. Taylor are speculative and equivocal.²¹ Additionally, Dr. Taylor did not explain the process of how urticaria could cause disability for more than seven years.²²

Accordingly, the Board finds that appellant did not meet his burden of proof to establish entitlement to compensation after August 4, 2000.

¹⁹ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

²⁰ Delayed Pressure Urticaria.

²¹ *Roger Dingress*, 47 ECAB 123 (1995); *Philip J. Deroo*, 39 ECAB 1294 (1988).

²² *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.)

The decision of the Office of Workers' Compensation Programs dated May 21, 2001 is hereby affirmed.

Dated, Washington, DC
August 26, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member