

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL D. GRIMES and DEPARTMENT OF THE AIR FORCE,
McCLELLAN AIR FORCE BASE, Sacramento, CA

*Docket No. 02-262; Submitted on the Record;
Issued December 16, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation.

On October 10, 1996 appellant, then a 39-year-old electronics technician, alleged that on October 2, 1996 he injured his neck and back when a chair he was sitting on started to roll back and he twisted in an attempt to stop the movement.

The Office accepted that appellant sustained neck and cervical and back strains as a result of the October 2, 1996 work-related injury and paid appropriate compensation benefits.

In a report dated March 19, 1997, Dr. Stephen C. Holtzclaw, reviewed a magnetic resonance imaging (MRI) scan of the lumbar spine taken that day and noted the following conditions: mild degenerative changes with desiccation to the disc at L3-4 without protrusion; mild facet arthropathy at L5-S1, otherwise, and normal signature; stature and contour without protrusion and no stenosis or facet arthropathy at L4-5. He added that the MRI scan was normal.

In an attending physician's report dated May 2, 1997, Dr. William Duffy, appellant's treating physician and a Board-certified orthopedic surgeon, stated that appellant had a symptomatic lumbar disc bulge as revealed by diagnostic tests.

In reports dated May 2, 1997, Dr. Duffy stated that appellant was unable to return to full-time work.

On August 15, 1997 the Office referred appellant to Dr. Richard Canaan, a second opinion physician and a Board-certified orthopedic surgeon.

In a report dated September 17, 1997, Dr. Canaan found that appellant had work-related residuals and that he could work in a light-duty capacity for four hours a day. However, he noted that appellant's obesity created back strain.

In a letter to Dr. Canaan dated March 5, 1998, the Office stated that the employing establishment would offer appellant work “breaks, alternating tasks and freedom to change position for comfort,” and that “a work site analysis can be provided to accommodate the work site to [appellant’s] anatomy.” It then asked him: “In your opinion, can [appellant] increase his work hours under these conditions? [h]ow many hours can he work?”

In a report dated March 11, 1998, Dr. Canaan stated that appellant could work six hours a day for a month and then eight hours a day based on the restrictions the Office proposed.

In a letter dated March 23, 1998, the Office asked Dr. Duffy if appellant could return to work for six and then eight hours a day as per Dr. Canaan’s March 11, 1998 opinion.

In a report dated March 23, 1998, the employing establishment stated that it had received instructions, based on the Office and Dr. Canaan’s guidance, that appellant could return to work six hours a day and then eight hours a day. It stated: “The employer is willing to offer [work] breaks 15 minutes every 2 hours, 30 to 45 minute lunch breaks and alternating tasks and freedom to change positions for comfort.”

On March 23, 1998 appellant agreed to work six hours a day.

In a report dated March 30, 1998, the employing establishment stated that it could not accommodate appellant.¹

In a report dated April 9, 1998, Dr. Duffy stated that appellant did not have back strain or sprain as diagnosed by others; rather he had a symptomatic lumbar disc bulge at L4-5.

On May 12, 1998 the Office referred appellant to Dr. Andrew M. Hazen, a Board-certified orthopedic surgeon and an impartial medical examiner, to resolve the conflict in medical opinion between Drs. Duffy and Canaan.

In a report dated May 21, 1998, Dr. Theresa DeMarco read a lumbar MRI scan taken that day and found that it revealed stable desiccation at L3-4, mild degenerative changes L5-S1 without change from prior study and no evidence of spinal stenosis. Dr. DeMarco stated that this was a stable MRI scan finding when compared with prior study of March 19, 1997.

In a report dated June 3, 1998, Dr. Hazen noted a familiarity with appellant’s history of injury, having reviewed the medical file, including appellant’s MRI scan and diagnostic test results. He stated that appellant no longer had residuals of his work-related injury. Dr. Hazen initially noted that enough time had passed to heal the muscular-type injury that appellant had sustained. He further noted that appellant’s objective features such as degenerative disc disease at L3-4 and early arthritis at L5-S1 were preexisting conditions “that are very likely causing the present back discomfort in association with the preexisting problem of gross obesity that would also predispose to back discomfort of itself.” Dr. Hazen was unable to support Dr. Duffy’s

¹ In its March 30, 1998 letter, the employing establishment noted that appellant could return to a light-duty position after Dr. Canaan opined that he could work for six hours a day for one month and then eight hours a day in succeeding months. Appellant’s supervisor noted that appellant’s permanent job had been abolished, and that he could not be “successfully reassigned.” He was accommodated because of his unit’s drawdown.

finding that appellant had an L4-5 disc bulge as he noted that both MRIs and x-rays failed to reveal “any abnormality relative to the L4-5 disc,” and that he agreed with Dr. Canaan’s findings that appellant could return to full duty with restrictions to accommodate his nonwork-related conditions.

On July 13, 1998 the Office proposed termination of appellant’s compensation benefits.

On August 19, 1998 the Office authorized a discogram and a computerized tomography (CT) scan.

In a memorandum of a telephone conversation dated October 1, 1998, the Office noted that appellant was unable to take the authorized discogram and CT scan because of his weight and that Dr. Duffy requested that appellant be authorized to see Dr. Richard Derby, Board-certified in anesthesiology, who had facilities to accommodate appellant’s size.

In a letter dated February 17, 1999, the Office indicated that it had authorized an additional discogram in January 1999.²

In a decision dated March 25, 1999, the Office terminated appellant’s compensation benefits effective that date.

In a report dated March 15, 1999 and received by the Office on April 2, 1999, Dr. Derby, Board-certified in radiology, noted that he had conducted a discogram on appellant on that day and reported findings.

In an amended report received by the Office on April 30, 1999, Dr. Derby noted a corrected copy of the impression section of his original report. The correction included the following findings:

“[Appellant] had a positive discography at both the L3-4 and L4-5 levels. He has disc pain from an anteriorly disrupted intervertebral disc at the L3-4 level. The L4-5 is a chemically and mechanically sensitized disc. The twisting injury towards the right side would predispose to tearing the annulus centrally and to the left side, which is where his painful annular disruption exists.”

In a report dated March 19, 1999 and received by the Office on June 24, 1999, Dr. Duffy stated that he had reviewed Dr. Derby’s report and found that appellant was severely limited in his daily activities and that his restrictions included no sitting or standing over 10 minutes, no walking over 50 yards, no lifting over 5 pounds and no repetitive bending or twisting. He noted that appellant was limited to four hours a day.

By letters dated April 23 and June 22, 1999, appellant requested an oral hearing. A hearing was held on October 20, 1999.

² The record does not reveal a January 1999 authorization for a second discogram.

In a report dated November 13, 1999, Dr. Duffy stated that appellant's March 1997 MRI scan was read by the radiologist as revealing degeneration at L3-4 without disc protrusion and at L4-5 as normal. However, he noted that he directly reviewed the MRI and determined that appellant "did indeed have a bulging disc at L4-5. The specific lateral cut number 006 of his lumbar MRI scan shows the L4-5 defect. The disc was the symptomatic source of pain." Dr. Duffy then noted that Dr. Derby's findings post-discography confirmed his view that appellant sustained a "symptomatic internal disc derangement with annular tears secondary to his industrial injury of October 2, 1996."

In a decision dated March 2, 2000, the hearing representative affirmed the Office's March 25, 1999 decision to terminate appellant's compensation benefits.

In a letter dated March 1, 2001, appellant requested reconsideration. In a decision dated August 15, 2001, the Office denied modification of appellant's request for reconsideration.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.³

In this case, the Office based its decision to terminate appellant's benefits on the opinion of Dr. Hazen, a Board-certified orthopedic surgeon and an impartial medical examiner, who had reviewed the relevant medical reports and diagnostic test, and found that appellant's strains had resolved. Although Dr. Derby found in his April 20, 1999 report that appellant had a positive discography at both the L3-4 and L4-5 levels, that report is not well rationalized in light of the intervening three years since the accepted October 2, 1999 incident. Further, his reference to a twisting incident does not adequately address causal relationship of the findings to the incident. Further, Dr. Derby does not address the diagnostic MRI scan or explain the basis for his conclusion on causal relationship.

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Hazen, the impartial medical examiner, who provided a rationalized medical explanation of why the accepted condition had resolved and why appellant had no continuing disability from the condition he sustained on October 2, 1996 and is sufficient to meet the Office's burden of proof in terminating appellant's compensation.⁴

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *See Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician's opinion was thorough, well rationalized and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

The August 15, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 16, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member