

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY S. LAROQUE and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 01-1067; Submitted on the Record;
Issued February 7, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On January 5, 1999 appellant, then a 50-year-old insulator, sustained a lumbar strain in the performance of duty when he was carrying bags of insulation.¹

In a report dated February 3, 1999, Dr. Christopher Schmitt, a Board-certified family practitioner, stated that appellant had a low back strain of chronic nature secondary to work activities on a more probable than not basis. He stated that his ongoing degenerative changes would make it very difficult to perform his job.

In a report dated April 13, 1999, Dr. Edward G. DeVita, a Board-certified neurologist and Office referral physician, provided a history of appellant's condition, a review of the medical evidence, detailed findings on examination and his review of a magnetic resonance imaging (MRI) scan of appellant's lumbosacral spine. He diagnosed a lumbosacral strain due to the January 5, 1999 employment injury, previous chronic low back pain with mild to moderate degenerative changes in the lumbosacral spine and peripheral vascular disease of the lower extremities by history awaiting surgery. Dr. DeVita stated:

“[Appellant's] lumbosacral strain is related to the industrial injury of January 5, 1999, on a more probable than not basis; otherwise, the remaining conditions noted above are not related to the industrial injury on a more probable than not basis.

“On a more probable than not basis, he has recovered from the effects of his employment-related condition. It is felt that the majority of his symptoms at this

¹ Appellant has also filed claims for back injuries on September 3, 1993, July 5, 1994 and March 1, 1996.

time are related to his chronic low back discomfort that was preexisting, as well as his peripheral vascular disease, particularly the right leg complaints.

“With regard to this industrial injury, [appellant] is capable of gainful employment without restrictions.”

By decision dated June 24, 1999, the Office terminated appellant’s compensation and medical benefits effective July 17, 1999 on the grounds that the evidence established that he had recovered from his employment injury.

By letter dated July 27, 1999, appellant requested reconsideration and submitted additional evidence.

In a report dated July 22, 1999, Dr. Schmitt stated that he first examined appellant on January 6, 1999 for exacerbation of long-standing degenerative disc disease and spondylosis of the lumbosacral spine. He stated that appellant had continuing back problems related to his January 5, 1999 employment injury and required ongoing medical treatment. Dr. Schmitt did not provide any physical findings on examination.

In a letter dated July 26, 1999, Dr. David L. Lukens, a family practitioner, stated that he had treated appellant since July 1, 1999 and opined that he was totally disabled. He provided no physical findings in his report.

In a report dated October 14, 1999, Dr. Lukens stated that appellant had experienced chronic lumbosacral pain since 1979 and had been seen intermittently for recurring episodes of lumbosacral distress as well as back injuries caused by motor vehicle accidents and work-related injuries. He stated that appellant had always responded to conservative management but had chronic ligamentous asthenia over the cervical suboccipital and lumbosacral segments of his spine which led to progressive degenerative joint disease over both the cervical and lumbosacral segments. Dr. Lukens provided findings on examination and stated that appellant could not return to his regular work.

By decision dated October 28, 1999, the Office vacated its June 24, 1999 decision.

By letter dated November 4, 1999, the Office referred appellant to Dr. Alexander Miller, a Board-certified orthopedic surgeon, together with a statement of accepted facts and copies of medical records, for an examination and evaluation of whether he had any residual disability or medical condition causally related to his January 5, 1999 employment injury.

In a report dated November 23, 1999, Dr. Miller provided a history of appellant’s condition, a review of the medical evidence, detailed findings on examination and a review of past x-rays and MRI scans. He diagnosed a history compatible with lumbosacral strain and degenerative disc disease at L3-4 and L4-5. Dr. Miller stated:

“There are no objective findings that relate to the lumbar straining injury of January 5, 1999. Limited lumbar spine flexibility and the findings on the MRI scan of January 27, 1999 are objective findings that corroborate his diagnosis of lumbar degenerative disc disease.

“In my opinion, the lumbar straining injury of January 5, 1999 did not aggravate [appellant’s] preexisting lumbar degenerative disc disease. Any ongoing low back symptoms subsequent to twelve weeks post injury are related to the natural progression of his lumbar disc disease. Ninety five [percent] of individuals who sustain lumbar straining injuries recover within twelve weeks.”

* * *

“[Appellant’s] work-related condition, *i.e.*, lumbar straining injury, does not currently disable him from work.”

By letter dated February 23, 2000, the Office advised appellant that it proposed to terminate his compensation benefits on the grounds that the weight of the medical evidence established that he had no residuals of his January 5, 1999 employment injury.

By decision dated May 16, 2000, the Office terminated appellant’s compensation and medical benefits on the grounds that the weight of the medical evidence, represented by the reports of Drs. Miller and DeVita, established that appellant had no residuals of his January 5, 1999 employment injury.²

The Board finds that the Office met its burden of proof in terminating appellant’s compensation and medical benefits.

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 or that it is no longer related to the employment.³

In this case, the Office also terminated appellant’s medical benefits. The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ 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.⁵

In a report dated April 13, 1999, Dr. DeVita, a Board-certified neurologist and Office referral physician, provided a history of appellant’s condition, detailed findings on examination, and his review of an MRI scan of appellant’s lumbosacral spine. He diagnosed a lumbosacral strain due to the January 5, 1999 employment injury, previous chronic low back pain with mild

² This record contains additional evidence which was not before the Office at the time it issued its May 16, 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).

³ *See Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

⁴ *See Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *See Calvin S. Mays*, 39 ECAB 993, 1001 (1988).

to moderate degenerative changes in the lumbosacral spine and peripheral vascular disease of the lower extremities by history. Dr. DeVita stated:

“[Appellant’s] lumbosacral strain is related to the industrial injury of January 5, 1999, on a more probable than not basis; otherwise, the remaining conditions noted above are not related to the industrial injury on a more probable than not basis.

“On a more probable than not basis, he has recovered from the effects of his employment-related condition. It is felt that the majority of his symptoms at this time are related to his chronic low back discomfort that was preexisting, as well as his peripheral vascular disease, particularly the right leg complaints.

“With regard to this industrial injury, [appellant] is capable of gainful employment without restrictions.”

In a report dated November 23, 1999, Dr. Miller, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant’s condition, detailed findings on examination, and a review of past x-rays and MRI scans. He diagnosed a history compatible with lumbosacral strain and degenerative disc disease at L3-4 and L4-5 and stated that there were no objective findings relating to appellant’s January 5, 1999 employment injury. Dr. Miller stated:

“In my opinion, the lumbar straining injury of January 5, 1999 did not aggravate [appellant’s] preexisting lumbar degenerative disc disease. Any ongoing low back symptoms subsequent to twelve weeks post injury are related to the natural progression of his lumbar disc disease.”

* * *

“[Appellant’s] work-related condition, *i.e.*, lumbar straining injury, does not currently disable him from work.”

The reports of Drs. DeVita and Miller were based upon a thorough physical examination of appellant and a review of the medical evidence. They found that appellant’s continued back problems were due to the natural progression of his degenerative disc disease. The reports of Drs. DeVita and Miller constitute the weight of the medical evidence and establish that appellant had no continuing disability or medical condition causally related to his January 5, 1999 employment-related lumbar strain.

The reports of appellant’s physicians are of diminished probative value. In a report dated July 22, 1999, Dr. Schmitt stated that he first examined appellant on January 6, 1999 for exacerbation of long-standing degenerative disc disease and spondylosis of the lumbosacral spine. He stated that appellant had continuing back problems related to his January 5, 1999 employment injury and required ongoing medical treatment. However, he did not provide any physical findings on examination or medical rationale in support of his opinion.

In a letter dated July 26, 1999, Dr. Lukens, appellant's attending family practitioner, opined that appellant was totally disabled. In a report dated October 14, 1999, Dr. Lukens stated that appellant had experienced chronic lumbosacral pain since 1979 and had been seen intermittently for recurring episodes of lumbosacral distress as well as back injuries caused by motor vehicle accidents and work-related injuries. He provided findings on examination and stated that appellant could not return to his regular work. However, Dr. Lukens failed to provide objective medical evidence or medical rationale establishing that appellant's condition was causally related to his January 5, 1999 employment-related lumbar strain rather than his preexisting degenerative disc disease.

The decision of the Office of Workers' Compensation Programs dated May 16, 2000 is affirmed.

Dated, Washington, DC
February 7, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member