

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER L. SETTLE and DEPARTMENT OF THE NAVY,
NAVAL SEA SYSTEMS COMMAND, Philadelphia, PA

*Docket No. 01-548; Submitted on the Record;
Issued January 3, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant was disabled after November 12, 1995 due to his August 15, 1975 employment injury.

This case is before the Board for the second time.¹ Previously, the Board found that the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective November 12, 1995. The Board found that the opinion of Dr. Roy T. Lefkoe, a Board-certified orthopedic surgeon, showed that appellant had no disability after that date due to his August 15, 1975 employment injury.² The facts and circumstances of the case up to that point are incorporated herein by reference.

Appellant submitted additional medical evidence in support of his claim that he had employment-related disability after November 12, 1995. By decision dated October 23, 2000, the Office denied appellant's claim on the grounds that the evidence was insufficient to show any work-related disability after November 12, 1995.

The Board finds that the additional evidence submitted by appellant is insufficient to establish that he had residuals of his August 15, 1975 employment injury after November 12, 1995.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without

¹ Docket No. 97-2582 (issued December 15, 1999).

² The Office accepted that on August 15, 1975 appellant, then a 31-year-old painter, sustained a post-traumatic lumbosacral sprain and strain and sciatic neuritis while loading heavy paint cans onto a skid. By decision dated October 27, 1995, the Office terminated appellant's compensation effective November 12, 1995. By decision dated July 21, 1997, an Office hearing representative affirmed the Office's October 27, 1995 decision.

³ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

establishing that the disability ceased or that it was no longer related to the employment.⁴ After termination or modification of compensation benefits, 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.⁵

Given that the Office properly relied on the opinion of the impartial medical specialist, Dr. Lefkoe, in terminating appellant's compensation effective November 12, 1995, the burden shifts to appellant to establish that he is entitled to compensation after that date.

Appellant submitted a July 14, 2000 report in which Dr. Mark D. Avart, an attending osteopath, indicated that appellant was disabled and stated: "The patient continues to suffer symptomatic effects of disc and nerve damage in his back still ongoing and documented from August 1975. Chronic radiculopathy is documented with nerve damage in his back which is still resultant from his original injuries and still ongoing and documented as positive." This report is of limited probative value because Dr. Avart did not provide adequate medical rationale in support of his conclusion on causal relationship.⁶ He did not explain the medical process through which appellant would have continued to suffer residuals of his August 15, 1975 employment injury. The Office has not accepted that appellant sustained a herniated lumbar disc with resultant radiculopathy⁷ and the evidence submitted by appellant does not otherwise show such an employment-related condition. Dr. Avart did not explain why appellant's continuing problems would not be solely due to his underlying degenerative disc disease or some other nonwork-related cause.

Appellant also submitted the results of various diagnostic tests of his back and extremity conditions. A computerized tomography scan from June 2000 revealed bulging discs without focal disc herniation at L3-4 through L5-S1. An electromyogram and nerve conduction study from July 2000 showed chronic bilateral L5 and/or S1 radiculopathy with no evidence of acute denervation.

In several reports dated in July 1987, Dr. Maurice Romy, an attending Board-certified neurosurgeon, indicated that, based on his review of diagnostic testing from 1987, appellant had a herniated disc at L4-5. These reports, however, are of limited probative value because they do not provide an opinion on causal relationship.⁸ They do not indicate that appellant's continuing back and extremity problems were related to the August 15, 1975 employment injury.

⁴ *Id.*

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

⁶ *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).

⁷ The Office accepted that appellant sustained a post-traumatic lumbosacral sprain and strain and sciatic neuritis.

⁸ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Moreover, the record contains medical evidence that appellant did not have an employment-related disability after November 12, 1995. In a report dated September 18, 2000, an Office medical adviser stated that a diagnosis of a herniated lumbar disc had not been established by diagnostic testing and indicated that the weight of the medical evidence regarding appellant's employment-related disability continued to rest with the opinion of Dr. Lefkoe. The Office medical adviser stated that a myelogram from 1978 was the "most definitive test" following the August 15, 1975 injury and did not show a herniated lumbar disc. He also noted that the diagnostic testing from 1987 referenced by Dr. Romy also did not show a herniated lumbar disc.

For these reasons, appellant did not meet his burden of proof to show that he had disability after November 12, 1995 due to his August 15, 1975 employment injury.

The October 23, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 3, 2002

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member