

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LLOYD WALKER and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS - FEDERAL CORRECTIONAL INSTITUTION,
Lexington, KY

*Docket No. 00-2824; Submitted on the Record;
Issued March 5, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits on the basis that appellant no longer had any disability or residuals causally related to his June 30, 1983 employment injury; and (2) whether the Office abused its discretion by refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

On June 30, 1983 appellant, then a 48-year-old food service foreman, sustained a traumatic injury while in the performance of duty. The Office accepted his claim for low back strain and aggravation of preexisting degenerative disc disease. Appellant was placed on the periodic compensation rolls and he received appropriate wage-loss compensation.

In April 2000, the Office referred appellant for evaluation by Dr. Robert P. Goodman, a Board-certified orthopedic surgeon. In a report dated May 15, 2000, Dr. Goodman diagnosed preexisting degenerative disc changes of the lumbar spine with arousal. He further stated that there were no residuals of the June 30, 1983 employment injury that would preclude appellant from working an 8-hour day. Dr. Goodman related appellant's current symptoms to the natural progression of his underlying degenerative disc disease and the normal aging process.

By decision dated August 15, 2000, the Office terminated appellant's compensation and medical benefits on the basis that the evidence of record established that appellant had no continuing employment-related disability.

On August 31, 2000 appellant requested reconsideration, which the Office denied in a decision dated September 11, 2000.

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

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.²

The record indicates that since October 1994 appellant has been under the care of Dr. James Templin, a specialist in occupational medicine and pain management.³ He treated appellant for degenerative lumbar disc disease and chronic cervical and low back pain syndrome. Dr. Templin has authored nine reports regarding appellant's treatment, which commenced on October 28, 1994. However, none of Dr. Templin's reports referenced appellant's June 30, 1983 employment injury. His most recent report dated August 3, 1998 attributed appellant's symptoms to a work-related accident, which purportedly occurred July 6, 1991; approximately 8 years after appellant ceased working for the employing establishment.

The record also includes the January 26, 2000 treatment records of Dr. William Lester, who like Dr. Templin is associated with the Cardinal Hill Rehabilitation Hospital. Dr. Lester also referenced a 1991 work-related back injury.

The most recent medical evidence did not attribute appellant's ongoing cervical and lumbar pain to his June 30, 1983 employment injury. Dr. Goodman's May 15, 2000 report specifically found that there were no objective physical findings of an ongoing employment-related injury.⁴ With respect to appellant's current symptoms, Dr. Goodman found that they were attributable to the natural progression of his underlying degenerative disc disease and the normal aging process. Accordingly, the Office properly terminated appellant's wage-loss compensation and medical benefits, based on Dr. Goodman's reports.

The Board further finds that the Office properly denied appellant's request for reconsideration.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁵ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated

¹ *Curtis Hall*, 45 ECAB 316 (1994).

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ Dr. Templin is the Medical Director of the Comprehensive Pain Management Center at Cardinal Hill Rehabilitation Hospital in Lexington, KY.

⁴ Dr. Phillip A. Tibbs, a neurosurgeon who treated appellant in 1980s, reported in November 1986 that appellant's employment-related low back strain had long since resolved.

⁵ 20 C.F.R. § 10.606(b)(2) (1999).

under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

Appellant's August 31, 2000 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2). Furthermore, as appellant did not submit any additional evidence with his August 31, 2000 request for reconsideration, he is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's August 31, 2000 request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated September 11 and August 15, 2000 are hereby affirmed.

Dated, Washington, DC
March 5, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ 20 C.F.R. § 10.608(b) (1999).