

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 01-1598; Submitted on the Record;
Issued March 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of January 30, 2000.

On February 27, 1992 appellant, then a 47-year-old mail processor, injured his right ankle while dispatching a piece of equipment. He filed a claim for benefits on March 2, 1992, which the Office accepted for fractured right ankle. The Office paid compensation for appropriate periods.

Appellant began complaining of low back pain, which he felt was causally related to the 1992 work injury. Although the Office never accepted that he had a low back condition causally related to the 1992 employment injury, appellant periodically requested compensation for medical benefits for treatment of his low back complaints.

In a report dated November 20, 1992, Dr. Arnold S. Lincow, an osteopath, stated:

"It is ... my professional opinion that the treatment rendered to the lumbar spine was ... medically necessary and the diagnoses of lumbar strain and sprain ... [and] was directly and causally related to the injury of February 27, 1992. Although the lumbar spine was not a significant problem from the first day, this patient's low back was taking a great deal of pressure from the casting of his right foot and the use of the cane. His lumbar strain and sprain is traumatically induced by the severe injuring of his right ankle."

On September 30, 1995 appellant's treating physician, Dr. James D. Loebell, a podiatrist, indicated in a work restriction evaluation that appellant could work an eight-hour day with restrictions on standing and kneeling, and recommended adequate break periods so he could perform stretching exercises.

Appellant missed work for intermittent periods until October 26, 1995, when he returned to full duty, with the above restrictions, for eight hours per day.

In a work restriction evaluation dated April 14, 1996, Dr. Loebell noted complaints of back and leg pain in the thigh.

In order to determine whether appellant continued to suffer residuals from his accepted conditions and to ascertain whether his low back condition was causally related to the February 27, 1992 employment injury, the Office referred appellant for a second opinion examination with Dr. Anthony S. Puglisi, a Board-certified orthopedic surgeon, for January 24, 1996.

In a report dated January 24, 1996, Dr. Puglisi stated:

"His condition at this time is that his ankle has stabilized. I find no evidence of any ongoing inflammation. He does have subjective complaints of pain in his ankle and lumbar symptoms. It is my opinion that his lumbar symptoms are not related to his work-related episode.... At this time, I could find no obvious continued inflammation in the right ankle and the lumbar symptoms appear to be mild in nature and without any signs of radiculopathy."

In a report dated December 5, 1996, a medical clinic which had been treating appellant for his right ankle and low back complaints stated:

"[Appellant] has been a patient of this medical center for many years and has [been] treated for his work related injury of February 27, 1992 since April 15, 1992.... [Appellant] often comes here with low back pain, spasms, radiation, etc.. Diagnosis includes [herniated nucleus pulposus], myofascitis, [degenerative joint disease], radiculopathy, all conditions related to his work injury of February 27, 1992. It has been the opinion of the physicians of the medical center that his low back condition is totally related to the work injury and this opinion remains."

The Office found that there was a conflict in the medical evidence between Drs. Loebell and Puglisi, and scheduled an independent medical examination for appellant with Dr. Martin A. Blaker, a Board-certified orthopedic surgeon, for April 14, 1997.

In a report dated April 14, 1997, Dr. Blaker expressed his strong disagreement with the physicians of record who related appellant's back complaints to his accepted ankle condition. He noted that an April 29, 1992 computer axial tomography (CAT) scan of the lumbar spine showed no evidence of a herniated disc, with no evidence of stenosis, although the canal was said to be small. Dr. Blaker opined that the size of the lower spinal canal had nothing to do with appellant's employment accident and that the same applied to the lumbar spine. He concluded that the manner in which appellant was injured in 1992 did not suggest any long, continued symptoms in the ankle region, that this condition should be resolved and that there was no need for continued treatment. Dr. Blaker further stated that any alleged injury appellant may have had to the right ankle had nothing whatever to do with his subsequent long history of back complaints.

On May 11, 1998 the Office issued a notice of proposed termination of compensation to appellant. The Office found that the weight of the medical evidence, as represented by Dr. Blaker's referee opinion, established that all residuals from his employment-related disability had ceased and that his low back condition was not causally related to the February 27, 1992

employment injury. The Office proposed that compensation and medical benefits be terminated. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. Appellant did not respond to this notice within 30 days.

By decision dated November 24, 2000, the Office terminated appellant's compensation.

By letter dated January 23, 2001, appellant's attorney requested reconsideration. In support of his request, appellant submitted a January 24, 2001 report from Dr. Lincow, who stated that appellant has a permanent injury with loss of bodily function of his musculoskeletal system and neurological system. He further stated:

"It is my professional opinion based upon a reasonable degree of medical certainty that all the medical bills are medically reasonable and necessary and were caused by his initial injury which took place on February 27, 1992.... Although he [has been] ... told that he should seek redress to this problem here regarding his residual pain in his right ankle, foot and lower back, his inability to function on a daily basis is obvious. [Appellant] has an indefinite expected continuing period of disability. As stated his prognosis is guarded. He has ... not reached maximum medical care. He has not recovered from a compensable injury."

By decision dated March 12, 2001, the Office denied appellant's claim for reconsideration, finding that he did not submit evidence sufficient to warrant modification.

The Board finds the Office met its burden of proof to terminate appellant's compensation benefits as of November 24, 2000.

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.¹ 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.²

In the present case, the Office based its decision to terminate appellant's compensation on the April 28, 1997 report of Dr. Blaker, the independent medical examiner. In his referee medical opinion, Dr. Blaker indicated that appellant's low back complaints were entirely unrelated to his accepted ankle condition and that the type of injury he sustained in 1992 should have resolved by this time, with no lingering symptomatology or need for continued treatment. The Office relied on Dr. Blaker's opinion in its November 24, 2000 termination decision, finding that all residuals of the previously accepted condition had ceased and that appellant currently suffered from no condition or disability causally related to his February 27, 1992 accepted employment injury.

The Board holds that the Office properly found that Dr. Blaker's referee opinion negating a causal relationship between appellant's claimed current conditions and disability and his

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

February 27, 1992 employment injury and that he no longer had any residuals from the employment injury was sufficiently probative, rationalized, and based upon a proper factual background, and that therefore, the Office acted correctly in according Dr. Blaker's opinion the special weight of an independent medical examiner.³ Accordingly, the Board finds that Dr. Blaker's opinion constituted sufficient medical rationale to support the Office's November 24, 2000 decision terminating appellant's compensation. The Board therefore affirms the Office's November 24, 2000 Office decision terminating compensation.

Following the Office's termination of compensation, the burden of proof in this case shifted to appellant, who requested reconsideration and submitted Dr. Lincow's January 24, 2001 report. Dr. Lincow opined that all the medical bills, including those for his residual pain in his right ankle, foot and lower back, were medically reasonable and necessary and were caused by the 1992 employment injury. He further stated that appellant had an indefinite expected continuing period of disability and advised that his inability to function on a daily basis is obvious. However, Dr. Lincow provided no medical rationale to support this opinion, which runs contrary to the fact that appellant has been working full duty for eight hours per day since October 1995 or his belief that appellant's alleged low back condition -- which was not a condition accepted by the Office -- was causally related to the accepted right ankle injury. The Office properly found that Dr. Blaker's referee opinion constituted the weight of the medical evidence. Accordingly, the Board affirms the Office's March 12, 2001 decision, affirming the November 24, 2000 termination decision.

The decisions of the Office of Workers' Compensation Programs dated March 12, 2001 and November 24, 2000 are hereby affirmed.

Dated, Washington, DC
March 4, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

³ *Gary R. Seiber*, 46 ECAB 215 (1994).