

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEMUEL A. SOUTHERN and U.S. POSTAL SERVICE,
POST OFFICE, Princeton, WV

*Docket No. 01-1816; Submitted on the Record;
Issued March 13, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective July 15, 2001.

On January 26, 1970 appellant, then a 44-year-old letter carrier, sustained a right knee bruise and aggravation of spondylolysis while in the performance of duty.

Effective February 10, 1972 appellant began receiving compensation for temporary total disability.

Appellant was treated for back problems by Dr. Roy R. Raab, an orthopedic surgeon, from June 17, 1971 to December 21, 1973 and again on March 31 and October 5, 1981.

Dr. Gary Craft treated appellant for back problems from January 9, 1984 to July 30, 1987 and again on December 27, 1993.

In a report dated March 30, 2001, Dr. George J. Orphanos, a Board-certified orthopedic surgeon and Office referral physician provided a history of appellant's condition, detailed findings on examination and diagnosed an acute low back strain on January 26, 1970 superimposed on preexisting spondylolysis at L5. He stated:

“[Appellant] was found to have essentially normal range of motion involving the lumbar spine with no objective neurologic abnormalities or radiculopathy. [He] is found to be stable at this time and has been controlling his off and on increased symptomatology due to degenerative arthritis involving the lumbar spine with antiinflammatory medications. No additional treatment is recommended at this time.

“The [January 26, 1970] claim was accepted for aggravation of his preexisting spondylolysis at L5 and I feel that aggravation has now ceased. [Appellant's]

presenting symptomatology and occasional aggravation is related to degenerative arthritis, which has progressed gradually due to aging.

“There is no evidence of a current work-related condition or aggravation at this time.

“[Appellant] is not totally disabled for any employment. He has been able to function at his farm for many years.¹ Certainly, considering his age and degenerative arthritis involving his lumbar spine and right ankle, [appellant] should not be up on his feet for more than two hours continuously and lift more than 25 to 50 [pounds] of weight.

“The initial symptomatology following this [January 26, 1970] injury has resolved a long time ago. [Appellant] continues to have chronic low back symptoms due to aging and advancing degenerative changes involving the lumbar spine.”

By letter dated April 9, 2001, the Office advised appellant that it proposed to terminate his compensation on the grounds that the weight of the medical evidence represented by the March 30, 2001 report of Dr. Orphanos, established that he had no continuing disability due to his January 26, 1970 employment injury. Appellant was given 30 days to submit additional evidence or argument if he disagreed with the proposed termination of compensation.

In an undated letter received by the Office on April 20, 2001, appellant stated that he had borrowed money to help a man purchase a home and he would like to keep receiving his compensation until he got out of debt.

Appellant submitted a work restriction evaluation form dated May 29, 2001 from Dr. Michael Brackenrich in which he indicated that appellant could perform only light work for one to two hours a day. He noted that appellant had “chronic condition,” could not bend over and had arthritis in both hands.

By decision dated June 28, 2001, the Office terminated appellant’s compensation effective July 15, 2001 on the grounds that the weight of the medical evidence of record established that he had no continuing disability due to his January 26, 1970 employment injury.

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

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

¹ A 1984 Office statement of accepted facts noted that appellant had a farm where he grew crops on five acres.

without establishing that the disability had ceased or that it is no longer related to the employment.²

In a report dated March 30, 2001, Dr. Orphanos, a Board-certified orthopedic surgeon and Office referral physician provided a history of appellant's condition and detailed findings on examination. He stated:

"The [January 26, 1970] claim was accepted for aggravation of his preexisting spondylolysis at L5 and I feel that aggravation has now ceased. [Appellant's] presenting symptomatology and occasional aggravation is related to degenerative arthritis, which has progressed gradually due to aging.

"There is no evidence of a current work-related condition or aggravation at this time.

"[Appellant] is not totally disabled for any employment. He has been able to function at his farm for many years....

"The initial symptomatology following this [January 26, 1970] injury has resolved a long time ago. [Appellant] continues to have chronic low back symptoms due to aging and advancing degenerative changes involving the lumbar spine."

The Board finds that the thorough and well-rationalized report of Dr. Orphanos established that appellant's January 26, 1970 employment injury had resolved and any continuing back conditions or work limitations were due to the natural aging process and his preexisting spondylolysis. Thus, the Office met its burden of proof in terminating appellant's compensation effective July 15, 2001 on the grounds that his January 26, 1970 employment injury had resolved.

The May 29, 2001 work restriction evaluation form from Dr. Brackenrich does not establish that appellant had any remaining disability or medical condition causally related to his January 26, 1970 employment injury. Dr. Brackenrich provided no findings on examination, no diagnosis except arthritis of the hands (which is not an accepted condition in this case) and did not mention appellant's January 26, 1970 employment injury.

² See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

The June 28, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 13, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member