

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALPHONSO NESMITH and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATRION MEDICAL CENTER, Miami, FL

*Docket No. 01-1427; Submitted on the Record;
Issued May 15, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits.

Appellant's claim filed on June 2, 1987 for lower back and leg pain, which occurred on December 12, 1985¹ after he reached for a medical file on the floor, was accepted for lumbosacral strain. Appellant received appropriate compensation, starting on January 1, 1986.²

Appellant was referred for vocational rehabilitation, and was scheduled to return to work on September 10, 1989. However, the rehabilitation specialist stated in a report dated December 4, 1989 that appellant was "unwilling to work" despite medical documentation that he was capable of returning to his preinjury position of medical clerk.

On February 23, 1990 the Office terminated appellant's wage-loss benefits on the grounds that he refused an offer of suitable work. Appellant requested an oral hearing, which was held on August 22, 1990. The hearing representative remanded the case for further development. Subsequently, the Office accepted an aggravation of appellant's chronic schizophrenia as related to his back injuries in 1984 and 1985.

¹ Appellant's previous claim filed on July 5, 1984 was also accepted for a lumbosacral strain, which resulted from a fall to the floor caused by a broken chair. Appellant received continuation of pay until September 7, 1984 and then used leave until he returned to light duty on October 15, 1984. Subsequently, appellant repaid a \$541.65 overpayment that occurred when he received compensation while on leave. The Office noted that the record contained no medical reports between November 16, 1984, when appellant's treating physician released him to regular duty, and December 6, 1985.

² Appellant was terminated from the federal service effective January 26, 1986 for falsifying a medical document and failure to follow proper leave procedures.

On December 14, 2000 the Office issued a notice to terminate appellant's medical benefits for his back injuries, based on the second opinion report of Dr. Georges Boutin, a Board-certified orthopedic surgeon who concluded in a March 29, 2000 report that the accepted back injuries had resolved. On February 8, 2001 the Office terminated medical benefits for the work-related back injuries.

The Board finds that the Office met its burden of proof in terminating medical benefits for appellant's accepted back injuries, effective February 8, 2001.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ 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.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition requiring further treatment.⁶

In this case, the opinion of Dr. Boutin is sufficient to establish that appellant has no residuals of his work-related back injuries. He examined appellant on March 29, 2000, noting that appellant moved well without any guarding, that his cervical, thoracic, and lumbar spine had normal curvature and that there was no pain on palpation, "surprisingly good range of flexion" with normal extension and rotation, and well-aligned lower extremities. Dr. Boutin found that appellant walked easily on heels and toes and concluded that his neurological examination was normal without visible motor or sensory deficit.

Reviewing the medical history, Dr. Boutin related that appellant had been treated conservatively for his back pain with medication, following various forms of treatment in the late 1980s, which included traction, manipulation, physical therapy, and injections. The record contains the July 18 and February 18, 1991 reports of Dr. John Millheiser, a Board-certified orthopedic surgeon and second opinion physician, who concluded that appellant had been "vastly overtreated" for his back strains. He reported no objective findings of any back condition and added that appellant's complaints were more on an emotional basis. Appellant's treating physician, Dr. Morry S. Fox, an osteopathic practitioner, stated on August 8, 1990 that appellant's back condition had reached maximum medical improvement.

Based on this review and his examination, Dr. Boutin concluded that the lumbosacral strains of 1984 and 1985 had resolved. He noted that appellant had reached maximum medical improvement and that no further treatment for his back was needed. Dr. Boutin found appellant

³ *Betty Regan*, 49 ECAB 496, 501 (1998).

⁴ *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

⁵ *Wiley Richey*, 49 ECAB 166, 168 (1997).

⁶ *Marvin T. Schwartz*, 48 ECAB 521, 522 (1997).

able to work with restrictions of no lifting of more than 10 pounds and no repetitive bending. He added that these restrictions fit easily into the job description of medical clerk.⁷

Inasmuch as the medical evidence establishes that appellant has no residuals of his work-related back injuries, the Board finds that the Office met its burden of proof in terminating appellant's medical benefits for his back condition.⁸

The February 8, 2001 decision of the Office of Workers' Compensation Programs is affirmed

Dated, Washington, DC
May 15, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ The physical demands of appellant's job included sitting most of the day with intermittent standing and walking, occasionally lifting objects up to 10 pounds, and infrequently carrying objects weighing 2 to 3 pounds. On September 19, 1999 the employing establishment offered appellant a clerk's position, described as completely sedentary, with the opportunity to stand, walk around and rest as needed.

⁸ See *Jose Hernandez*, 47 ECAB 288, 295 (1996) (finding that the second opinion physician's conclusion that appellant's work-related back condition had resolved was sufficient to support the Office's termination of medical benefits); cf. *Tobias B. Fritz*, 49 ECAB 694, 695 (1998) (finding that the Office failed to meet its burden of proof in terminating reimbursement for a fitness program to treat appellant's back condition).