

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CLARENCE W. COX and DEPARTMENT OF DEFENSE,  
FIELD COMMISSARY SERVICE, Hurlburt Field, FL

*Docket No. 01-2215; Submitted on the Record;  
Issued October 3, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective July 13, 1999.

In this case, the Office accepted that appellant sustained a lumbar sprain at work on July 6, 1989 and paid appropriate benefits.

On May 18, 1998 the Office referred appellant to Dr. Kevin Komes, a second opinion physician Board-certified in physical medicine and rehabilitation, to determine whether appellant was still disabled as a result of his work-related injury.

In a report dated November 2, 1998, Dr. Komes stated that his examination of appellant was essentially normal. Physical findings with respect to manual muscle testing of the lower extremities were normal, negative Laseque test on the right with some left discomfort. He reported no pinpoint deficits. His spinal range of motion was 40 degrees flexion, 0 degrees extension and side bending, left and right, was 15 degrees. He opined:

“[B]ased on the natural history of soft tissue sprains and mechanism of injury, it would appear that [appellant's] lumbar strain should be resolved at this point. He is at maximum medical improvement. There are significant underlying diseases here which are prohibiting full functional recovery including morbid obesity and degenerative arthritis and degenerative disc disease. It is felt that the individual will not be able to return to work due to these factors.... It is likely that [appellant] had reached maximum medical improvement nine months after the alleged injury.”

By letter dated June 8, 1999, the Office proposed termination. By decision dated July 13, 1999, the Office terminated appellant's benefits effective on July 17, 1999. By letter dated June 27, 2000, appellant, through his representative, requested reconsideration.

In a report dated August 16, 1999, Dr. Kymberly D. Rittman, appellant's treating osteopath, stated that appellant had been her patient since 1998, that he was originally injured in 1987 and diagnosed with muscle strain. Since he understood that appellant had taken medical retirement in 1990, she had conducted no further inquiry into the condition.

In a report dated June 2, 2000, Dr. Rittman stated that appellant originally injured his back in October 1987, that he was reinjured while performing light-duty in February 1988, that he returned to work and again injured himself in July 1999. He noted a 1987 x-ray which revealed some degenerative disc space narrowing and a myelogram in July 1989, which revealed multiple levels of disc bulging and some mild stenosis. Dr. Rittman's 1990 thermogram "suggested L4-5 nerve irritation." She noted appellant's constant pain and 100-pound weight gain. Dr. Rittman stated that appellant's back studies demonstrated a worsening degenerative back disease "of which there is substantial certainty that the causative agent was three well-documented work-related back injuries."

In a decision dated October 23, 2000, the Office denied appellant's claim for modification.

By letter dated July 22, 2001 appellant, through his representative, requested reconsideration.

In a report dated August 5, 1993, Dr. Lawrence Faulker, an osteopath, noted a familiarity with appellant's back condition, stated that it was impossible to perform a diagnostic work-up due to appellant's obesity, noting that he weighed over 500 pounds.

In a decision dated August 24, 2001 the Office denied modification of appellant's request for reconsideration.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim for compensation, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup>

Under the Federal Employees' Compensation Act,<sup>2</sup> once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to employment.<sup>4</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

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<sup>1</sup> *Alfred Arts*, 45 ECAB 530 (1994).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

<sup>4</sup> *Id.*

<sup>5</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

The Board finds that the evidence of record clearly demonstrates that appellant has no further disability causally related to his work-related injury of July 6, 1989. The medical report of the Office referral physician, Dr. Komes, shows that appellant's accepted condition of back strain has resolved. He performed a physical evaluation on appellant and had access to his entire medical file including a statement of accepted facts that outlined appellant's history of injuries, medical treatment and objective tests. Dr. Komes opined that appellant's work-related back sprain had resolved and that his current condition was related to his obesity, degenerative arthritis and degenerative disc disease. He specifically stated that there was no residual medical condition based on the work-related injury.

None of the other medical evidence of record supports a medical residual condition based on appellant's work-related injury. Dr. Rittman did not support her June 2, 2000 opinion that appellant's condition was due to his employment injury with a rationalized medical opinion. Moreover, her report is devoid of medical findings on examination or any diagnostic tests rendered. The Board has held that a medical opinion consisting solely of a conclusory statement regarding disability, without supporting rationale, is of little probative value.<sup>6</sup>

Dr. Faulkner's August 5, 1993 report is lacking in probative value due to its age and lack of a diagnosis.

The Board, therefore, finds that appellant had no employment-related disability on or after July 19, 1999 and the Office met its burden of proof in terminating his compensation on that date.

The August 24, 2001 and October 23, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
October 3, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>6</sup> See *Marilyn D. Polk*, 44 ECAB 673, 678 (1993).