

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of WALTER L. STOCKDALE and DEPARTMENT OF THE ARMY,  
FORT MCCLELLAN, AL

*Docket No. 02-1308; Submitted on the Record;  
Issued October 9, 2002*

---

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant's disability and need for medical treatment causally related to his October 23, 1987 employment injury ended by June 19, 1999.

On November 12, 1987 appellant, then a 43-year-old firefighter, filed a claim for a traumatic injury to his low back sustained on October 23, 1987 when he jumped out of bed for a fire alarm.

The Office of Workers' Compensation Programs accepted that appellant sustained a low back strain and, following 45 days of continuation of pay, began paying appellant compensation for temporary total disability on December 28, 1987.

On March 8, 1999 the Office issued a notice of proposed termination of compensation on the basis that, the January 19, 1999 report of Dr. John D. Crompton, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation, established that he had no continuing disabling residuals of his October 23, 1987 employment injury.

By decision dated June 4, 1999, the Office terminated appellant's compensation effective June 19, 1999 on the basis that he no longer suffered disabling residuals of his October 23, 1987 injury causing wage loss or requiring medical treatment.

By letter received July 6, 1999, appellant requested reconsideration. By decision dated July 14, 1999, the Office found that appellant had not submitted any evidence to warrant modification of its prior decision.

By letter received June 1, 2000, appellant requested reconsideration and submitted additional medical evidence. By decision dated June 28, 2000, the Office found that the additional evidence did not establish a relationship between appellant's low back condition and his October 23, 1987 employment injury.

By letter dated April 24, 2001, appellant requested reconsideration and submitted the employing establishment's August 24, 1989 decision to remove him on the basis of his inability to perform his assigned duties and an additional medical report from his attending physician, Dr. Christian Jimmerson, a Board-certified internist.

By decision dated July 30, 2001, the Office found that the additional evidence was insufficient to explain how appellant had a lumbar strain 14 years after his employment injury.

By letter dated January 3, 2002, appellant requested reconsideration and submitted an August 16, 2001 report from Dr. Jimmerson.

By decision dated February 1, 2002, the Office found that there was no objective evidence to support that he continued to suffer from the lumbar strain he sustained on October 23, 1987.

The Board finds that the Office met its burden of proof to establish that appellant's disability and need for medical treatment causally related to his October 23, 1987 employment injury ended by June 19, 1999.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.<sup>1</sup>

In his January 19, 1999 report, upon which the Office relied in terminating appellant's compensation, Dr. Crompton stated, in answer to the Office's questions:

"1. What is the diagnosis established? The current diagnosis is degenerative dis[c] disease with degenerative arthritis of the lumbar spine including severe degenerative dis[c] disease and dis[c] space collapse at L5-S1, moderate dis[c] space collapse at L4-5, and mild degenerative scoliosis.

"2. Is the condition diagnosed causally related to the October 22, 1987 work injury? I do not believe that this is directly related to the work injury. I see many patients on a daily basis that have this type of degeneration that did not specifically have any type of injury. I believe that it is far more related to just the degenerative process.

"3. Has the strain caused by the October 22, 1987 work injury healed by now? I believe that a strain that would have occurred in 1987 has fully healed.

"4. Does [appellant] have any residual disability due to the October 22, 1987 work injury? I do not believe [appellant] has any residual disability after an injury October 1987. Basically, this is because of the above reasoning.

---

<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

“5. To what medical reasons do you attribute the prolonged disability of this claimant following the October 22, 1987 soft tissue injury? I am unsure as to why [appellant] has had such a prolonged disability secondary to his soft tissue injury October 22, 1987, except for the possibility of the relationship between the soft tissue injury and what probably was already coexisting degenerative dis[c] disease at that point.

“6. Are [appellant’s] subjective complaints of pain in line with his clinical findings on examination? I believe that the subjective complaints or pain are out of line with the clinical findings. I believe that [he] should have pain in his back and should have probably daily complaints of pain, but not to the level that he states where he can only stand or sit for just a few minutes at a time.

“7. Only if an impairment causally related to the October 22, 1987 work injury remains please advise: I do not believe there is any impairment based upon the October 1987 work injury.

“8. What are the work restrictions? I do not necessarily believe there are any specific work restrictions based upon the October 1987 soft tissue injury. [Appellant’s] work restrictions would be more based upon degenerative dis[c] disease and, therefore, I will not specifically give work restrictions.”

The Board finds that Dr. Crompton’s report was sufficient to meet the Office’s burden of proving that appellant’s disabling condition was no longer related to his employment injury as of June 19, 1999. His report was based upon a complete and accurate history and unequivocally concluded that appellant’s continuing disability was related to his degenerative disc disease rather than his October 23, 1987 employment injury. Dr. Crompton also concluded that appellant had no residual disability from this injury and that the strain he sustained on October 23, 1987 had “fully healed.”

At the time of the Office’s termination of appellant’s compensation on June 19, 1999, there was no medical evidence indicating that appellant had continuing disability causally related to his October 23, 1987 employment injury. The Office accepted appellant’s claim on the basis of reports from his attending physician until his retirement in 1998, Dr. John D. Sherrill, Jr., a Board-certified orthopedic surgeon. However, at the time of the Office’s termination of appellant’s compensation, the most recent report from Dr. Sherrill was dated November 6, 1997, and this report attributed appellant’s disability to “a documented lumbar disc as the cause of his back problem which had been persistent to date.” The Office has not accepted a disc herniation as related to the October 23, 1987 employment injury and an April 19, 1988 lumbar myelogram; and computerized tomography scan showed only a protruding disc, according to Dr. Sherrill. In light of this finding, Dr. Sherrill did not provide sufficient explanation for a diagnosis of a herniated disc or sufficient rationale to relate this condition to appellant’s October 23, 1987 employment injury.

Following the termination of benefits on June 19, 1999 appellant submitted additional medical evidence. In a report dated October 24, 2000, Dr. Jimmerson diagnosed chronic low back pain secondary to lumbosacral strain. He stated:

“I feel that [appellant] needs to be retired even from light duty secondary to his ongoing back pain and in light of this going on for the last 13 [plus] years when on or about October 23, 1987 according to the history of [appellant] he raised to get out of a bed to respond to a fire alarm and has had pain in his lower back ever since. I do not feel that surgery is probably going to help. Therefore, my recommendation is that [appellant] be retired as a result of this injury from approximately 1987.”

In a report dated August 16, 2001, Dr. Jimmerson stated:

“Before [appellant] injured his back in 1987, he was without pain. After the injury, he has continued back pain. [Appellant] was initially felt to have a lumbosacral strain due to lack of radiographic evidence otherwise. Due to [his] continued pain and limitations that occurred after the 1987 injury, one can conclude that the injury is the precipitating factor for his continued back pain. [Appellant] has been through physical therapy and other conservative measures without cure.

“Therefore, I feel he continues to have a degree of original musculoskeletal strain that is ultimately still responsible for [appellant’s] present back pain.”

The Board finds that the weight of medical opinion is represented by the report of Dr. Crompton who was provided the case record and a statement of accepted facts. He reviewed appellant’s factual and medical background and provided medical rationale explaining that appellant’s accepted lumbar strain had resolved and that his continuing disability was due to the diagnoses of degenerative disc disease and scoliosis which he found was not related to the accepted injury. Dr. Jimmerson provided only brief medical notes which failed to provide a complete factual and medical background of the case or sufficient medical rationale in support of his stated conclusions.<sup>2</sup> He noted appellant’s complaint of chronic pain but did not provide a detailed report setting forth the findings of a physical examination.<sup>3</sup> Further, Dr. Jimmerson is not a specialist in the field of orthopedic surgery while Dr. Crompton is a Board-certified specialist in the relevant field.<sup>4</sup>

---

<sup>2</sup> See *Duane B. Harris*, 49 ECAB 170 (1997).

<sup>3</sup> See *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

<sup>4</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB 980 (1996).

The February 1, 2002 and July 30, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
October 9, 2002

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member