

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK D. SECKLER and TENNESSEE VALLEY AUTHORITY,
DIVISION OF POWER CONSTRUCTION, Jackson, TN

*Docket No. 03-186; Submitted on the Record;
Issued April 15, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective June 17, 2001.

The Office accepted appellant's claim for a left ankle sprain, traumatic tenosynovitis of the left ankle and permanent aggravation of synovitis of the left knee and left ankle.¹

In a work restriction evaluation dated February 20, 1993, appellant's treating physician, Dr. Samuel W. Huddleston, a Board-certified orthopedic surgeon, opined that he could perform intermittent walking, lifting, bending, twisting and standing for 2 hours, could bend and kneel for one hour and could lift from 20 to 50 pounds. Based on Dr. Huddleston's work restrictions, the Office found that appellant could perform the work of a cashier. By decision dated February 8, 1994, the Office adjusted appellant's compensation to reflect his wage-earning capacity of a cashier.

To obtain an updated medical evaluation, the Office referred appellant to Dr. Carl W. Huff, a Board-certified orthopedic surgeon and specialist in preventive medicine. In a report dated April 2, 2001, Dr. Huff considered appellant's history of injury, performed a physical examination, reviewed x-rays and an electromyogram (EMG). He diagnosed multiple arthralgias with basically normal orthopedic examinations, postoperative status arthrotomy of the left knee without residuals and numbness and weakness report of the left lower extremity without objective findings. Dr. Huff stated that appellant's findings suggested that he was able to resume the work of a journeyman lineman. He stated that appellant had normal mobility of the joints, no neurological deficit and the x-rays showed no structural changes of the joints and no indication of a degenerative process. Dr. Huff stated that, as far as appellant's nervousness, appellant

¹ Appellant sustained an injury on July 29, 1971 and became disabled in February 1972. He received a schedule award on October 12, 1977 for 10 percent impairment of the left leg. Appellant returned to work on light duty on May 22, 1978 but in 1988 light duty was no longer available. He returned in August 1990, but light duty was terminated on May 10, 1991.

seemed to respond appropriately, had a sense of humor and his “affect was certainly normal.” He opined that appellant did not require further medical treatment and had no physical limitations precluding a return to full-duty work.

On April 19, 2001 the Office issued a notice of proposed termination of appellant’s compensation benefits, finding that Dr. Huff’s April 2, 2001 opinion established that appellant did not have any continuing disability as a result of the July 29, 1971 employment injury. No additional medical evidence was submitted.

By decision dated May 30, 2001, the Office finalized the termination of appellant’s compensation benefits effective June 17, 2001.

By letter dated June 15, 2001, appellant requested an oral hearing before an Office hearing representative, which was held on February 26, 2002. At the hearing, he stated that rheumatoid arthritis and loss of vision were also part of his ongoing medical conditions. Appellant contended that Dr. Huff did not run any blood tests and he saw him once on his own. He stated that he saw several other doctors since the termination of his benefits.

Appellant submitted a report dated January 31, 2002 from Dr. Philippe G.A. Lopez, a Board-certified internist, who stated that he treated appellant since November 2001 for multiple complicated medical problems which included alcohol abuse, although appellant quit drinking in September 2000, hypertension, chronic blindness in the left eye since the age of one, general peripheral neuropathy secondary to alcohol abuse in the past, bilateral carpal tunnel syndrome confirmed by EMG, peripheral vascular disease predominant in the right lower extremity, a history of hypercholesterolemia and cataract in the right eye which would probably require surgery. A note from the Van Dyck Eye Clinic dated September 26, 2002 referred to appellant’s eye problems and a test dated January 29, 2002 stated that appellant was positive for osteoarthritis.

In a report dated April 1, 2002, Dr. Bennie M. Fulbright, an orthopedic surgeon, stated that appellant had “an injury back in 1971.” He performed a physical examination and reviewed x-rays. Dr. Fulbright diagnosed possible left knee recurrent meniscal tear, left ankle chronic synovitis and peripheral neuropathy. He stated that “[a]lthough [appellant had] chronic symptoms of his knee and ankle, it appears that the hyperreflexia and probable peripheral neuropathy due to alcoholism is a good bit of the reason for his lower extremity complaints and inability to function at a normal level.” Dr. Fulbright stated that appellant’s other problems were adding to the current level of his problems.

In a report dated April 12, 2002, Dr. Fulbright stated that he evaluated appellant for his left knee and ankle pain, which gave him difficulty standing and ambulating and that appellant suffered from peripheral neuropathy and bilateral carpal tunnel syndrome. He stated that “these multiple joint complaints are difficult to isolate in terms of one specific source of these problems.” A surgical report from Dr. Fulbright dated April 25, 2002 described a left knee arthroscopic chondral debridement of medial femoral condyle to treat a left knee medial meniscal tear. A magnetic resonance imaging (MRI) scan dated April 2, 2002 showed a tear of the medial meniscus.

By decision dated May 24, 2002, the Office hearing representative affirmed the Office's May 30, 2001 decision.

By letter dated July 24, 2002, appellant requested reconsideration of the Office's May 24, 2002 decision. He resubmitted Dr. Fulbright's April 1 and April 25, 2002 reports and reports from Dr. Fulbright dated April 12 and July 8, 2002 and MRI scans of the left knee and left ankle dated April 2 and May 13, 2002 respectively. He also submitted progress reports from the Henry Country Orthopedics and Sports Medicine, Inc. dated April 19 and May 3, 2002. In the July 8, 2002 report, Dr. Fulbright stated that appellant had arthritis in his left knee and suffered from bilateral peripheral neuropathy. He stated that appellant had gotten minimal improvement from the left knee arthroscopy and his left ankle showed chronic changes of "wear and tear" from the MRI scan. Dr. Fulbright stated that appellant had increased problems on the left side compared to the right as evidenced by the cartilage breakdown at the left knee and the cyst formation to the ankle. He stated:

"This likely means that there had been an accident in the past that put increased pressure to this left leg causing this accelerated breakdown; therefore, I would have to say that if he had a previous documented injury to his left lower extremity that this would account for his problems that he is having today."

By decision dated August 8, 2002, the Office denied modification of the May 24, 2002 decision.

The Board finds that the Office properly terminated appellant's compensation benefits effective June 27, 2001.

Once the Office has accepted 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 disability has ceased or that it is no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.³

The opinion of Dr. Huff that appellant could resume the work of a journeyman lineman constitutes the weight of the evidence. He considered appellant's history of injury, performed a physical examination and reviewed x-rays and an EMG. Dr. Huff found that appellant had normal mobility of the joints, no neurological deficit and the x-rays showed no structural changes of the joints and no indication of degenerative process. He found that appellant did not require further treatment. Dr. Huff's opinion is complete and well rationalized and justifies the Office's termination of benefits.

In this case, no evidence of record shows that appellant continues to have a work-related disability. Dr. Lopez' January 31, 2001 opinion described appellant's medical problems

² *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

³ *Larry Warner*, 43 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

including peripheral neuropathy secondary to alcohol abuse and bilateral carpal tunnel syndrome but did not address causation and, therefore, is of diminished probative value.⁴ Similarly, the September 26, 2002 note from the Van Dyck Eye Clinic and the January 29, 2002 test stating that appellant had osteoarthritis do not address causation. In his April 1, 2002 report, Dr. Fulbright stated that appellant's hyperreflexia and probable peripheral neuropathy due to alcoholism was "a good bit of the reason" for his lower extremity complaints and inability to function at a normal level. Thus, he did not attribute the cause of appellant's condition to his work injury. In his April 12, 2002 report, Dr. Fulbright stated that appellant's multiple joint complaints were difficult to isolate in terms of one specific source of these problems. He did not identify appellant's work as the cause of them. Dr. Fulbright's April 25, 2002 surgical report and the April 2, 2002 MRI scan do not address causation and, therefore, are not probative. The only new evidence appellant submitted with his request for reconsideration which addresses causation is Dr. Fulbright's July 8, 2002 report. In that report, he stated that as evidenced by the cartilage breakdown at the left knee and the cyst formation to the ankle, it was likely that there had been an accident in the past that put increased pressure on appellant's left leg causing an accelerated breakdown. He concluded that if appellant had a previously documented injury to his left lower extremity that it would account for his current problems. Dr. Fulbright's opinion, however, is vague and speculative, in that he uses the word "likely" and does not specifically reference appellant's July 29, 1971 employment injury. His opinion is, therefore, of diminished probative value.⁵

The August 8 and May 24, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 15, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See *Michael E. Smith*, 50 ECAB 313, 316 n. 8 (1999).

⁵ See *Vaheh Mokhtarians*, 51 ECAB 190, 195 n.8 (1999); *William S. Wright*, 45 ECAB 498, 504 (1994).