

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES B. BEVERLY, JR. and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION,
Petersburg, VA

*Docket No. 02-2106; Submitted on the Record;
Issued August 26, 2003*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits; and (2) whether appellant met his burden of proof to establish that he sustained a lumbar spine condition causally related to his June 9, 2000 employment injury.

On June 14, 2000 appellant, then a 44-year-old correctional counselor, filed a traumatic injury claim alleging that on June 9, 2000 he was injured when his chair broke and he fell. The Office accepted appellant's claim for a head contusion and strains of the left shoulder, neck and thoracic spine and he began receiving compensation for temporary total disability. He underwent left shoulder surgery on October 17, 2000.

By letter dated August 7, 2001, the Office advised appellant that it proposed to terminate his compensation on the grounds that the medical evidence of record established that he had no continuing disability or medical condition causally related to his June 9, 2000 employment injury. By decision dated September 7, 2001, the Office terminated appellant's compensation and medical benefits.

By letter dated October 2, 2001, appellant requested a hearing that was held on March 28, 2002. By decision dated and finalized July 15, 2002, an Office hearing representative affirmed the Office's September 7, 2001 decision.

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation and medical benefits.

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 without establishing that the disability has ceased or that it is no longer related to the

employment.¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.²

Dr. Joel Gonzales, appellant's attending orthopedic surgeon, indicated on May 7, 2001 that appellant was released from treatment of his left shoulder condition but noted that he was still having back problems. He indicated that appellant could return to work with restrictions as described in a Functional Capacity Evaluation.³ The Board finds that it is not clear from this report that appellant's work-related disability had ceased and his accepted medical conditions had resolved. Although Dr. Gonzales released appellant from his care for treatment of the left shoulder condition, the Functional Capacity Evaluation, which Dr. Gonzales indicated he had reviewed, reported that appellant had continued left shoulder pain. Additionally, Dr. Gonzales did not opine as to whether appellant's work-related cervical and thoracic strains had resolved.

Dr. Daniel C. Martin, a specialist in pain management, reported on April 19, 2001 that appellant had a history of cervical spondylosis with a C5-6 disc bulge as shown on a MRI. He diagnosed post-traumatic back pain and possible lumbar facet arthropathy. However, he did not provide an opinion as to whether appellant's work-related cervical and thoracic spine strains or left shoulder strain had resolved.

The Board finds that the medical evidence of record is not sufficient to establish that appellant no longer has any disability due to his work-related left shoulder and cervical and thoracic strains or that he no longer needs medical treatment for these conditions. Therefore, the Office did not meet its burden in terminating appellant's compensation and medical benefits.

The Board further finds that appellant did not meet his burden of proof to establish that he sustained a lumbar back condition causally related to his June 9, 2000 employment injury.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.⁴ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.⁵ As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁶ The mere manifestation of a

¹ *Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990).

² *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, 41 ECAB 361 (19990).

³ A Functional Capacity Evaluation dated April 19, 2001 that was apparently prepared for Dr. Gonzales but not signed by him indicated that appellant continued to have left shoulder pain but could return to work with certain limitations on lifting, carrying, stooping, squatting, and climbing.

⁴ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

⁵ *Daniel R. Hickman*, 34 ECAB 1220 (1983).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁷ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁸

In this case the June 9, 2000 emergency room report indicated that appellant was treated for a head contusion, left shoulder strain and cervical and thoracic strains. No mention was made in the emergency room report of any lumbar spine complaints. The Office accepted that appellant sustained a head contusion, left shoulder strain, and cervical and thoracic strains due to his June 9, 2000 traumatic injury. No lumbar spine condition was accepted. In a report dated August 9, 2000, Dr. Gonzalez noted that appellant had a new complaint of low back pain but he did not explain how this condition was related to appellant's June 9, 2000 employment injury. On September 14, 2000 and January 10 and July 6, 2001, Dr. Gonzalez diagnosed a lumbar strain but again did not provide any explanation of how this condition was related to the June 9, 2000 employment injury. As Dr. Gonzales did not provide a rationalized opinion as to how appellant's lumbar spine condition was causally related to his June 9, 2000 employment injury, his reports do not discharge appellant's burden of proof.

On February 26, 2001, Dr. Douglas A. Wayne, a specialist in physical medicine and rehabilitation, reported that appellant had low back pain, probably due to facet joint irritation. However, he did not explain in his report how appellant's low back condition was causally related to his June 9, 2000 employment injury and therefore this report does not establish that appellant sustained a work-related lumbar spine condition.

As noted above, in an April 19, 2001 report, Dr. Martin diagnosed post-traumatic back pain and possible lumbar facet arthropathy. However, he did not indicate that the lumbar condition was causally related to appellant's June 9, 2000 employment injury. Therefore this report is not sufficient to establish that appellant sustained a work-related lumbar spine condition.

As appellant failed to submit rationalized medical evidence establishing that his lumbar spine condition was causally related to his June 9, 2000 employment injury, the Office properly denied his claim.

⁷ *Edward E. Olson*, 35 ECAB 1099 (1984).

⁸ *Walter D. Morehead*, 31 ECAB 188 (1979).

The decisions of the Office of Workers' Compensation Programs dated July 15, 2002 and September 7, 2001 are affirmed as to the issue of a lumbar spine condition and reversed on the issue of termination of appellant's compensation and medical benefits.

Dated, Washington, DC
August 26, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member