

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNIE W. YOUNG and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, AIR TRAFFIC CONTROL, Aurora, IL

*Docket No. 03-52; Submitted on the Record;
Issued March 14, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits; and (2) whether the Office abused its discretion by denying appellant's request for reconsideration.

Appellant, a 32-year-old air traffic control specialist, filed a claim on May 13, 1970 alleging that he developed severe stomach and shoulder pain due to factors of his federal employment. The Office accepted appellant's claim for duodenal ulcer and aggravation of left shoulder bursitis.

By letter dated March 29, 2001, the Office proposed to terminate appellant's compensation benefits on the grounds that he was no longer disabled from his date-of-injury position and had no medical residuals. Appellant disagreed with this proposal. The Office terminated appellant's compensation benefits on April 30, 2001. Appellant requested an oral hearing on May 18, 2001. By decision dated April 12, 2002, the hearing representative affirmed the termination of appellant's wage-loss compensation benefits, but concluded that appellant had continuing medical residuals of his accepted employment injuries.

Appellant requested reconsideration on April 29, 2002 and submitted evidence in support of this request. By decision dated June 25, 2002, the Office denied appellant's request for reconsideration finding that he failed to submit relevant new evidence in support of his request.

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

Appellant sought treatment from Dr. Bernie Parrish, a Board-certified family practitioner, who, in a report dated November 6, 2000, stated that he treated appellant for peptic ulcer disease caused by helicobacter pylori beginning in September 1999. He stated that, although appellant had an allergic reaction to the initial treatment, the second round of treatment was successful and that appellant did not require any medications for ulcer discomfort. Dr. Parrish stated that appellant was totally symptom free for seven months. He noted that appellant had some mild nocturnal reflux symptoms treated with Zantac and Prilosec. Dr. Parrish stated that appellant could have a recurrent helicobacter pylori infection which would require additional testing and treatment. He concluded that appellant was not disabled and that he could pursue any low stress occupation. On March 8, 2001 Dr. Parrish stated that appellant had helicobacter pylori infection resulting in peptic ulcer disease. He stated that appellant was treated for the infection and the peptic ulcer symptoms had resolved. Dr. Parrish noted that appellant took some Zantac intermittently for dyspepsia with minimal symptoms. He stated that appellant could return to work with no specific functional or psychological limitations which would interfere with appellant's ability to work.

In a report dated January 15, 2002, Dr. John P. Kirchner, a Board-certified gastroenterologist, noted that he first examined appellant in 1982. He noted appellant's employment history and medical treatment by Dr. Parrish. Dr. Kirchner stated that appellant needed to continue on significant acid suppression to avoid prompt recurrence of his ulcer symptoms. He diagnosed active acid peptic disease exacerbated by stress and concluded that appellant did not have a significant infection with helicobacter pylori as he had received adequate therapy without significant long-term benefit. Dr. Kirchner stated that stress caused a recurrence of appellant's symptoms and that these symptoms could distract appellant from the intensive nature of his date-of-injury position of air traffic controller.

The Office has the burden of proof to establish that appellant was no longer disabled due to his accepted employment injuries of duodenal ulcer and aggravation of left shoulder bursitis. Disability is defined as the "[i]ncapacity because of injury in employment to earn the wage which the employee was receiving at the time of such injury."⁵ The medical evidence of record at the time of the Office's decision consisted of the reports of Dr. Parrish, which establishes that appellant's ulcer condition continues, but that this condition would not interfere with some forms of work. However, Dr. Parrish did not offer the opinion that appellant could return to his date-

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

⁵ *George J. Kemble*, 35 ECAB 370, 379 (1983).

of-injury position of air traffic controller. Dr. Parrish stated on November 6, 2000 that appellant could return to a low stress position. In his March 8, 2001 report, Dr. Parrish stated that appellant could return to work with no specific functional or psychological limitations. However, Dr. Parrish did not provide a history of injury including appellant's date-of-injury job duties in either of his reports. Furthermore, he did not offer any explanation for his change in opinion regarding whether appellant could work in a stressful environment. As Dr. Parrish's report is not based on a proper factual background and does not contain medical reasoning in support of his conclusions, it is insufficient to meet the Office's burden of proof in establishing that appellant had no disability due to his accepted employment injury.

Appellant submitted additional medical evidence before the hearing representative. Dr. Kirchner noted appellant's employment history and opined that appellant still required medication to treat his accepted employment injury. He did not support that appellant could return to his date-of-injury position stating that appellant would not be able to perform the duties of an air traffic controller due to the possibility that the stress of the position would result in a return of appellant's ulcer symptoms.

While the medical evidence of record does not establish that appellant is totally disabled, there is no rationalized medical evidence based on a proper factual background establishing that appellant is capable of returning to his date-of-injury position and to earn the wages of an air traffic controller. Without affirmative evidence establishing that appellant is no longer disabled, the Office has failed to meet its burden of proof to terminate appellant's compensation benefits.⁶

⁶ Due to the resolution of the issue of termination of compensation benefits, it is not necessary for the Board to address the issue of the denial of appellant's request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated April 12, 2002 is hereby reversed.

Dated, Washington, DC
March 14, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member