

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**ROBERT L. VILLA, Appellant**

**and**

**DEPARTMENT OF DEFENSE, BARKSDALE  
AIR FORCE BASE, LA, Employer**

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**Docket No. 05-665  
Issued: July 25, 2005**

*Appearances:*  
*Robert L. Villa, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 24, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 10, 2005, which terminated his compensation effective that date on the grounds that he no longer had any disability or residuals due to his January 22 and June 26, 1996 employment injuries. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly terminated appellant's compensation, effective January 10, 2005, on the grounds that he no longer had any remaining disability or residuals causally related to his January 22 and June 26, 1996 employment injuries.

## **FACTUAL HISTORY**

On January 24, 1996 appellant, a 32-year-old weapons loader, filed a traumatic injury claim alleging that he strained his upper back while opening bomb bay doors.<sup>1</sup> The Office accepted the claim for a trapezius strain.<sup>2</sup>

Appellant filed a traumatic injury claim on June 26, 1996 alleging that he injured his lower back that date while lifting bomb bay doors.<sup>3</sup> The Office accepted the claim for lumbar sprain. By letter dated January 6, 1997, the Office placed appellant on the periodic rolls for temporary total disability.<sup>4</sup>

On January 18, 2002 the Office issued a loss of wage-earning capacity decision. The Office found that appellant had the capacity to earn wages of \$251.47 in the constructed position of shipping/receiving clerk and reduced his benefits to reflect his wage-earning capacity.

On October 1, 2004 the Office referred appellant for a second opinion evaluation with Dr. James W. Simmons, Jr., a Board-certified orthopedic surgeon. In a November 16, 2004 report, Dr. Simmons noted that appellant injured himself in 1996, while lifting bomb bay doors and had been totally disabled since then. A November 16, 2004 thoracic spine x-ray interpretation revealed "some spondylitic changes." In a November 16, 2004 lumbosacral spinal x-ray interpretation, Dr. Simmons reported "spondylitic changes of the L2-3 segment," a significant facet subluxation at L4-5 and one centimeter of excursion with the lateral facet of L4 impinging significantly on the L4-5 foramina. A physical examination of the left shoulder revealed "full range of motion with no pain with abduction or adduction," and no point tenderness was noted over the thoracic spine. He found some point of tenderness over the left trapezius as well as the intrascapular area. With regard to the lumbar spine, Dr. Simmons reported flexion to 60 degrees, extension 30 degrees, lateral bending to 45 degrees bilaterally, and rotation to 45 degrees bilaterally. He reported that appellant had some pain during palpitation of the left paravertebral area of the lumbar spine. Dr. Simmons diagnosed spondylosis with a herniated disc at C6-7, thoracic spondylis, L2-3 spondylosis and L4-5 facet subluxation with mild instability. In response to questions from the Office, Dr. Simmons concluded that appellant had no objective or clinical findings of acute or chronic strain involving the spine. He stated that appellant sustained "repeated sprain/strain situations relating to his spine as well as activities of a repetitive nature, particularly those activities of a bomb bay door operator." Dr. Simmons opined:

"The healing process of 'sprains' indeed resolve normally within a six to eight week period. [Appellant] appears to have had repeated episodes of sprain/sprains to his back as well as repetitive activities that would contribute to an accelerated

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<sup>1</sup> This was assigned claim number 16-0274646.

<sup>2</sup> The nonfatal summary lists the accepted condition as a thoracic sprain.

<sup>3</sup> This was assigned claim number 16-0281308.

<sup>4</sup> Appellant returned to limited duty on July 30, 1996 which was withdrawn by the employing establishment effective October 21, 1996.

degenerative condition. All of these episodes can be cumulative in nature which could very easily lead up to his present condition.”

Regarding appellant’s continued medical care, Dr. Simmons concluded that he did not require any ongoing supportive care either of a physical nature or with pharmaceuticals. He recommended general conditioning, particularly strengthening exercise for the neck, thoracic and lumbar spine. As to appellant’s physical restrictions, Dr. Simmons stated that “limitations are not being changed significantly from those previously recommended essentially throughout the records as provided.” He noted that the magnetic resonance imaging (MRI) scans supported appellant’s complaints of increased back pain with prolonged activities and the inability to carry out his job function as a bomb bay door operator. Dr. Simmons found that appellant was capable of working eight hours a day with specified physical limitations.

On December 8, 2004 the Office issued a notice of proposed termination of benefits on the basis that the weight of the medical evidence, as represented by the report of Dr. Simmons, established that he had no continuing disability or residuals causally related to the January 22 and June 26, 1996 work injuries. Appellant did not respond within the allotted 30 days.

By decision dated January 10, 2005, the Office terminated appellant’s compensation benefits.<sup>5</sup>

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>6</sup> After it has determined that an employee has disability causally related to his 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.<sup>7</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>8</sup> However the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss due to disability.<sup>9</sup> 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.<sup>10</sup>

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<sup>5</sup> By letter dated September 24, 2004, the Office had advised appellant that his compensation was being suspended effective October 3, 2004 due to his failure to submit a completed Form CA-1032. Appellant was advised that when he completed the required Form CA-1032 his compensation benefits would be retroactively restored. Appellant is not appealing from the suspension of benefits.

<sup>6</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>7</sup> *Lynda J. Olson*, 52 ECAB 435 (2001).

<sup>8</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>9</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>10</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001).

### ANALYSIS

The Office accepted that appellant sustained lumbar and trapezius strains as a result of his accepted January 22 and June 26, 1996 employment injuries. Appellant was placed on the periodic rolls for temporary total disability in receipt of compensation. On January 18, 2002 the Office issued a loss of wage-earning-capacity decision and reduced his compensation based upon his capacity to earn wages in the constructed position of shipping/receiving clerk.

Dr. Simmons indicated that appellant's work-related spinal sprain/strains had resolved as there were no supporting objective or clinical findings. He stated that strains/sprains normally resolve within six to eight weeks. However, Dr. Simmons also opined that appellant's "repeated episodes of sprain/strains to his back" and repetitive work duties "would contribute to an accelerated degenerative condition." He concluded that "[a]ll of these episodes can be cumulative in nature which could very easily lead up to his present condition." As to appellant's physical restrictions, the physician opined that his limitations are not being changed significantly from those previously recommended throughout the records as provided. Dr. Simmons stated that the MRI scans supported appellant's complaints of increased back pain with prolonged activities and the inability to carry out his job function as a bomb bay door operator and that appellant was capable of working eight hours a day with limitations.

The Board finds that the report of Dr. Simmons is not clear as to whether appellant had recovered from his January 22 and June 26, 1996 employment injuries. Although he noted that strain and sprain injuries generally resolve in a six- to eight-week period, he went on to note that the accepted injuries and appellant's repetitive work duties "would contribute to an accelerated degenerative condition." He also stated that the MRI scans supported appellant's complaints of increased back pain with prolonged activities and the inability to carry out his job function as a bomb bay door operator. The report of Dr. Simmons is not sufficient to establish that all residuals of appellant's accepted conditions had resolved without ongoing disability. Dr. Simmons' report is not sufficient to establish that appellant has no residual disability or medical condition caused or aggravated by his accepted lumbar or trapezius strain. Dr. Simmons concluded that these injuries would contribute to appellant's degenerative condition. He did not definitively state that appellant's current conditions and limitations were due solely to any preexisting degenerative condition.

### CONCLUSION

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation and medical benefits causally related to his accepted employment injuries. Due to the deficiencies described above, the opinion of Dr. Simmons is not sufficient to establish that appellant has no continuing disability or medical residuals causally related to his accepted lumbar and trapezius strains. Therefore, the Office's January 10, 2005 decision is reversed.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 10, 2005 is reversed.

Issued: July 25, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board