

Office accepted appellant's claim for lumbosacral strain with myositis. Appellant suffered a series of recurrences of disability and the Office paid appropriate wage-loss compensation. The Office placed appellant on the periodic compensation rolls effective December 7, 1977. In a September 13, 1982 decision, the Office reduced appellant's compensation based on his ability to earn wages in the selected position of automobile self-serve service station attendant. The reduction in compensation became effective on October 6, 1982. For the next 20 years the Office paid monthly compensation benefits based on appellant's loss of wage-earning capacity.

In July 2002, the Office requested a current medical opinion regarding appellant's condition. Appellant submitted a July 12, 2002 report from his treating physician, Dr. Jerjis J. Denno, a Board-certified orthopedic surgeon. Appellant's chief complaints were low back pain, numbness in his feet, neck pain and right arm pain. Appellant reported that his pain seemed to worsen over the past two years. Dr. Denno noted a history of injury to the lumbar spine on October 9, 1975 while appellant lifted a trash can. Dr. Denno also noted that appellant had been out of work since 1977 and that he had undergone neck surgery two to three years prior, which was unrelated to workman's compensation. Appellant also had bilateral carpal tunnel surgery and heart bypass surgery. Dr. Denno's neurological examination of the lower extremities was negative and his physical examination revealed no objective findings related to appellant's work injury. Appellant's x-rays of the lumbar spine were normal and a lumbar magnetic resonance imaging (MRI) scan dated October 31, 2001, revealed a mild bulge at L4-5 with neuroforaminal narrowing and a broad-based disc bulge at L5-S1 with moderate to severe bilateral neuroforaminal narrowing. Dr. Denno's clinical impression was status post lumbar strain and lumbar spinal stenosis; primarily foraminal stenosis at L5-S1. He explained that the MRI scan results were attributable to the normal physiological aging process and unrelated to the initial work injury. Dr. Denno indicated that the effects of appellant's work injury had ceased and that he required no further treatment for the accepted condition. However, he noted that appellant might ultimately require surgery to decompress his nerve roots as a result of the spinal stenosis at L5-S1. This condition and appellant's advanced age were noted as likely limitations to performing the job appellant held at the time of his 1975 injury.

On August 14, 2002 the Office issued a notice of proposed termination of compensation and medical benefits. The Office relied on Dr. Denno's July 12, 2002 report. Appellant was afforded 30 days to submit any additional evidence or argument. Appellant wrote to the Office expressing his disagreement, but he did not otherwise submit any medical evidence of an ongoing employment-related condition. By decision dated September 23, 2002, the Office terminated appellant's medical benefits and wage-loss compensation effective September 7, 2002. Appellant requested an oral hearing, which was held on April 28, 2003. In a decision dated July 28, 2003, the Office hearing representative affirmed the September 23, 2002 decision terminating benefits.

On July 13, 2004 appellant requested reconsideration. He submitted treatment records and reports from Dr. Salvador P. Baylan, covering the period April 29 to June 1, 2004.¹ The

¹ Dr. Baylan is a Board-certified physiatrist.

records included a May 3, 2004 electromyography (EMG) and a May 3, 2004 lumbar MRI scan.² Dr. Baylan initially examined appellant on April 29, 2004 for chronic neck and lower back pain. He obtained x-rays of appellant's cervical, thoracic and lumbar spine and referred him for additional objective studies and a lumbar MRI scan. When Dr. Baylan next saw appellant on May 10, 2004 he reviewed the recent EMG and diagnosed residual cervical radiculopathy, status post anterior discectomy and fusion, status post carpal tunnel release, lumbar disc disease with radiculopathy and peripheral neuropathy. He found appellant to be disabled and the source of his pain was an old injury to the neck and the degenerative process producing cervical spondylosis. However, Dr. Baylan was unable to apportion the pain attributable to "workman's comp[ensation]" and the pain attributable to cervical spondylosis. On June 1, 2004 he reviewed a recent lumbar MRI scan and stated that appellant's disc herniation at L5-S1 was the source of his back pain.

The Office reviewed the claim on the merits and denied modification by decision dated October 27, 2004.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁶

ANALYSIS

Appellant has an accepted claim for lumbosacral strain with myositis arising on October 9, 1975. The Office terminated wage-loss compensation and medical benefits based on the July 12, 2002 report of appellant's treating physician, Dr. Denno, who found that appellant's employment-related lumbosacral strain had resolved and that no further medical treatment was necessary with respect to the accepted employment injury. Although Dr. Denno noted evidence of spinal stenosis at L5-S1, he found that this was an age-related condition, which was not attributable to the October 9, 1975 employment injury. Dr. Denno's opinion establishes that

² The EMG revealed chronic left C7, C8 and L5 radiculopathy. It also revealed evidence of residual bilateral carpal tunnel syndrome and superimposed peripheral neuropathy. The May 3, 2004 lumbar MRI scan showed evidence of diffuse mild canal stenosis, annular disc bulge at L4-5 with mild bilateral foraminal encroachment and a disc herniation at L5-S1 with flattening of the adjacent thecal sac and mild bilateral foraminal encroachment.

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁶ *Calvin S. Mays*, 39 ECAB 993 (1988).

appellant no longer has residuals of his October 9, 1975 employment injury and the Office properly relied upon this report to terminate wage-loss compensation and medical benefits.

On reconsideration, appellant submitted recent treatment records from Dr. Baylan. These records, however, do not establish that appellant continues to suffer from residuals of his accepted employment injury. Dr. Baylan did not find evidence of an ongoing lumbosacral strain with myositis, which was the only condition the Office accepted as employment related. He noted that appellant had an “old injury to the neck,” cervical spondylosis and a herniated disc at L5-S1. But none of these conditions have been accepted by the Office as employment related. Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.⁷ The evidence of record does not establish that any of the conditions reported by Dr. Baylan are causally related to appellant’s October 9, 1975 employment injury. As the weight of the medical evidence establishes that appellant’s October 9, 1975 lumbosacral strain with myositis has resolved, the Office properly terminated appellant’s wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant’s wage-loss compensation and medical benefits effective September 7, 2002.

⁷ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member