

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

B.R., Appellant

and

**DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, OK, Employer**

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**Docket No. 08-252
Issued: June 10, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 25, 2007 appellant filed a timely appeal from a September 19, 2007 Office of Workers' Compensation Programs' merit decision. Under 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 appellant has met his burden of proof to establish continuing disability after April 6, 2006.

FACTUAL HISTORY

This is the fourth appeal before the Board. On April 4, 1988 appellant, a 31-year-old aircraft mechanic, injured his right knee while in the performance of duty. The Office accepted the claim for internal derangement of the right knee. Appellant stopped work in September 1988 and returned to work briefly in 1989. The Office placed him on the periodic rolls. Appellant was referred for vocational rehabilitation and retrained as an automobile mechanic technician. He accepted a modified-duty job as an automobile mechanic in 1994. By decision dated June 21,

1996, the Office reduced appellant's wage-earning capacity based on his actual earnings as an automobile mechanic technician. On July 26, 1996 appellant requested reconsideration of the June 21, 1996 decision, seeking the resumption of total disability compensation as of December 19, 1996. By decision dated October 3, 1996, the Office denied the claim. By nonmerit decision dated January 28, 1997, the Office denied reconsideration. In a January 6, 2000 decision, the Board found that the Office improperly failed to reopen appellant's case for a merit review.¹ On remand, the Office, in a February 4, 2000 decision, found that appellant submitted sufficient medical evidence to establish that he was entitled to wage-loss compensation for total disability beginning December 19, 1996.

In a work capacity evaluation dated July 25, 2005, Dr. Abraham Abdo, appellant's treating physician, stated that maximum medical improvement had been reached and that appellant was capable of performing his usual job with no restrictions.²

In a notice of proposed termination dated March 6, 2006, the Office, based on Dr. Abdo's report, found that the weight of the medical evidence demonstrated appellant was no longer disabled due to his April 4, 1988 employment injury. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. By decision dated April 6, 2006, the Office terminated appellant's compensation benefits. By decision dated May 26, 2006, the Office denied modification of the April 6, 2006 termination decision.

By letter dated June 2, 2006, appellant requested reconsideration. He submitted a June 6, 2006 report from Dr. Abdo, who stated, "[t]he work capacity evaluation that was filled out on July 25, 2005 is for tune-up mechanic, [for] which the job description [is] attached. I have not done a work capacity evaluation for an aircraft mechanic."

By decision dated August 2, 2006, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

In an August 7, 2007 decision, the Board affirmed the April 6 and May 26, 2006 decisions, finding that Dr. Abdo's July 25, 2005 work capacity evaluation constituted sufficient medical evidence to terminate compensation. However, the Board set aside the August 2, 2006 nonmerit decision, finding that the Office erred in failing to consider relevant and pertinent new evidence, *i.e.*, Dr. Abdo's June 6, 2006 report. The Board remanded the case for a merit decision. The complete facts of this case are set forth in the Board's prior decisions and are incorporated herein by reference.³

¹ Docket No. 98-336 (issued January 6, 2000).

² By order dated January 17, 2006, the Board dismissed an appeal by appellant on the grounds that the record did not contain a final decision over which it had jurisdiction. Docket No. 05-1385.

³ Docket No. 06-2100 (issued August 7, 2007). The Board notes that the case file is incomplete, as it does not contain much of the documentation pertaining to the procedural development of this case. However, the instant record does contain a June 1, 2001 Office decision, which includes sufficient references to the pertinent decisions, findings and procedural occurrences in the case for the Board to render an informed adjudication.

By decision dated September 19, 2007, the Office denied modification of the April 6, 2006 termination decision. The Office found that Dr. Abdo's June 6, 2006 report did not provide sufficient medical rationale to establish that appellant was disabled due to residuals of his accepted 1988 employment injury. It noted that Dr. Abdo had previously found that appellant return to work without restriction and that the new medical evidence did not address disability for work.

LEGAL PRECEDENT

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.⁴ If the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.⁵

ANALYSIS

Following the termination of appellant's compensation benefits on April 6, 2006, appellant submitted a June 6, 2006 note from Dr. Abdo. He stated that his prior July 25, 2005 work capacity evaluation was for a tune-up mechanic position description, not appellant's date-of-injury position as an aircraft mechanic. Dr. Abdo did not address the issue of disability for work. He did not provide an opinion on whether appellant was totally disabled due to residuals of his accepted condition following the termination of compensation in 2006.

As noted, the July 25, 2005 work capacity evaluation from Dr. Abdo, appellant's treating physician, found that appellant had reached maximum medical improvement and that he was able to perform work without restrictions. The July 25, 2005 work capacity evaluation stated that appellant could work his usual job for eight hours without restrictions. The June 6, 2006 report does not provide any opinion that appellant remains disabled due to the accepted employment injury. Dr. Abdo's June 6, 2006 note is not probative on the issue of continuing disability after April 6, 2006. The Board will affirm the September 19, 2007 Office decision.

CONCLUSION

The Board finds that appellant has not established disability on or after April 6, 2006 due to his accepted injury.

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁵ *Darlene R. Kennedy*, 57 ECAB 414 (2006).

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board