

In a report dated October 4, 2005, Dr. Gary J. Ganiban, a specialist in ophthalmology, stated that appellant was legally blind.

In a Florida state form report dated April 4, 2006, Dr. Regine Pappas, a specialist in ophthalmology, certified that appellant was totally and permanently disabled as of January 1, 2006 due to legal blindness.

In order to determine appellant's current condition and to ascertain whether he still suffered residuals from his accepted condition, the Office referred appellant for a second opinion examination with Dr. Richard Steinfeld, Board-certified in orthopedic medicine. In a May 29, 2006 report, Dr. Steinfeld noted appellant's history of injury on September 21, 1965 and his persistent nonradicular back pain. On examination he noted tenderness of the right paraspinal region on palpation and limitation of appellant's range of motion. After reviewing appellant's magnetic resonance imaging (MRI) scan report, Dr. Steinfeld noted that the MRI scan documented significant moderate level spinal stenosis at L4-5, as well as severe degenerative disease at L5-S1. He thereafter concluded that appellant's lumbar strain had resolved. Dr. Steinfeld stated that appellant's continued complaints of low back pain were most likely related to his underlying history of degenerative joint disease and accompanying spinal stenosis at L5 and S1. He also noted that appellant was legally blind due to glaucoma. Dr. Steinfeld indicated that there was no evidence that there had been any aggravation of his accepted lower back condition.

On June 11, 2007 the Office issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Steinfeld's referral opinion, established that his accepted, employment-related lower back condition had resolved. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

By decision dated July 19, 2007, the Office terminated appellant's compensation, finding that Dr. Steinfeld's opinion represented the weight of the medical evidence.

In a July 24, 2007 report, Dr. Andrew Atkinson, Board-certified in internal medicine, stated:

"This is to medically document that [appellant], who is 96 years of age indeed still has the same back issues and back problems and ongoing back pain that he has had since his injury in 1965, which has been previously documented and recognized. There has been nothing in his medical course that has changed this condition. Obviously, this still exists."

On July 30, 2007 appellant requested an oral hearing.

By decision dated October 11, 2007, the Office denied appellant's request for an oral hearing. It stated that, since the injury under consideration in the present case occurred on September 21, 1965, he was not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

By letter dated November 14, 2007, appellant requested reconsideration.

By decision dated January 23, 2008, the Office denied modification of the July 19, 2007 termination decision.

LEGAL PRECEDENT -- ISSUE 1

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

ANALYSIS -- ISSUE 1

In this case, the Office based its decision to terminate appellant's compensation on the May 29, 2006 report of Dr. Steinfeld, the Office referral physician, who noted that appellant had continued complaints of low back pain, but opined that these were related to his underlying history of degenerative joint disease and accompanying spinal stenosis at L5 and S1, which was well documented by an MRI scan. Dr. Steinfeld indicated that there was no evidence that there had been any aggravation of his accepted lower back condition. He concluded that appellant's lumbar strain had resolved.

The Board finds that the Office properly found that Dr. Steinfeld's referral opinion represented the weight of the medical evidence and negated a causal relationship between appellant's current condition and his accepted lower back condition. Dr. Steinfeld's report demonstrated an accurate history of appellant's employment injury, an understanding of his symptoms since the injury, as well as a knowledge of his current lumbar findings of significant moderate level spinal stenosis at L4-5, as well as severe degenerative disease at L5-S1, as demonstrated by an MRI scan. He submitted a report, which demonstrated that appellant still had some restrictions due to a nonwork-related degenerative condition in his lower back, but had no current disability stemming from his accepted, September 1965 lower back strain. Dr. Steinfeld therefore properly found that appellant had no longer had any residuals from the accepted condition and his report is sufficiently probative, rationalized and based upon a proper factual background. The Board will affirm the July 19, 2007 decision.

LEGAL PRECEDENT -- ISSUE 2

Once the Office properly terminated appellant's compensation in its July 19, 2007 decision, the burden of proof shifted to him to establish continuing disability.³

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

² *Id.*

³ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

ANALYSIS -- ISSUE 2

Following the Office's July 19, 2007 termination decision, appellant requested reconsideration and submitted Dr. Atkinson's July 24, 2007 report, who advised that appellant's back symptoms and back condition had remained unchanged since his 1965 employment injury. Dr. Atkinson stated that there was nothing in appellant's medical records indicating that his condition had changed.

Dr. Atkinson's report did not constitute probative medical opinion showing that appellant had any continuing disability or residuals from his accepted condition. His report is summary in nature and merely states that appellant's back condition and symptomatology was causally related to the September 1965 employment injury. Dr. Atkinson did not provide a diagnosis of appellant's current condition and did not indicate whether MRI scans or any other radiological studies had been reviewed to document his back condition. As such his report does not provide a well-reasoned and sufficiently supported opinion that would vitiate the Office's July 19, 2007 determination that appellant did not have any employment-related disability or residuals stemming from the September 1965 work injury. Dr. Atkinson's report does not outweigh Dr. Steinfeld's opinion. Thus, the Office properly found in Dr. Atkinson's January 23, 2008 decision that appellant failed to submit medical evidence sufficient to modify the Office's July 19, 2007 termination decision.

LEGAL PRECEDENT -- ISSUE 3

The Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Federal Employees' Compensation Act,⁴ which provided the right to a hearing when the request is made after the 30-day period established for requesting a hearing.⁵

ANALYSIS -- ISSUE 3

In its October 11, 2007 decision, denying appellant's request for a hearing, the Branch of Hearings and Review stated that he was not entitled to a hearing as a matter of right. This determination was within the hearing representative's discretion, as appellant's injury occurred on September 21, 1965, prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing when the request is made after the 30-day period established for requesting a hearing. The Board therefore affirms the October 11, 2007 decision.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits in its July 19, 2007 decision and that he has not met his burden to establish continuing disability. The Board also finds that the Office's October 11, 2007 denial of appellant's July 30, 2007 hearing request was within its discretion.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Herbert C. Holley*, 33 ECAB 140 (1981).

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2008 and October 11 and July 19, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 20, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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