

FACTUAL HISTORY

This is the second appeal in this case.¹ By decision dated February 24, 1982, the Board remanded the case for further development on the issue of whether appellant had any work-related disability after November 8, 1979.

On July 24, 1978 appellant, then a 54-year-old carpenter, sustained a right inguinal hernia in the performance of duty when he lifted a steel curbing and grating. On August 3, 1978 he underwent surgical herniorrhaphy to repair his hernia. Appellant returned to work on September 24, 1978. He sustained a recurrence of disability on December 22, 1978 and returned to work with restrictions on May 3, 1979. Appellant resigned from his job on November 9, 1979 for personal reasons. In a report dated April 7, 2003, Dr. James H. Simpson, an attending family practitioner, stated that appellant was totally and permanently disabled due to his right inguinal hernia.

On April 12, 2007 the Office referred appellant, together with a statement of accepted facts and copies of medical records to Dr. Christopher J. Lucas, a general and vascular surgeon, for an examination and evaluation as to whether he had any residual disability or medical condition causally related to his accepted July 24, 1978 right inguinal hernia.

In a report dated April 27, 2007, Dr. Lucas reviewed appellant's medical history and provided findings on physical examination. He noted bilateral inguinal herniorrhaphy scars. Dr. Lucas examined appellant in the supine and standing positions and did not palpate any recurrent hernias on either side of the inguinal canals. He stated that appellant had a history of a severe right groin injury at work in 1978 with apparent development of an acute inguinal hernia. Dr. Lucas had a surgical repair but thereafter experienced chronic continuous pain with any movement or activities in the right groin and thigh. He stated that the pain seemed mostly neuropathic in nature suggesting ilioinguinal nerve involvement either from the employment injury or the subsequent surgery. Dr. Lucas noted that appellant was 82 years old and had been disabled for almost 30 years due to his accepted condition. He opined that appellant was disabled due to chronic severe pain and multiple other medical issues. In a report dated May 14, 2007, Dr. Lucas stated that he found no objective findings to support a recurrent hernia. He stated that a common injury after a herniorrhaphy or injury to the right groin would be neuropathic pain secondary to ilioinguinal nerve injury. However, diagnosis of a nerve condition was not within Dr. Lucas' expertise as a general surgeon. He stated that the issue of whether appellant had an ilioinguinal nerve injury should be determined by a neurologist.

By letter dated June 11, 2007, the Office advised appellant of its proposed termination of his wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence, represented by the opinion of Dr. Lucas, established that he had no remaining disability or medical condition causally related to his July 24, 1978 employment-related right inguinal hernia.

By decision dated July 19, 2007, the Office terminated appellant's wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence

¹ Docket No. 81-1871 (issued February 24, 1982).

established that he had no continuing disability or medical condition causally related to his July 24, 1978 employment-related right inguinal hernia.

Appellant requested reconsideration and submitted additional medical evidence. In a report dated July 15, 2008, Dr. J. Thomas Giannini, a general and vascular surgeon, noted that he underwent a hernia repair on August 4, 1978. He stated that appellant had right groin pain with any type of lifting and right thigh pain. The pain radiated into the lateral aspect of the right scrotum and into the right anterior medial thigh. Dr. Giannini provided findings on physical examination and stated that appellant's abdomen was within normal limits. Appellant did not feel either a left or right inguinal hernia. Dr. Giannini diagnosed a probable nerve entrapment syndrome of the ilioinguinal nerve as evidenced by his increased pain in the right scrotum as well as the right thigh. He opined that appellant was totally disabled. Appellant also submitted medical reports dated April 30, 1980 to April 5, 1984.

By decision dated September 29, 2008, the Office denied appellant's claim for compensation after July 19, 2007.²

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁶

ANALYSIS -- ISSUE 1

The Board finds that the Office did not meet its burden of proof in terminating appellant's wage-loss and medical benefits effective July 19, 2007.

Dr. Lucas reviewed appellant's medical history and provided findings on physical examination. He noted bilateral inguinal herniorrhaphy scars. Dr. Lucas examined appellant in the supine and standing positions and did not palpate any recurrent hernias on either side of the

² Subsequent to the September 29, 2008 decision, additional evidence was associated with the case. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

³ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

⁴ *J.M.*, 58 ECAB ___ (Docket No. 06-661, issued April 25, 2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ *T.P.*, 58 ECAB ___ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

⁶ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

inguinal canals. He found no objective findings to support a recurrent hernia. Appellant had a history of a severe right groin injury at work in 1978 with apparent development of an acute inguinal hernia. Despite a surgical repair, he experienced chronic continuous pain with any movement or activities in the right groin and thigh. Dr. Lucas stated that the pain seemed mostly neuropathic in nature suggesting ilioinguinal nerve involvement either from the employment injury or the subsequent surgery. He noted that a common injury after a herniorrhaphy or injury to the right groin would be neuropathic pain secondary to ilioinguinal nerve injury. However, diagnosis of a nerve condition was not within Dr. Lucas' expertise as a general surgeon. Dr. Lucas stated that the issue of whether appellant had an ilioinguinal nerve injury should be determined by a neurologist. Dr. Giannini also found that appellant had indications of nerve entrapment syndrome of the ilioinguinal nerve as evidenced by his increased pain in the right scrotum as well as the right thigh. As a general surgeon, like Dr. Lucas, he was not qualified to diagnose a nerve condition. The Board finds that the Office should have referred appellant to a neurologist to determine whether he had an ilioinguinal nerve injury causally related to his accepted right inguinal hernia. The reports of Drs. Lucas and Giannini raised the issue of a possible nerve injury causally related to appellant's accepted and authorized right inguinal hernia surgery. The Office did not properly develop the medical evidence to resolve this issue before terminating his compensation and medical benefits. For this reason, it did not meet its burden of proof in terminating appellant's wage-loss and medical benefits effective July 19, 2007.

CONCLUSION

The Board finds that the Office failed to meet its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective July 19, 2007. In light of the Board's resolution of the first issue, the second issue is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 29, 2008 is reversed.

Issued: August 20, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board