

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

H.R., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL
SUPPLY CENTER, Oakland, CA, Employer**

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**Docket No. 08-1753
Issued: February 24, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 12, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 19, 2007, affirming the termination of medical benefits for the accepted orthopedic condition. 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 met its burden of proof to terminate medical benefits as of December 18, 2006 for the accepted low back injury.

FACTUAL HISTORY

The Office accepted that appellant sustained a low back strain, superimposed on lumbar degenerative disc disease, in the performance of duty on November 26, 1990 when he jumped onto a barge. In addition, the Office accepted a consequential neurotic depression. Appellant stopped working in September 1991 and received compensation for temporary total disability.

In a report dated April 25, 2006, the attending orthopedic surgeon, Dr. John Warbritton III, indicated that appellant reported low back pain. He diagnosed degenerative disc disease.

The Office referred appellant, along with medical records and a statement of accepted facts, to Dr. Aubrey Swartz, an orthopedic surgeon, for a second opinion evaluation. In a report dated August 21, 2006, Dr. Swartz provided a history and results on examination. He reviewed medical reports and noted that appellant complained of lumbosacral pain. Dr. Swartz noted that a report dated August 24, 1991 from Dr. Henry M. Daniels, an orthopedic surgeon, showed a normal range of motion and straight leg raising and a November 4, 1991 magnetic resonance imaging (MRI) scan showed only a mild L4-5 annular bulge. He also noted the results of examination by Dr. Daniels on September 26, 1992 and June 29, 1993 showing a normal neurological examination. Dr. Swartz stated that there were no current objective findings referable to the November 26, 1990 injury, and appellant no longer had residuals of the injury. He opined that appellant had a mild degenerative disc bulge at the time of the employment injury, and he sustained a strain which gradually subsided and resolved.

By letter dated November 6, 2006, the Office advised appellant that it proposed to terminate medical benefits for the accepted low back condition. It indicated that compensation for the accepted psychiatric condition was not affected.¹ Appellant submitted statements indicating that he still had back pain and he disagreed with Dr. Swartz.

By decision dated December 18, 2006, the Office terminated medical benefits for the accepted low back condition. It found the weight of the evidence was represented by Dr. Swartz.

Appellant requested an oral hearing before an Office hearing representative, which was held on June 1, 2007. Prior to the hearing, appellant submitted a narrative report from Dr. Warbritton dated November 16, 2005. Dr. Warbritton stated that he would like to perform a functional capacity evaluation. He stated that appellant had originally injured his back when he jumped 8 to 10 feet onto a boat and sustained a compression injury that aggravated his degenerative disc disease. Dr. Warbritton concluded this injury was largely if not entirely responsible for appellant's current symptoms.

By decision dated July 19, 2007, the hearing representative affirmed the December 18, 2006 Office decision.

LEGAL PRECEDENT

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.²

¹ The Office stated that the accepted emotional condition was dysthymic disorder.

² *Furman G. Peake*, 41 ECAB 361 (1990).

ANALYSIS

The Office based the termination of medical benefits for the accepted orthopedic condition on the August 21, 2006 report from the second opinion physician, Dr. Swartz. In his report, Dr. Swartz provided a history and reviewed medical records. He provided an unequivocal opinion that the low back strain, superimposed on degenerative disc disease, had resolved. Dr. Swartz supported his opinion with reference to the medical evidence of record, and explained that appellant sustained a strain that gradually resolved. The Board finds that Dr. Swartz provided a rationalized medical opinion that the November 26, 1990 physical injury had resolved.

The attending physician, Dr. Warbritton, provided treatment reports indicating that appellant continued to have low back pain and he diagnosed degenerative disc disease. This is not an accepted employment-related condition. Dr. Warbritton did not discuss the accepted low back strain. The Board finds that the weight of the evidence rests with Dr. Swartz and the Office met its burden of proof to terminate medical benefits for the accepted low back condition.

To the extent appellant alleges that he had an additional employment-related back condition, it is his burden of proof to establish the condition as causally related to the employment injury.³ In his November 16, 2005 report, Dr. Warbritton appeared to diagnose an aggravation of degenerative disc disease causally related to the November 26, 1990 employment incident. He did not provide a complete history or a rationalized medical opinion on causal relationship.⁴ Dr. Warbritton did not discuss whether the aggravation was temporary or permanent, or provide other relevant detail. The Board finds that appellant did not establish an aggravation of degenerative disc disease as employment related.

CONCLUSION

The Office met its burden of proof to terminate medical benefits for the accepted low back strain superimposed on degenerative disc disease as of December 18, 2006.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the employment factors. *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

ORDER

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

Issued: February 24, 2009
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