

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RODGER B. DRYE and U.S. POSTAL SERVICE,
POST OFFICE, Concord, N.C.

*Docket No. 96-2189; Submitted on the Record;
Issued August 3, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of January 16, 1992.

On November 18, 1991 appellant, a 40-year-old distribution clerk, sustained an injury to his lower back when a coworker allegedly "slammed" him off a stool on which he was sitting, knocking him into a letter tray and scheme rack. Appellant filed a Form CA-1 claim for benefits based on traumatic injury on November 18, 1991.

In a letter dated November 25, 1991, the employing establishment controverted appellant's claim, submitting statements from appellant's coworkers who rebutted his claim that he had been "slammed" off of his work stool.

By decision dated January 16, 1992, the Office denied appellant's claim for failure to establish fact of injury. In a memorandum to the Director, the Office noted there was conflicting evidence in the record regarding the November 18, 1991 employment incident from appellant, from the person who was alleged to have knocked appellant off of his stool, and from appellant's coworkers who were in the vicinity of the alleged incident. Based on this contradictory factual evidence, the Office found that the evidence of record failed to establish that appellant sustained an injury as alleged.

In a letter dated January 25, 1992, appellant requested an oral hearing. Appellant's representative requested an oral hearing in a letter dated January 30, 1992.

By letter dated May 14, 1992, the Office scheduled a hearing for June 10, 1992.

By decision dated and finalized August 21, 1992, an Office hearing representative affirmed the Office's January 19, 1992 decision that appellant failed to establish fact of injury because the evidence of record did not indicate that he sustained an injury as alleged on November 18, 1991. The hearing representative noted appellant's long-standing history of back

pain, the fact that he was on light duty on November 18, 1991, his coworker's statement that he only "bumped" appellant slightly, and the fact that there apparently were no direct eyewitness to the alleged incident.

In a letter to the Board dated November 18, 1992, appellant's representative requested review of the Office's August 21, 1992 decision.

In a decision dated March 10, 1994, the Board reversed the Office's August 19, 1992 decision finding that appellant did not establish fact of injury, finding that the case was not in posture for decision. The Board found that the record was consistent with regard to the time, place and manner of the alleged incident on November 18, 1991. The Board stated that appellant's description of events occurring on November 18, 1991 had been consistent and had largely been confirmed by witnesses, and that, in addition, he had provided a consistent history to his physicians. The Board further found that appellant submitted sufficient medical evidence to establish that the November 18, 1991 work incident resulted in an injury, and that the record contained no medical evidence negating that an injury occurred due to the November 18, 1991 employment incident. The Board therefore remanded for the Office to determine whether the November 18, 1991 work injury resulted in any continuing condition, for which appellant would be entitled to medical benefits, or in any periods of disability.

By letter dated April 14, 1994, the Office contacted Dr. Tim E. Adamson, a specialist in neurosurgery and appellant's treating physician, and requested that he review an attached statement of accepted facts and respond to several questions pertaining to whether appellant had a continuing disability due to the November 18, 1991 employment injury, and, if so, the approximate date on which he expected the disability to cease.

In a memorandum of telephone conference dated May 24, 1994, an Office claims examiner indicated that she had called Dr. Adamson's office and had spoken to a nurse, who stated that Dr. Adamson was not going to be able to answer the Office's questions and that the Office should just go ahead and refer appellant for a second opinion.

By letters dated May 24, 1994, the Office scheduled a second opinion examination for appellant with Dr. Charles B. Lockert, a Board-certified orthopedic surgeon, for July 26, 1994.

In a report dated July 27, 1994, Dr. Lockert noted some mild tenderness in the lumbosacral and left sacroiliac area in addition to tenderness in the left sciatic notch on examination, with no evidence of paravertebral muscle spasm or any kind of muscular spasm. Based on his review of x-rays, Dr. Lockert noted no evidence of a herniated nucleus pulposus. Dr. Lockert opined that there was no related or remaining condition related to the 1991 back injury, and that any continued problem with his back could be explained by his preexisting back problem that he had prior to his employment with the employing establishment. Dr. Lockert stated that he did not believe there was any residual disability stemming from the November 18, 1991 employment injury, and that any work-related disability ceased as of the date he was returned to work [January 16, 1992] by his treating neurosurgeon, Dr. Adamson.

In a decision dated August 23, 1994, the Office, based on the opinion of Dr. Lockert, found that any residual disability appellant sustained as a result of the November 18, 1991

employment injury had resolved by January 16, 1992. The Office found that the weight of the medical evidence rested with the opinion of Dr. Lockert, who provided a rationalized medical opinion regarding the question of continuing disability, and noted that Dr. Adamson, appellant's attending physician, had failed to answer the Office's questions regarding continuing disability and therefore had not given an opinion on continuing disability. The Office therefore concluded that appellant's entitlement to compensation had ceased as of January 16, 1992.

In a letter dated July 20, 1995, received by the Office July 25, 1995, appellant requested reconsideration of the Office's August 23, 1994 decision. Accompanying appellant's letter were May 5 and May 11, 1995 letters from Dr. Charles W. Rhodes, a Board-certified family practitioner, a June 6, 1995 letter from Dr. J.W. Scott Wallace, Board-certified in psychiatry and neurology, and a July 22, 1994 physical therapy report from Ms. Deborah Mabry Monroe, a physical therapist, which indicated that appellant had periodically been administered physical therapy for his back condition from October 29, 1991 through May 1994. Dr. Rhodes stated in his May 5, 1995 letter that appellant was referred to his clinic on January 7, 1992 due to the November 18, 1991 employment injury, and stated in the May 11, 1995 letter that appellant had been seen on November 19, November 27 and December 11, 1991 after sustaining a back injury at work. Neither of these letters, however, provided an opinion as to whether appellant was currently suffering any residual physical disability causally related to the November 18, 1991 employment injury.

Dr. Wallace stated in his June 6, 1995 letter that appellant had numerous somatic complaints as well as a number of depressive symptoms, most of which "evidently" were precipitated by events occurring in 1992 with a coworker. Dr. Wallace diagnosed a "Major Depressive Disorder", single episode, and found that the events at the employing establishment as well as attendant injuries precipitated this condition. Appellant also submitted previously submitted statements from his coworkers regarding the November 18, 1991 employment injury.

By decision dated September 28, 1995, the Office found that the evidence appellant submitted was not sufficient to warrant modification of its August 23, 1994 decision, and it therefore denied appellant further compensation for injury or disability resulting from his November 18, 1991 employment injury. The Office noted that neither of Dr. Rhodes' May 11, 1995 reports had provided an opinion regarding whether appellant's continued complaints were related to the November 18, 1991 employment injury, and that Dr. Wallace's June 6, 1995 report failed to provide medical reasoning based on a complete and accurate history to establish that appellant suffered a psychiatric condition related to the November 18, 1991 employment injury. The Office rejected Ms. Monroe's July 22, 1994 physical therapy report, noting that she is not a physician under the Act and that therefore her opinion had no probative value insofar as establishing an employment-related condition.¹ In addition, the Office stated that the statements from appellant's coworkers had all been previously submitted.

In a letter dated December 26, 1995, appellant requested reconsideration of the Office's September 28, 1995 decision. Accompanying appellant's letter was a previously submitted January 27, 1992 report from Dr. Nathaniel S. Greenwood, a psychological therapist, who stated

¹ See 5 U.S.C. § 8101(2).

that appellant came to his office on January 7, 1992, January 9, 1992, January 17, 1992, and January 27, 1992, and had been diagnosed as having generalized anxiety, shaking and trembling as a result of this condition, and “considerable worry” which related in part to physical problems incurred or aggravated during recent weeks. The report stated that appellant had alleged that, due to the actions of certain colleagues at work, he had been singled out for cruel and unfair punishment from which he had suffered both physically and emotionally, and recommended ongoing psychotherapy. Appellant also submitted a November 15, 1995 report from Dr. Rhodes, a November 17, 1995 letter from Dr. Wallace, an undated letter from Dr. Jo Cooley, a clinical psychologist, all of which documented an emotional condition which allegedly resulted from the November 18, 1991 employment injury, and a Form CA-7 requesting reimbursement for lost annual leave and sick leave.

By decision dated March 27, 1996, the Office found that the evidence appellant submitted was not sufficient to warrant modification of its August 23, 1994 decision terminating benefits, and it therefore denied appellant further compensation for injury or disability resulting from his November 18, 1991 employment injury. The Office stated that the Form CA-7 was not relevant to the medical issue adjudicated in its August 23, 1994 termination decision; *i.e.*, whether his compensable back condition had resolved, and noted that the form was not completed because the employing establishment had not filled out the reverse of the form.

The Office further stated that all of the medical evidence appellant submitted pertained to an alleged emotional condition, which was not “appropriately presented” as an issue for reconsideration of its August 23, 1994 decision terminating benefits based on his traumatic injury claim. The Office stated that a claim for an alleged emotional condition needed to be adjudicated as a separate occupational condition in the event appellant decide to pursue the matter further.

The Board finds the Office met its burden of proof in terminating appellant’s compensation benefits.

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.² 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.³

In the present case, the Office based its decision to terminate appellant’s compensation as of January 16, 1992 on the July 27, 1994 report of Dr. Lockert. Dr. Lockert found that appellant no longer suffered residual disability from his accepted, employment-related lower back conditions as of January 16, 1992, the date appellant’s treating physician released him to return to work, and found that his current back condition of November 18, 1991 employment injury. The Board finds that the Office properly relied on Dr. Lockert’s opinion, which is uncontested

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

by any other medical report in the record, in finding that all residuals from the November 18, 1991 employment injury had ceased as of January 16, 1992 and that appellant therefore was no longer entitled to compensation based on his employment-related accepted conditions.

The only other medical evidence bearing on the causal relationship of appellant's November 18, 1991 employment injury to his current back condition are the periodic progress reports from Dr. Adamson, who as Dr. Lockert noted released appellant to return to work on January 16, 1992, and declined the Office's May 24, 1994 request to submit an opinion regarding whether residual disability from appellant's November 18, 1991 employment had resolved. All of the other medical reports refer to an alleged emotional condition stemming from the November 18, 1991 employment injury, for which appellant has not filed a claim, and is therefore not subject to the Board's jurisdiction in the instant decision. The Board therefore affirms the Office's September 28, 1995 and March 27, 1996 decisions denying reconsideration of its August 9, 1994 termination decision.

The decisions of the Office of Workers' Compensation Programs dated March 27, 1996 and September 28, 1995 are hereby affirmed.

Dated, Washington, D.C.
August 3, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member