

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDWARD FINNELL and DEPARTMENT OF THE ARMY,  
Fort Hood, TX

*Docket No. 98-1568; Submitted on the Record;  
Issued February 10, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective December 17, 1997.

This case has previously been on appeal before the Board. By decision and order dated January 14, 1982, the Board affirmed the Office's decision dated October 16, 1981, finding that appellant had a 41 percent loss of wage-earning capacity effective September 10, 1981, the date the Office reduced his compensation. The facts and circumstances of the case are completely set out in that decision and are hereby incorporated by reference.<sup>1</sup> Subsequently, appellant requested reconsideration of the Office's October 1981 decision. In a decision dated December 9, 1988, the Office denied merit review on the grounds that the evidence submitted with his request for reconsideration was cumulative and not sufficient to reopen the record. By decision and order dated June 29, 1989, the Board set aside the December 9, 1988 decision of the Office, remanding the case for merit review and a *de novo* decision.<sup>2</sup> On remand, by decision dated February 27, 1990, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision. In a decision dated May 29, 1991, an Office hearing representative affirmed the February 27, 1990 decision of the Office.

In a letter dated November 6, 1997, the Office proposed termination of appellant's compensation based on a report by his treating physician, Dr. John Garwacki, a Board-certified neurologist. By decision dated December 17, 1997, the Office terminated appellant's compensation effective that date based on an additional report dated November 11, 1997 from Dr. Garwacki.

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<sup>1</sup> Docket No. 82-136 (issued January 14, 1982).

<sup>2</sup> Docket No. 89-439 (issued June 29, 1989).

The Board has duly reviewed the entire case record on appeal and finds that the Office properly terminated appellant's compensation effective December 17, 1997.

Under the Federal Employees' Compensation Act,<sup>3</sup> once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>4</sup> After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>5</sup>

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.<sup>6</sup> Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after December 17, 1997, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

In the present case, the Office initially proposed termination of appellant's compensation based on the September 12, 1995 report by Dr. Garwacki, a periodic report of physical examination submitted to the Office per its guidelines. Dr. Garwacki reported no objective findings, noted that appellant was 75 years of age and retired. He indicated that appellant's age prevented him from working, not his previous injury. Dr. Garwacki concluded that no improvement was expected in appellant's condition and noted that appellant was diabetic and had coronary heart failure, coronary heart disease, hypertension, hyperlipidemia and benign prostatic hyperplasia or hypertrophy that were not work related. In a report dated November 11, 1997, Dr. Garwacki reiterated these findings. Although appellant did not submit any legal arguments to challenge the Office's proposed termination of compensation, he did submit a form report by Dr. Sundaram Sukumar, a Board-certified internist. On a "status form" Dr. Sukumar indicated that appellant was indefinitely unemployable and noted appellant still had considerable pain in his right 4<sup>th</sup> costochondral joint. The Board finds that the Office properly determined that the weight of the medical evidence rested with the reports by Dr. Garwacki as he had been appellant's attending physician for a number of years and his report was based on his knowledge and experience with appellant's physical condition as opposed to one examination, as was the case with Dr. Sukumar. Moreover, Dr. Sukumar's only report of record does not provide any history of injury, objective findings, or rationale for his conclusion that appellant is indefinitely unemployable. Therefore, Dr. Garwacki's reports are entitled to determinative weight, and they establish that appellant's inability to work is due to his age and not due to his accepted

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *William Kandel*, 43 ECAB 1011 (1992).

<sup>5</sup> *Carl D. Johnson*, 46 ECAB 804 (1995).

<sup>6</sup> *Dawn Sweazey*, 44 ECAB 824 (1993).

<sup>7</sup> *Mary Lou Barragy*, 46 ECAB 781 (1995).

employment injury. The Office met its burden of proof in terminating appellant's compensation effective December 17, 1997.

The decision of the Office of Workers' Compensation Programs dated December 17, 1997 is hereby affirmed.

Dated, Washington, D.C.  
February 10, 2000

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member