

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERTIS A. PRYOR and DEFENSE LOGISTICS AGENCY,
RED RIVER ARMY DEPOT, Texarkana, TX

*Docket No. 99-180; Submitted on the Record;
Issued October 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits.

The Board has duly reviewed the case record in the present appeal and finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further treatment.⁴

On December 12, 1995 appellant, then a 46-year-old material handler, sustained a lumbar strain in the performance of duty while climbing a pole.⁵ Effective May 11, 1996, appellant was placed on the periodic compensation rolls to receive compensation benefits for temporary total disability. By letter dated August 5, 1997, the Office advised appellant that it proposed to

¹ *Charles E. Minniss*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

² *Id.*

³ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁴ *Furman G. Peake*, 41 ECAB 361 (1990).

⁵ The record shows that appellant also sustained a work-related left hip and low back strain on May 20, 1994. He began a light-duty office job on December 29, 1994.

terminate his compensation benefits on the grounds that the weight of the medical evidence established that appellant had no continuing disability or medical condition causally related to his December 12, 1995 employment injury. By decision dated September 15, 1997, the Office terminated appellant's compensation and medical benefits effective that date. By letter dated October 7, 1997, appellant requested an oral hearing before an Office hearing representative. On June 24, 1998 a hearing was held before an Office hearing representative at which time appellant testified. By decision dated August 2, 1998 and finalized on September 2, 1998, the Office hearing representative affirmed the Office's September 15, 1997 decision.

Regarding the medical evidence of record, by letter dated June 17, 1997, the Office referred appellant, together with copies of medical records and a statement of accepted facts, to Dr. Norris C. Knight, Jr., a Board-certified orthopedic surgeon, for an examination and evaluation as to whether appellant had any remaining disability or medical condition causally related to his December 12, 1995 employment injury.

In a report dated July 10, 1997, Dr. Knight provided a history of appellant's condition and findings on examination and diagnosed degenerative disc disease at L4 and L5 with concomitant midline disc bulge and spine stenosis. He stated that, based upon his physical examination of appellant, x-rays and a magnetic resonance imaging scan, there was no objective evidence of a current lumbar sprain or disability related to appellant's December 12, 1995 employment injury.

In a report dated July 1, 1997, Dr. Gregory J. Smolarz, appellant's attending Board-certified orthopedic surgeon, diagnosed spinal stenosis at L4-5 for which he recommended surgery. He indicated that there were no objective findings of a current lumbar strain and indicated that appellant had been released back to his light-duty work as of December 9, 1996. He indicated that appellant's work limitations were due only to nonwork-related degenerative changes in his back.

In a report dated July 11, 1997, regarding appellant's L4-5 stenosis, Dr. Smolarz related that appellant's medication should be changed or he should seek another means of controlling his pain besides chronic pain medication. He did not address the issue as to whether appellant had any remaining disability or medical condition causally related to his December 12, 1995 employment-related lumbar strain.

In a report dated October 14, 1997, Dr. Huntly G. Chapman, a surgeon, related that he had reviewed appellant's medical records and he stated his opinion that appellant had a spinal stenosis and a disc herniation. He stated, "It is my thought that based upon your history that you may have had an on-the-job injury." However, he did not mention appellant's December 12, 1995 employment injury and did not provide any medical rationale explaining the cause of the spinal stenosis and disc herniation. Therefore, this report is of limited probative value and does not establish any remaining disability or medical condition causally related to appellant's December 12, 1995 employment injury.

Both Dr. Smolarz, appellant's attending physician, and Dr. Knight, the Office referral physician, examined appellant and found that he had no residual disability or medical condition causally related to his December 12, 1995 employment injury. There is no probative medical

evidence of record establishing that appellant had any remaining disability or medical condition causally related to his employment injury. Therefore, the Office met its burden of proof in terminating appellant's compensation and medical benefits.

The decision of the Office of Workers' Compensation Programs dated August 2, 1998 and finalized on September 2, 1998 is hereby affirmed.

Dated, Washington, DC
October 20, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member