

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of AHMED A. SHERIFF and GENERAL SERVICES ADMINISTRATION,  
PUBLIC BUILDINGS SERVICE, Washington, DC

*Docket No. 00-2402; Submitted on the Record;  
Issued February 4, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation effective January 30, 2000 on the basis that he no longer had any continuing disability as a result of his September 12, 1967 employment injury; and (2) whether the Office properly denied appellant's request for an oral hearing.

On September 12, 1967 appellant, then a 40-year-old carpenter, sustained injuries in the performance of duty when a load of sheetrock fell on him. The Office accepted appellant's claim for back strain and conversion reaction. Appellant returned to work in a limited-duty capacity but subsequently ceased work after a brief period of time. He continued to receive wage-loss compensation for approximately 30 years following his September 12, 1967 employment injury.

In September 1998, the Office referred appellant for an orthopedic evaluation to ascertain the extent of any ongoing employment-related disability. Appellant similarly underwent a psychiatric evaluation in March 1999 at the Office's request. Based upon the evidence obtained from these evaluations, the Office notified appellant on December 27, 1999 of its proposed termination of compensation. Appellant did not submit any additional medical evidence in response to the Office's proposed termination of compensation. Accordingly, in a decision dated January 28, 2000, the Office found that appellant had no continuing employment-related disability or condition, and therefore, the Office terminated appellant's compensation.

By letter dated April 24, 2000, appellant requested an oral hearing. In a decision dated June 16, 2000, the Office found that appellant did not submit his request for an oral hearing within 30 days of the Office's January 28, 2000 decision, and therefore, he was not entitled to a hearing as a matter of right. Additionally, the Office considered the matter in relation to the issues involved and denied appellant's request on the basis that the issue could equally well be addressed through the reconsideration process.

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

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>1</sup> In order to terminate wage-loss compensation, the Office must establish that the disability has either ceased or that it is no longer related to the employment.<sup>2</sup> Additionally, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>4</sup>

In a report dated March 23, 1998, appellant's treating physician, Dr. Irvin A. Guterman, a Board-certified orthopedic surgeon, diagnosed lumbar strain and radiculitis. In response to a series of questions posed by the Office, Dr. Guterman stated that appellant's back strain condition was still active and that he could not be gainfully employed as a result of the September 12, 1967 employment injury. He further stated that appellant would have difficulty performing his job and concentrating secondary to the pain. Additionally, Dr. Guterman noted that appellant experiences dizziness. Lastly, Dr. Guterman stated that the chronicity of the injury only makes it more difficult for appellant to work. Dr. Guterman later submitted a June 8, 1998 report indicating that he had been treating appellant for lumbar strain and right lower extremity radiculitis from February 23 to June 8, 1998 and that appellant had recently completed 12 sessions of physical therapy. His impression was "continued improving exacerbation of lumbar strain and right lower extremity radiculitis."

Dr. Donald E. Pearson, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on September 23, 1998, and in a similarly dated report, he diagnosed chronic low back pain. Dr. Pearson reported complaints of low back pain, some days worse than other days, and no complaints of pain radiating down the legs. Recent x-rays revealed "some minimal spurring" off the L4 and L5 vertebral bodies anteriorly. Dr. Pearson stated that he did not believe appellant's current symptomatology was directly related to the September 12, 1967 work injury. Instead, he characterized appellant's current condition as "an age type problem with arthritic changes in the lumbar spine." Dr. Pearson explained that he did not see evidence of the need for further orthopedic treatment or therapeutic measures. Moreover, Dr. Pearson stated he would not impose any work restrictions from an orthopedic standpoint.

In March 1998, the Office solicited a report from appellant's psychiatrist, Dr. Stephen J. Rojcewicz, Jr. In a report dated March 23, 1998, Dr. Rojcewicz noted that he recently examined appellant on January 9 and 30, 1998, and on two prior occasions in March 1983 and February 1984. Dr. Rojcewicz diagnosed conversion disorder and post-traumatic stress disorder, secondary to appellant's September 12, 1967 employment injury. He further stated that

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<sup>1</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>2</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>4</sup> *Id.*; *Calvin S. Mays*, 39 ECAB 993 (1988).

appellant's condition was permanent and would not be removed by psychiatric treatment. Dr. Rojcewicz also stated that appellant was incapacitated from work for an indefinite period.

Dr. Lillian T. Saavedra, a Board-certified psychiatrist and Office referral physician, examined appellant on March 12, 1999, and in a similarly dated report, she diagnosed cyclothymic disorder and mixed personality disorder. Dr. Saavedra found no evidence of conversion reaction. She explained that the latter condition was merely a reaction and a temper display related to appellant's frustration with his job at the time and not a permanent condition. Dr. Saavedra further stated that cyclothymia is a mild degree of mood swings that some individuals have that make them feel impulsive and have mood liability. She explained that this condition was not work related. In conclusion, Dr. Saavedra stated that appellant does not have an injury-related permanent condition requiring disability. In a supplemental report dated August 4, 1999, Dr. Saavedra further explained that conversion reaction is a temporary reaction to a situation that can manifest itself in physical symptoms of deficit. She provided examples of an individual who claims he cannot walk but has no medical justification for this condition or a man who suddenly cannot see without any justification. Dr. Saavedra explained that the conversion reaction is a recoverable condition and she questioned why appellant was given disability for such a diagnosis.

The Board finds that the weight of the medical evidence rests with the well-reasoned opinions of Drs. Pearson and Saavedra. Both physicians conducted thorough examinations. Additionally, their respective reports accurately reflect appellant's medical and employment history. Moreover, Drs. Pearson and Saavedra fully explained the basis for their conclusion that appellant no longer suffered from an employment-related condition.

In contrast, the reports of Drs. Guterman and Rojcewicz provide little, if any, support for concluding that appellant continues to suffer from residuals of his September 12, 1967 employment injury. Dr. Guterman's March 23, 1998 report does not include sufficient rationale to support his finding that appellant remains totally disabled due to his employment-related lumbar strain. Similarly, Dr. Rojcewicz failed to adequately explain the basis for his opinion that appellant continues to suffer from conversion reaction some 30 years after his September 12, 1967 employment injury. In light of the deficiencies noted in the reports of Drs. Guterman and Rojcewicz, the Board finds that the Office reasonably relied upon the opinions of Drs. Pearson and Saavedra as a basis for terminating appellant's benefits. Accordingly, the medical evidence establishes that as of January 30, 2000, appellant no longer had residuals of an employment-related condition. Therefore, the Office properly terminated appellant's wage-loss compensation and authorization for continued medical treatment.

The Board further finds that the Office properly denied appellant's request for an oral hearing.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision

for which a hearing is sought.<sup>5</sup> The Office has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>6</sup> In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>7</sup>

Appellant's request for an oral hearing was dated and postmarked April 24, 2000, which is more than 30 days after the Office's January 28, 2000. As such, appellant is not entitled to an oral hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review, and correctly advised appellant that the issues of whether he continued to experience residuals of his work injury could equally well be addressed by requesting reconsideration.<sup>8</sup> Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated June 16 and January 28, 2000 are hereby affirmed.

Dated, Washington, DC  
February 4, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>5</sup> 20 C.F.R. § 10.616(a) (1999).

<sup>6</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>7</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>8</sup> The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).