

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

T.M., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Portland, OR, Employer**

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**Docket No. 08-33
Issued: April 28, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 1, 2007 appellant filed an appeal of a September 6, 2007 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration and a June 22, 2007 merit decision terminating his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit issues in this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective June 22, 2007; and (2) whether the Office properly denied appellant's request for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 14, 2005 appellant, then a 50-year-old transportation security screener, injured his right groin while lifting a heavy bag at work.¹ He worked modified duty but stopped work on November 22, 2005 and did not return. The Office paid appropriate medical and wage-loss benefits.

In a January 23, 2006 letter, the Office requested Dr. Paul Won, the attending Board-certified family practitioner, to provide a specific return-to-work date and discuss whether appellant's groin strain was permanent. In a January 26, 2006 report, Dr. Won advised that appellant had been on light duty since the injury and on permanent light duty since October 4, 2005. He advised that appellant was medically stationary and no further treatment was recommended for his groin. Dr. Won noted that appellant's condition was due to handling multiple heavy bags, not lifting a single bag as found by the Office.

On February 27, 2007 the Office referred appellant, together with a statement of accepted facts, to Dr. Daniel K. Mangum, a Board-certified internist, and Dr. Timothy J. Craven, Board-certified in occupational medicine, to address whether appellant had any ongoing right groin strain or residuals. The Office requested a determination as to whether appellant had work restrictions due to the right groin condition.

In a March 28, 2007 report, Drs. Mangum and Craven reviewed appellant's history of injury and treatment. They stated that appellant's hernia history began in 1986 and that he had multiple surgeries for a right inguinal hernia, the last of which occurred in 1995. Other injuries while working for the employing establishment were noted. Drs. Mangum and Craven reviewed diagnostic tests, provided their examination findings and diagnosed chronic groin pain. They agreed that appellant sustained a right groin strain from the incident of January 14, 2005, but opined that his current symptoms were related to his preexisting problems to the groin and past surgeries, scar tissue and chronic changes to that region. Drs. Mangum and Craven noted some restriction to straight leg raising and hip movement on the right side, but stated that this was more related to pain complaints and not due to any true restrictions. They also found thick indurations above and below the area of scarring which had been present for over 10 years and which supported the current diagnosis of chronic groin pain. There appeared to be more subjective complaints than were supported and found that the 2005 right groin strain had resolved. Drs. Mangum and Craven explained that while a single incident may have pulled or strained the groin and past scar tissue, it would not cause ongoing pain. Moreover, appellant's pain complaints were not consistent with a strain history. Appellant's ongoing chronic pain to the groin was not work related and was most likely due to preexisting interventions and surgeries to the right groin. There was no evidence of a ventral hernia, but the diastasis recti stretching of the supporting muscle was related to deconditioning. Drs. Mangum and Craven advised that there were no permanent work restrictions for the right groin area. While appellant may have had temporary work restrictions due to groin pain, this ceased well before their evaluation. He

¹ The record reflects that appellant has a preexisting hernia condition, for which he underwent repair in 1995. Under claim number 142037197, the Office accepted that appellant sustained a work-related ventral hernia due to his lifting activity over a period of time. The hernia claim is not before the Board on appeal.

was found to have reached maximum medical improvement by August 2005, over six months after he experienced the accepted groin strain.

By letter dated April 11, 2007, the Office requested that Dr. Won review the report of Drs. Mangum and Craven. The Office did not receive a response.

On May 17, 2007 the Office proposed to terminate appellant's compensation, finding that the medical evidence established that he no longer had any residuals or disability due to his accepted work injury. In response, appellant disagreed with the March 28, 2007 report of Drs. Mangum and Craven.

By decision dated June 22, 2007, the Office terminated appellant's compensation benefits effective that day.

On July 30, 2007 appellant requested reconsideration. He advised that, less than one month after he was examined by the Office's physicians, he received an increased disability rating from the Veterans Administration (VA) for his right inguinal hernia scar. Appellant stated that he was enclosing a copy of the VA medical records. However, the records were not received into evidence. After appellant received the Office's June 22, 2007 termination decision, he called Dr. Won and inquired as to why the physician did not respond to the Office. Dr. Won informed appellant that he took a copy of the second opinion report to one of the senior industrial medicine physicians and that they agreed with the report. For this reason, he did not send a response.

By decision dated September 6, 2007, the Office denied appellant's request for reconsideration without further review of the merits.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁴ 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.⁵

² *Bernadine P. Taylor*, 54 ECAB 342 (2003).

³ *Id.*

⁴ *Roger G. Payne*, 55 ECAB 535 (2004).

⁵ *Pamela K. Guesford*, 53 ECAB 726 (2002).

ANALYSIS -- ISSUE 1

Appellant's claim was accepted for a right groin strain. The Board finds that the weight of the medical evidence is represented by the report of Drs. Mangum and Craven.

In a March 28, 2007 report, Drs. Mangum and Craven noted appellant's history of injury and medical treatment involving the hernia. On the physical examination there was a thick induration above and below the area of scarring, supported a diagnosis of chronic groin pain. Drs. Mangum and Craven found that appellant had reached maximum medical improvement. They stated that, with respect to his right groin strain, appellant did not require any work restrictions. Drs. Mangum and Craven opined that appellant's complaints were consistent with their objective findings and that his accepted strain had resolved well before they examined him. Appellant's injury did not cause ongoing pain; rather his ongoing pain was related to preexisting interventions and the prior surgeries to the groin. Drs. Mangum and Craven did not attribute any continuing condition or disability to the January 14, 2005 injury.

In his January 26, 2006 report, Dr. Won, appellant's attending physician, indicated that he was medically stationary and had been on permanent light duty since October 4, 2005. He also had an opportunity to respond to Drs. Mangum and Craven's March 28, 2007 report, but did not do so.

The March 28, 2007 report of Drs. Mangum and Craven is based on an accurate factual background and provide medical rationale for their conclusions.⁶ The Office met its burden of proof to terminate appellant's benefits. The weight of the medical evidence establishes that residuals of his employment-related condition ceased.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Federal Employees' Compensation Act,⁷ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁸ Section 10.608(b) provides that, when an application for reconsideration does not meet at least

⁶ *Michael S. Mina*, 57 ECAB ___ (Docket No. 05-1763, issued February 7, 2006) (in assessing medical evidence, the weight of such evidence is determine by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion, are facts which determine the weight to be given to each individual report).

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(2).

one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS -- ISSUE 2

The Board finds that the Office properly denied appellant's request for review. The underlying issue for reconsideration was whether the Office properly terminated appellant's compensation effective June 22, 2007.

In support of his July 30, 2007 request for reconsideration, appellant noted that the VA had increased his disability rating. Appellant's allegation does not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered. The underlying issue is medical in nature. The fact that the VA increased his disability rating for his groin condition is not relevant to the issue of whether his accepted injury caused ongoing residuals on disability. A finding of disability by the VA has no bearing on a disability finding under the Act as each statute has different standards of medical proof on the question of causal relation. Therefore, disability under one statute does not establish disability under the other statute.¹⁰ This argument does not constitute a basis for reopening appellant's case for further merit review. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

While appellant indicated that copies of his medical records which supported his increased disability rating from the VA were provided, such documents are not of record. Appellant has not otherwise submitted any new and relevant medical evidence in support of his request for reconsideration. Consequently, appellant is not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(2).

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact nor previously considered by the Office; nor did he submit relevant and pertinent evidence not previously considered by the Office. Accordingly, the Board finds that the Office properly determined that appellant was not entitled to a merit review.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss and medical benefits. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

⁹ *Id.* at § 10.608(b).

¹⁰ *See id.*; *David Budzik*, 52 ECAB 339 (2001).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated September 6 and June 22, 2007 are affirmed.

Issued: April 28, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board