

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAIL FRANKS and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 00-2698; Submitted on the Record;
Issued April 5, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits; and (2) whether appellant had any continuing disability or residuals after August 31, 1999, the date the Office terminated his compensation.

The Office accepted that on August 25, 1981 appellant sustained a work-related lumbar strain while performing his duties as a pipefitter. He returned to light-duty work on October 13, 1981 and stopped work on October 14, 1981. Appellant has not worked for the federal government since 1981 and has held various nonfederal positions since 1988.

Appellant submitted several medical reports from his attending physician, Dr. Harry Marinow, a Board-certified orthopedic surgeon. In a report dated August 6, 1996, he indicated that appellant suffered from low back pain which had become worse since his last examination on December 16, 1994. He also found "slight to moderate lumbar degenerative osteoarthritis" and diagnosed appellant with chronic lumbar spine pain syndrome with degenerative disc disease at L5-S1. Dr. Marinow did not state that appellant's current condition was related to the August 25, 1981 work injury. In a questionnaire dated December 27, 1996, when asked which diagnoses were related to the work injury, Dr. Marinow responded: "due to the work injury August 25, 1981." He did not provide any medical rationale for his statement.

The Office referred appellant to Dr. Ibrahim Yashruti, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether the August 25, 1981 lumbar strain had resolved. In a report dated July 13, 1999, he indicated that appellant complained of low back pain and had suffered from low back pain since approximately 1974. Dr. Yashruti diagnosed appellant with degenerative disc disease of the lumbar spine at L5-S1 and stated that appellant's subjective complaints and descriptions were "out of proportion" to the physical

findings and his ability to move around. When asked if the August 25, 1981 work-related lumbar strain had resolved, Dr. Yashruti stated:

“Yes, his lumbar strain associated with the August 25, 1981 work injury has resolved. [Appellant’s] symptoms at the present time are unrelated to a lumbar strain. [His] symptoms are exaggerated and his description of complaints and history are indicative of degeneration. [Appellant’s] physical findings are minimal, if any.”

Dr. Yashruti also stated that appellant’s diagnosed chronic spine syndrome with degenerative disc disease was not related to factors of his federal employment as a sprain of the lumbar spine would have already resolved. He noted that appellant’s description of his back pain was not related to any specific activity and was indicative of degenerative changes and not one single injury.

The Office issued a notice of proposed termination of compensation on July 26, 1999. Appellant was given 30 days to submit additional evidence from his physician if he disagreed with the proposed action.

By decision dated August 31, 1999, the Office terminated appellant’s compensation benefits based on Dr. Yashruti’s July 26, 1999 report.

Appellant requested reconsideration on July 12 and September 10, 1999 and his requests for a merit review were denied on September 21 and December 1, 1999. He also requested reconsideration and received full merit reviews on February 28, March 30, May 18 and August 3, 2000. Since the Board has jurisdiction over several Office decisions and the last Office decision dated August 3, 2000 was a merit decision, the Board has jurisdiction over the merits in this case and need not address the Office’s nonmerit decisions.¹

The Board has duly reviewed the case record on appeal and finds that the Office properly terminated appellant’s compensation benefits effective August 31, 1999.

Under the Federal Employees’ Compensation Act,² once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to employment.⁴ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.⁵ In order to prevail, he must establish by the weight of the reliable, probative

¹ The Board’s jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

⁴ *Id.*

⁵ *Virginia Davis-Banks*, 44 ECAB 389 (1993).

and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.⁶

The Office terminated appellant's compensation benefits based on the July 13, 1999 second opinion report from Dr. Yashruti. At the time of termination, the medical reports of record from appellant's attending physician, Dr. Marinow, did not contain medical rationale or a definitive medical opinion that appellant's condition was related to the August 25, 1981 accepted work injury. In his August 6, 1996 report, he discussed appellant's continued low back pain but did not opine that the diagnosed chronic lumbar spine pain syndrome was related to the August 25, 1981 injury. Dr. Marinow also noted that the objective medical evidence of record indicated that appellant's condition was degenerative in nature. In the questionnaire dated December 27, 1996, when asked which diagnoses were related to the work injury, Dr. Marinow stated: "Due to [the] work injury of August 25, 1981." He did not provide any medical rationale for his statement.

The Office correctly determined that Dr. Marinow's reports were of limited probative value since they did not contain a definitive medical opinion that appellant's current condition was related to the August 25, 1981 work injury.

At the time of the termination, Dr. Yashruti's July 13, 1999 report carried the weight of the medical evidence as it was well rationalized and was based on a complete medical history. In his report, he diagnosed appellant with degenerative disc disease of the lumbar spine at L5-S1 and noted that appellant had suffered from chronic low back pain since approximately 1974. Dr. Yashruti stated that appellant's complaints of low back pain did not coincide with the physical findings. He also indicated that appellant's diagnosed chronic spine pain syndrome was not related to factors of his federal employment since a lumbar strain would have already resolved. Dr. Yashruti concluded by stating that appellant's current complaints and history were indicative of degeneration and not one specific injury.

The weight of medical evidence at the time of termination was the well-rationalized report from Dr. Yashruti and the Office properly terminated appellant's compensation benefits effective August 31, 1999.

The Board finds that appellant has failed to establish that he has continuing disability causally related to his accepted employment injury.

In support of his claim after termination, appellant submitted reports from Dr. Marinow dated December 22, 1999, April 12 and June 20, 2000. In his December 22, 1999 report, he stated that appellant's condition remained "permanent and stationary" and that he has suffered from chronic ongoing back pain for the past 19 years. He stated:

"It is evident that [appellant] has documented work-related low back pain injuries while employed as a pipefitter. His most recent work-related injury had occurred on August 25, 1981. It was after that injury that [appellant] has not been able to participate in gainful employment for any period of time because of the ongoing

⁶ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

chronicity of his low back pain symptoms. All findings, both clinically, as well as with x-ray and magnetic resonance imaging (MRI) scan, confirm that [appellant] continues to suffer with all the signs and symptoms of chronic lumbar spine pain syndrome and findings of degenerative disc disease at the L5-S1 interspace that has been confirmed by a recent lumbar MRI July 7, 1999.”

In his April 12, 2000 report, Dr. Marinow stated:

“It is my opinion that [appellant’s] current low back condition is entirely medically connected to his federal employment at the Long Beach Naval Shipyard where he had been employed as a pipefitter and where he had sustained injury to his lumbar spine.”

He continued:

“[Appellant’s] low back strain symptoms were almost constant and he continued to work light duty through August 26, 1981, when his pain significantly increased while working. He required medical treatment for this lumbar strain and in essence, these symptoms have persisted and have not been cured or reached maximum medical improvement.”

Dr. Marinow also noted the objective findings which showed degeneration and stated: “[T]his would be the result of injuries sustained to his lower back in the course of his usual and customary work activities as a pipefitter.” He concluded by stating:

“[Appellant’s] lumbar strain symptoms have been chronic and ongoing and have not resolved over the past 19+ years. All of the clinical findings, as well as x-ray and MRI studies, confirm [that appellant] has been [in] pain specific to his lumbar spine and the wear and tear stresses and strains of his work activity are documented by the degenerative disc disease at the L5-S1 interspace, which has also been confirmed by lumbar MRI studies.

“[Appellant] has denied any other subsequent low-back injuries and I would not apportion any of his low-back pain symptoms to any other factors aside from the industrial injury that he had sustained to his lumbar spine in the summer 1981 and the ongoing industrial trauma sustained recurrently after 1974.”

Dr. Marinow’s June 20, 2000 report restated the findings in his previous reports.

The Board finds that Dr. Marinow’s opinions are insufficient to establish that appellant has continuing employment-related disability. His reports focus on appellant’s diagnosed degenerative disc disease and chronic lumbar spine pain syndrome and do not clearly state that appellant continues to suffer from effects of the accepted lumbar strain. Dr. Marinow noted that appellant has also suffered from other work-related back injuries and has had chronic lower back pain for the past 19 years. His reports generally state that appellant’s current condition is related to his federal employment as a pipefitter, but fail to provide sufficient rationale to show that the specific effects of the August 25, 1981 lumbar strain continue. Dr. Marinow’s analysis supports

the notion that appellant suffers from a chronic, occupational disease, rather than from continued effects of the August 25, 1981 lumbar strain.

As appellant has failed to submit rationalized medical evidence establishing that he has residuals related to his accepted lumbar strain, he has not met his burden of proof in establishing further entitlement to compensation.

The decisions of the Office of Workers' Compensation Programs dated August 3, May 18, March 30 and February 28, 2000 and December 1, September 21 and August 31, 1999 are hereby affirmed.

Dated, Washington, DC
April 5, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member