

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERBERT X. McGEE and U.S. POSTAL SERVICE,
GENERAL POST OFFICE, New York, NY

*Docket No. 00-2598; Submitted on the Record;
Issued March 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation; and (2) whether the Office properly denied appellant's request for reconsideration.

On July 10, 1977 appellant, then a 29-year-old vehicle operator, was lifting mailbags when he developed severe pain in the right side of the groin. The Office of Workers' Compensation Programs accepted his claim for a sprain of the ligaments of the abdomen and right inguinal hernia. Appellant underwent a right inguinal herniorrhaphy on January 23, 1978. Appellant underwent two subsequent operations for removal of scar tissue and a neuroma from the site of the initial herniorrhaphy. Appellant stopped working on July 11, 1977 and returned to light-duty work on July 31, 1977. He had numerous recurrences of disability thereafter and for some periods worked only four to six hours a day. The Office paid appropriate compensation for the periods appellant did not work. Appellant stopped working on January 26, 1984 and did not return to work thereafter. The Office paid temporary total disability compensation effective that date.

In a September 7, 1999 decision, the Office terminated appellant's compensation effective September 11, 1999 on the grounds that he was no longer disabled due to the effects of the employment injury. In a May 6, 2000 letter, appellant requested reconsideration. In a May 11, 2000 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was immaterial and therefore insufficient to warrant review of the prior decision.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation

without establishing that the disability has ceased or that it is no longer related to the employment.¹

The Office based its decision to terminate appellant's compensation on the reports of Dr. Kenneth H. Mincey, a Board-certified surgeon, selected by the Office to perform an examination of appellant and provide a second opinion on his current condition. In a May 3, 1999 report, he stated that appellant's chief complaint was pain in the right groin that had been present since 1977. Dr. Mincey reported that on examination appellant had a well-healed right inguinal hernia incision. He found no evidence of any hernia. Dr. Mincey detected point tenderness slightly inferior to the medial aspect of the incision. He diagnosed chronic pain of the right groin, secondary to multiple surgeries and injury at work, and possible chronic neuropathy of the ilioinguinal nerve. In response to the issue of whether appellant continued to suffer from the residuals of the employment injury, Dr. Mincey stated that, based on objective findings, he could not identify anything that would render appellant disabled. Dr. Mincey noted that appellant's subjective symptoms had been relatively constant over the years. He commented that he did not feel it appropriate to question appellant's honesty as his complaints had been the same for the prior 22 years. He stated that, objectively, there were no findings that would render appellant disabled. He indicated, however, with appellant's complaints of injuries, he would not be a suitable work candidate. He noted that appellant had seen 16 physicians, without any relief from his pain.

The Office requested clarification from Dr. Mincey. In a May 13, 1999 report, Dr. Mincey stated that the only objective finding was point tenderness to palpation slightly inferior to the medial aspect of the right inguinal hernia. He indicated that this finding did not render appellant disabled. He stated that he could see no reason why appellant could not attempt full-time light work, based on the objective medical evidence.

Dr. Mincey's report shows that appellant had only one objective finding, point tenderness in the area of the groin. He concluded that this objective finding, in the region of the inguinal hernia, was not disabling. He noted that appellant otherwise only had subjective pain. He stated that appellant was no longer disabled due to the effects of the employment injury.

The Board notes that Dr. Lane Wilner, a Board-certified internist, in an April 30, 1997 report, indicated that appellant's neurologic examination appeared to be normal. Dr. Wilner commented that appellant had no objective findings. He diagnosed chronic neuropathy secondary to multiple surgeries and injury at work. Dr. Wilner's report further bolsters the finding that appellant had no objective evidence of disability due to the employment injury. The reports of Dr. Mincey and Dr. Wilner show that appellant was no longer disabled due to the effects of the employment injury. The Office therefore had sufficient evidence to support its decision to terminate appellant's compensation.

The Board further finds that the Office properly denied appellant's request for reconsideration.

¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.³ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁴

In his request for reconsideration, appellant stated that Dr. Mincey's examination lasted only eight minutes. He also noted that Dr. Mincey had initially indicated that appellant could only work four hours a day but subsequently reported that he could work full time. He contended that the Office offered him no rehabilitation and the employing establishment did not offer him a job. Appellant, however, did not offer any medical evidence that he remained disabled due to the effects of the employment injury. The contentions that appellant offered, therefore, were immaterial to the issue of whether he was disabled due to the effects of an employment injury 22 years previously.⁵

² 20 C.F.R. § 10.608(b).

³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁵ The Board notes that the record submitted on appeal contains evidence that was submitted subsequent to the Office's May 11, 2000 decision. The scope of the Board's review is limited to the evidence that was before the Office at the time of its final decision. The Board therefore cannot review the medical reports received by the Office after the May 11, 2000 decision. 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated May 11, 2000 and September 7, 1999 are affirmed.

Dated, Washington, DC
March 18, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member