In the Matter of	)	
	)	
LEONARD JONES,	)	
	)	
Claimant,	)	
	)	
v.	)	AHD NO. PBL 07-047
	)	DCP NO. 761020-1999-0015
DEPARTMENT OF PUBLIC WORKS,	)	
	)	
Employer.	)	

Appearances

RICHARD L. LINK, ESQUIRE
For the Claimant

KEVIN TURNER, ESQUIRE
For the Employer/Carrier

Before:

LESLIE A. MEEK
Administrative Law Judge

COMPENSATION ORDER

STATEMENT OF THE CASE

This matter arises out of a claim for disability compensation benefits filed pursuant to the provisions of Subchapter XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann., § 1-623.1 *et seq.* (2001), (hereinafter, the Act).

After timely notice, a full evidentiary hearing was held on June 13, 2007, before Leslie A. Meek, Administrative Law Judge. Leonard Jones (hereinafter, Claimant) appeared in person and by counsel; the Department of Public Works (hereinafter, Employer) appeared by counsel. Claimant testified on his own behalf. Employer did not present any witnesses. Claimant Exhibit (hereinafter, CE) Nos. 1 - 7, and Employer Exhibit (hereinafter, EE) Nos. 1 and 2, described in the Hearing Transcript (hereinafter, HT), were admitted into evidence. The record closed on June 13, 2007, upon receipt of the hearing transcript.

BACKGROUND

Claimant sustained an accidental work-injury on December 11, 1978 while at work for Employer. He provided notice of his injury and timely filed a claim for disability benefits, which was accepted by the Disability

Compensation Program. Claimant continued to receive disability compensation, but the Disability Compensation Program terminated Claimant's medical benefits by notice dated June 9, 2006 based upon the opinion of Employer's medical expert that Claimant had reached maximum medical improvement. Claimant filed an application for a formal hearing to seek relief from the June 9, 2006 Notice of Determination.

CLAIM FOR RELIEF

Claimant seeks an award under the Act of causally related medical benefits.

ISSUES

Whether the Disability Compensation Program properly terminated Claimant's medical benefits.

FINDINGS OF FACT

The parties have stipulated, and I accordingly find, Claimant worked for Employer on December 11, 1978 when he sustained an accidental injury that arose out of and in the course of his employment. Claimant provided timely notice of his injury and a claim was timely filed.

Claimant is a 62 year old male that sustained a back injury almost 30 years ago. He has not worked since the time of his injury.

Since his injury, Claimant has participated in conservative medical treatment, including nerve blocks and prescription medications, from a variety of physicians. Claimant's primary complaint is of chronic back pain, which is causally related to the 1978 work-injury. The epidural blocks and prescription medications prescribed by Claimant's physician continue to provide relief.

Claimant has reached maximum medical improvement. He has permanent physical restrictions and limitations that include no significant and repetitive periods of stooping, bending, lifting or carrying of objects over 20 pounds.

DISCUSSION

The undersigned has thoroughly reviewed and considered the totality of the evidence and the arguments set forth by the parties on the issues presented for resolution. To the extent an argument is consistent with the findings of fact and conclusions of law contained herein, the argument is accepted; to the extent an argument is inconsistent therewith, it is rejected.[1]

The Act provides for modification of an award of compensation if the Disability Compensation Program has reason to believe a change of condition has occurred. D.C. Code §1-623.24(d)(1).

> **An award may not be modified because of a change to the claimant's condition unless:**
>
> > **(A) The disability for which compensation was paid has ceased or lessened;**
> >
> > **(B) The disabling condition is no longer causally related to the employment;**

[1]While each documentary exhibit received in evidence is not specifically referenced in the discussion, all evidence of record was reviewed as part of this deliberation.

> **(C) The claimant's condition has changed from a total disability to a partial disability;**
>
> **(D) The employee has returned to work on a full-time or part-time basis other than vocational rehabilitation under §1-623.04; or**
>
> **(E) The Mayor or his or her designee determines based upon strong compelling evidence that the initial decision was in error.**

§1-623.24(d)(4).

The holding of the Employees' Compensation Appeals Board (ECAB)[2] is often recited: once government-employer has accepted a claim of disability compensation, and has actually paid benefits, employer must adduce persuasive medical evidence sufficient to substantiate a modification or termination of an award of benefits. *Chase*, ECAB No. 82-9 (July 9, 1992); *Mitchell*, ECAB No. 82-28 (May 28, 1983); and *Stokes*, ECAB No. 82-33 (June 8, 1983). In addition, ECAB has held the evidence relied upon to support a modification or termination of compensation benefits must be current and fresh in addition to being probative and persuasive of a change in medical status. *Robinson*, ECAB No. 90-15 (September 16, 1992). *See also*, *Warren*, Dir. Dkt. No. 10-00, OHA No. PBL 99-32, OWC No. 003923 and *Amaiche*, Dir. Dkt. No. 12-00, OHA No. PBL 99-31, OWC No. 004146.[3]

D.C. Code §1-623.03(a) states:

> **The District government shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician, who is approved by the Mayor or his or her designee pursuant to subsection (d) of this section, which the Mayor considers likely to <u>cure</u>, <u>give relief, reduce the degree or period of disability</u>, *or* <u>aid in lessening the amount of the monthly compensation.</u>**

(Emphasis added.) There is nothing in the Act that indicates that the Council of the District of Columbia meant "or" to mean "and", thereby applying a conjunctive interpretation to the list enumerated in D.C. Code §1-623.03(a). *Norton v. Travelers Ins. Co.*, 105 F.2d 122, 123-24 (3d Cir. 1939). In the absence of such indication, AHD is compelled to give the Act a literal interpretation and hold that "or" is disjunctive. The use of the disjunctive "or" necessitates the conclusion that only one of the factors need be met to authorize medical treatment. *Id.* (citations omitted). Unless that section contains some hidden ambiguity it must be interpreted literally, for "where the language

[2]Prior to 1998, the Employees' Compensation Appeals Board (ECAB) was responsible for ruling on appeals of Final Compensation Orders issued by the Assistant Director for Labor Standards.

[3]Despite the fact the OWC (Office of Workers' Compensation) number was listed on both of these cases, that number references Private Sector cases. The correct number for Public Sector cases is the OBA (Office of Benefits Administration) number.

of an enactment is clear and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended." *United States v. Missouri Pacific Railroad Co.*, 278 U.S. 269 (U.S. 1929). Thus, to terminate Claimant's medical benefits, DCP must present evidence of a change in condition whereby causally related medical treatment is not likely *to cure* or *to give relief* or *to reduce the degree or period of disability* or *to aid in lessening the amount of the monthly compensation.*

Employer relies on the medical reports of Drs. Arthur I. Korbine and Bruce J. Ammerman to support the termination of Claimant's medical benefits. EE 2. The record is uncontradicted that Claimant sustained a work-related back injury and that he has been afflicted by chronic back pain with radiculopathy. EE 2. Employer's medical reports also state that Claimant has reached maximum medical improvement; this speaks to the nature of his impairment. However, maximum medical improvement does mean that Claimant is not entitled to any medical treatment.

Claimant has been receiving, and is seeking palliative[4] care in the form of prescription medication and epidural injections. *See* CE 1-7 .

The medical reports presented by Employer include a statement that Claimant "does not require any further medical treatment". EE 2. However, Employer has not presented any medical opinion or basis for concluding the treatments prescribed by Claimant's treating physician no longer provides relief to Claimant. An unsubstantiated, bald statement is insufficient to sustain Employer's burden. Employer must adduce persuasive medical evidence of a change in condition to support termination of Claimant's benefits; and, the evidence presented herein does not carry such weight.

CONCLUSIONS OF LAW

Claimant has not sustained a change in condition such that the treatment prescribed no longer provides relief; therefore, he is entitled to the medical services prescribed by his treating physician.

[4] *Palliative* means "affording relief but not cure." Dorland's Illustrated Medical Dictionary (29th Ed.). Philadelphia: W.B. Saunders Co., p. 1306.

ORDER

It is **ORDERED** that Claimant's claim for relief be, and hereby is **GRANTED**.

LESLIE A. MEEK
ADMINISTRATIVE LAW JUDGE

November 26, 2007
Date