In the Matter of	)	
	)	
WILLIE PARKER, JR.,	)	
	)	
Claimant,	)	
	)	
v.	)	AHD NO. PBL 07-044
	)	DCP NO. 761032-1999-0041
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. Willie Parker, Jr. (hereinafter, Claimant) appeared in person and by counsel; the Department of Corrections (hereinafter, Employer) appeared by counsel. Claimant testified on his own behalf. Employer did not present any witnesses. Claimant Exhibit (hereinafter, CE) Pages 1-12, and Employer Exhibit (hereinafter, EE) Nos. 1 and 2, described in the Hearing Transcript (hereinafter, HT), were admitted into evidence. The record closed on July 28, 2007, upon receipt of the hearing transcript.

BACKGROUND

Claimant sustained an accidental work-injury on August 10, 1997 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. The Disability Compensation Program provided Claimant notice of its intent to terminate Claimant's disability compensation and medical benefits on October 14, 2006. This determination was affirmed by the Disability Compensation Program in the January 19, 2007 Final Decision on Reconsideration. In response to the January 19, 2007 Notice, Claimant filed an application for a formal hearing.

CLAIM FOR RELIEF

Claimant seeks reinstatement of his disability compensation and 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 August 10, 1997 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 60 year old male with a seventh grade education. Claimant sustained a work-related back injury approximately 10 years ago, and has not worked since.

As an Officer in Charge, Claimant's work-related duties and responsibilities included training correctional officers and monitoring inmates from the tower. His job did not require a lot of physical activity. Claimant would stand in the meal-line with inmates and escort inmates to the infirmary and court. Occasionally, Claimant would have to restrain an inmate.

Since his injury, Claimant has participated in conservative medical treatment, including steroid injections and prescription medications, at the hands of Drs. Dawson and Jackson. Claimant's primary complaint is of chronic back pain. The steroid injections prescribed by Claimant's physician provide relief for little more than one week.

Claimant sustained an intervening back injury in 2000, which resulted from an automobile accident. Claimant is treated by a doctor other than Drs. Dawson and Jackson for his 2000 back injury. Claimant also has diabetes mellitus, hypertension and angina.

Claimant has reached maximum medical improvement. He has permanent physical restrictions and limitations that allow him to work a sedentary to light duty position. Claimant requires a position that allows him to alternate sitting, standing and walking and not lift over 20 pounds. Claimant currently walks and rides a bicycle approximately one mile twice each day.

Claimant was evaluated by Dr. Robert O. Gordon, Employer's medical expert, on three occasions and issued medical reports relating his finding contemporaneous with such evaluations.

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;**
> >
> > **(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]

Employer relies on the medical reports of Drs. Dr. Robert Gordon and Robert Collins, as well as Claimant's treating physician, Dr. Eric Dawson, to support the termination of Claimant's medical benefits. EE 1 and 2. The record is uncontradicted that Claimant sustained a work-related back injury in August 1997 and that he has continued to complain of back pain. EE 2. The record is also uncontradicted, however, that Claimant sustained an intervening accident in 2000 that is unrelated to his employment. EE 2.

[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.

[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.

Evidence of the intervening accident, in addition to the medical reports of Drs. Gordon and Collins, are sufficient to sustain Employer's initial burden of production to show that Claimant's current condition is not medically related to the 1997 work-injury. Thus, the burden shifts to Claimant.

To sustain his burden, Claimant presents his live testimony and the medical reports of his treating physician, Dr. Eric Dawson. HT 35- 72 and CE 1-12. Claimant was not ask about, and did not testify about the non-work accident that occurred in 2000 and any injury resulting therefrom.

Nonetheless, Claimant testified that he has continual pain in his lower back and numbness in his left leg. HT 43-44. He also testified that he is able to engage in the normal activities of daily living. Additionally, Claimant is able to ride a bicycle one mile twice a day and to walk approximately one mile twice a day. HT 44 -45 and 64-66.

As it relates to Claimant's medical evidence, Claimant has provided medical reports from Dr. Dawson dated April, 2006, through March, 2007. The medical reports are inconsistent with the record evidence and, at times, present contradictions from record to record. A glaring example is found in the October 19, 2006 medical report, wherein Dr. Dawson reports:

> In way of the original injury, this occurred on 8/10/97. The mechanism of injury or the conditions under which it occurred is as follows: The patient was on his job and the patient evidently had a hypoglycemic episode falling down stairs in the tower at his job in the position and function as a corrections officer.

CE 4; see also CE 5. Dr. Dawson also affirmatively states Claimant had "no preexisting accidents or injuries", and further states: "Claimant "has no preexisting condition and has had no subsequent accident or injury of marked note." CE 10. And, in the Addendum dated March 29, 2007, Dr. Dawson reports that Claimant has a "subsequent very mild motor vehicle accident". CE 11. This opinion exceeds the scope of Dr. Dawson's accepted expertise as an orthopaedist. This renders Dr. Dawson's medical report unreliable and worthless. *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992); *Erickson v. Washington Metropolitan Area Transit Authority*, H&AS No. 92-63, OWC No. 181489 (October 28, 1993), aff'd. Dir. Dkt. No. 93-82 (June 5, 1997).[4]

Additionally, Dr. Dawson fails to present any medical evidence to support his bald conclusion that the automobile accident, for which Claimant apparently required medical treatment, is not an intervening and superceding event. Absent such evidence, Claimant has fail to sustain his burden.

CONCLUSIONS OF LAW

Claimant has sustained a change in condition: his current back condition is not related to the 1997 work-injury. Since Claimant's back condition is not related to the 1997 work-injury, Employer properly terminated Claimant's medical benefits.

---

[4]The trier of fact is not required to consider facially unreliable evidence, particularly when the end result would be the same.

ORDER

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

LESLIE A. MEEK
ADMINISTRATIVE LAW JUDGE

November 29, 2007
Date