

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KARIN R. STOKKINK and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, San Francisco, Calif.

*Docket No. 96-1703; Submitted on the Record;  
Issued July 8, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits effective June 25, 1995 on the grounds that her employment-related disability had ceased.

The Board has duly reviewed the case record in the present appeal and finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.<sup>1</sup>

On April 5, 1985 appellant, then a 32-year-old revenue officer, sustained a cervical strain in the performance of duty when her vehicle was struck from behind by another vehicle. She sustained a recurrence of disability in 1991.

Appellant was placed on the periodic compensation rolls to receive compensation benefits for temporary total disability.

By letter dated April 21, 1995, the Office advised appellant that it proposed to terminate her compensation benefits and medical benefits on the grounds that the weight of the medical evidence established that she no longer had any residuals of the employment-related cervical strain sustained on April 5, 1985.

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<sup>1</sup> See *Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990); *Leona Z. Blair*, 37 ECAB 615 (1986).

By decision dated May 31, 1995, the Office terminated appellant's compensation and medical benefits. The Office stated that the weight of the medical evidence established that appellant no longer had any residual disability or medical condition causally related to her 1985 employment injury.

By letter dated March 11, 1996, appellant requested reconsideration of the Office's May 31, 1995 decision and submitted additional evidence.

By decision dated April 2, 1996, the Office denied modification of its May 31, 1995 decision.

In a report dated July 1, 1991, Dr. Joseph Seab, a Board-certified neurologist, provided a history of appellant's condition and findings on examination obtained from appellant's visits on March 13, April 26, and June 10, 1991. He stated:

"There are no objective findings relating the onset of her above complaints with any specific injury. She states she is unable to work due to pain in the right shoulder and arm brought on by sitting and attempting to write. There are no objective findings in this regard as well. The onset of symptoms by her history was approximately February 7, 1991.... Based on her report of symptoms, her current work tolerance is less than one hour of sitting or writing."

As Dr. Seab did not find any objective evidence that appellant had any disability or medical condition which could be attributed to the 1985 employment injury, this report does not establish that appellant had any residuals from that injury.

In a report dated January 18, 1992, Dr. Marvin B. Zwerin, a Board-certified physiatrist and Office referral physician, provided a history of appellant's condition and findings on examination and diagnosed multiple sclerosis, nonindustrial, and resolved sequelae of the April 1985 employment-related motor vehicle accident. Dr. Zwerin stated:

"Her clinical examination at this time would suggest that she long ago recovered from the effects of the April, 1985 motor vehicle accident. The etiology of her current problem Multiple Sclerosis [MS] is indeterminate. Although a correlation between trauma and the onset of MS exists in the medical literature, the six year interval between the accident and the onset of symptoms in February, 1991 would make such cause/effect relationship most tenuous. such a cause/effect statement could not be substantiated with any reasonable medical probability.

"It would appear that there is no disability present at this time which relates to the effects of [appellant's] motor vehicle accident in April 1985. All of her present complaints with attendant disability appear to be on the basis of her demyelinating disease [multiple sclerosis], a nonindustrial process. However, she is and will permanently be totally disabled on the basis of that medical disorder.... No further medical treatment for the above condition is required on the basis of her industrial injury of [April] [19]85."

Thus, Dr. Zwerin concluded that appellant no longer had any residual disability or medical condition causally related to the 1985 employment injury.

In notes dated September 20, 1995, Dr. Richmon noted that Dr. Seab had previously made a diagnosis of multiple sclerosis. He provided findings on examination and stated his opinion that the diagnosis of multiple sclerosis was “questionable” at that time. However, he did not provide any opinion stating that appellant continued to have problems relating to her 1985 employment injury.

In a letter dated October 9, 1995, Dr. Seab related that appellant was seen by him in 1991 for an evaluation of hot and cold patches of sensation in her leg as well as right shoulder and neck pain and numbness on the left side. He related that he diagnosed multiple sclerosis with cervical core involvement. Dr. Seab noted that appellant had been involved in a 1985 motor vehicle accident with symptoms involving neck and low back pain which resolved after chiropractic treatment. Dr. Seab:

“While the immediate precipitant of your symptoms in 1991 are related to your multiple sclerosis, I do think prior injuries, such as the motor vehicle accident in 1985, contribute to subsequent musculoskeletal pains such as those which you continue to have problems with.”

However, Dr. Seab did not provide sufficient medical rationale explaining how appellant’s continuing symptoms in 1995 could be due to the 1985 employment-related motor vehicle accident which occurred 10 years earlier. His report is therefore of limited probative value and is not sufficient to overcome the opinion of Dr. Zwerin that appellant had no residual disability or medical condition causally related to the 1985 employment injury.

The April 2, 1996 and May 31, 1995 decisions of the Office of Workers’ Compensation Programs are affirmed.

Dated, Washington, D.C.  
July 8, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member