

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANIE L. PLEASANTS and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Oakland, Calif.

*Docket No. 96-1736; Submitted on the Record;
Issued July 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective May 3, 1996 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 benefits effective May 3, 1996.

On June 14, 1989 appellant, then a 50-year-old senior case processor, sustained lumbar radiculitis in the performance of duty while lifting heavy boxes.

Effective February 25, 1990, appellant was placed on the periodic compensation rolls to receive compensation benefits for temporary total disability. By letter dated April 2, 1996, the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that the evidence of record established that she no longer had any residuals from her June 14, 1989 employment injury. By decision dated May 3, 1996, the Office terminated appellant's compensation benefits effective that date.

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.¹

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

By letter dated February 13 1996, the Office referred appellant, along with a statement of accepted facts and copies of medical records to Dr. Geoffrey M. Miller, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether appellant had any continuing disability or medical condition causally related to her June 14, 1989 employment injury.

In a report dated March 15, 1996, Dr. Miller provided a history of appellant's condition, findings on examination, and the results of tests, and diagnosed acute cervical and lumbar strain sustained on June 14, 1989 and resolved without residuals, and nonindustrial multiple sclerosis. He stated that multiple sclerosis was a disease which was not caused by trauma and was not related to appellant's employment injury. Dr. Miller noted that there was an August 8, 1989 magnetic resonance imaging (MRI) scan report in which the radiologist noted that appellant had undergone an imaging study of the brain on November 3, 1988. He stated that this revealed that appellant had already been worked up for what would ultimately be proven to be multiple sclerosis eight months prior to her employment injury, thus indicating that not only was the multiple sclerosis a disease separate and apart from any work-related exposure, but was clearly preexisting. Dr. Miller stated that it appeared from the medical record that appellant sustained a relatively innocuous lifting incident in June 1989 that could have caused a straining injury but nothing beyond this. He stated that, within two months after this work incident, the medical record showed that appellant's symptoms were unchanged and that she was, in fact, discharged at the end of 1989 and told to return only if necessary. He related that, in 1990, because of persistent symptoms, appellant underwent the cervical MRI scan which gave the first evidence that she was suffering from multiple sclerosis, a diagnosis ultimately confirmed by her treating neurologist. Dr. Miller stated that what appeared to have occurred, based upon the medical record, was that appellant somehow continued to receive compensation benefits even though she was found ultimately to have multiple sclerosis as the actual source of her ongoing complaints. He stated that if appellant had been receiving benefits from the Office since 1989 it was due to a gross misunderstanding of the nature of her pathology and that her ongoing complaints were due to her multiple sclerosis and had nothing to do with the 1989 straining incident from which she had recovered with no residuals.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits based upon the comprehensive and well-rationalized report of Dr. Miller who opined that appellant no longer had any residual disability due to her employment-related lumbar radiculitis.

The May 3, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.

July 20, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member