

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN SULLIVAN and DEPARTMENT OF VETERANS AFFAIRS,
HOSPITAL, Brockton, Mass.

*Docket No. 96-908; Submitted on the Record;
Issued June 16, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective January 8, 1995; and (2) whether appellant has established continuing disability on or after January 8, 1995 causally related to her accepted employment injury.

The Board has duly reviewed this case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

Appellant filed a claim alleging on January 6, 1980 she injured her lower back, in the performance of duty. The Office accepted appellant's claim for low back strain on December 19, 1980 and entered appellant on the periodic rolls. The Office proposed to terminate appellant's compensation benefits on November 9, 1994. Appellant submitted a narrative statement alleging her continued employment-related disability. The Office terminated appellant's compensation benefits by decision dated December 12, and finalized December 22, 1994. Appellant requested an oral hearing and by decision dated October 10, 1995, the hearing representative affirmed the Office's December 12, 1994 decision.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.¹ 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

Appellant's attending physician, Dr. David W. Moore, a Board-certified orthopedic surgeon, diagnosed continuing low back pain and sciatica, secondary to a ruptured disc in her lumbosacral spine and resultant disability on July 10, 1992. He noted that x-rays demonstrated very localized degenerative arthritis at the L5-S1 level with severe facet joint arthritis. Dr. Moore completed a series of work restriction evaluations indicating that appellant was totally disabled.

The Office referred appellant for a second opinion evaluation with Dr. John Duff, a Board-certified orthopedic surgeon, on October 3, 1994. In a report dated October 24, 1994, Dr. Duff noted appellant's history of injury and physical findings. He diagnosed degenerative osteoarthritis of the spine with possible spinal stenosis. Dr. Duff stated that appellant was disabled from her date-of-injury position, but attributed this disability to advanced degenerative changes in her spine due to arthritis rather than to the January 1980 employment injury. He stated, "She is disabled in my opinion, but it is not in any way related to the injury of January 1980. I think it is just a normal process of the disease and I would not give any percentage of disability to her present situation from that accident in 1980."

In this case, appellant's attending physician, Dr. Moore, opined that appellant was disabled due to her accepted employment injury. The Office referral physician, Dr. Duff, also found that appellant was disabled, but concluded that this disability was not causally related to her accepted employment injury. The Board finds that there is a conflict of medical opinion evidence between Drs. Moore and Duff regarding the cause of appellant's current disability. Section 8123(a) of the Federal Employees' Compensation Act,⁵ provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." Because the medical opinion evidence of record is in conflict, the Office failed to satisfy its burden of proof in terminating appellant's compensation benefits.

⁴ *Id.*

⁵ 5 U.S.C. §§ 8101-8193, 8123(a).

The decisions of the Office of Workers' Compensation Programs dated October 10, 1995 and December 22, 1994 are hereby reversed.

Dated, Washington, D.C.
June 16, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member