

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LISA M. HARPER and U.S. INFORMATION AGENCY,
VOICE OF AMERICA, Washington, D.C.

*Docket No. 98-1129; Submitted on the Record;
Issued October 28, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective February 9, 1998.

The Board has duly reviewed the case on appeal and finds that the Office met its burden to terminate appellant's compensation benefits.¹

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.²

The facts in this case indicate that on April 15, 1996 appellant, then a 29-year-old budget analyst, sustained an employment-related cervical strain and contusion of the coccyx when she fell at work. She stopped work that day and returned for four hours daily for intermittent periods until she stopped work on July 7, 1997 and delivered a baby on July 10, 1997.³ She returned to four hours a day on September 8, 1997, stopped work on September 18, 1997 and returned to work on February 9, 1998. She received appropriate compensation during these intermittent periods. On November 4, 1997 the Office referred appellant, along with a statement of accepted

¹ The Board notes that on January 30, 1998 appellant filed an appeal that was assigned Docket No. 98-1026. By order dated September 8, 1998, this case was dismissed on the grounds that that Board did not have jurisdiction as the Office had not issued a final decision in this case at the time appellant filed her appeal with the Board on January 30, 1998. On February 10, 1998 the Office issued a final decision, and the instant appeal follows.

² See *Patricia A. Keller*, 45 ECAB 278 (1993).

³ The record indicates that she worked four hours on April 18, 1996 and did not work again until she returned for four hours per day on October 2, 1996, stopped work in December 1996 and returned to four hours per day on May 12, 1997.

facts, a set of questions and the medical record, to Dr. Arthur I. Kobrine, a Board-certified neurosurgeon, for a second opinion evaluation. Based on his reports, by letter dated January 9, 1998, the Office proposed to terminate appellant's compensation benefits. She submitted nothing in response to the proposed termination and by decision dated February 10, 1998, the Office terminated her medical and compensation benefits effective February 9, 1998.

The contemporaneous medical evidence establishes that appellant had no employment-related disability or residuals on or after February 9, 1998. While her treating neurologist, Dr. Stuart J. Goodman, continued to advise that she could not return to work, in reports dated October 7 and 14, 1997, he diagnosed chronic low back syndrome which had been exacerbated by a motor vehicle accident that occurred on September 19, 1997 and advised that she remained disabled due to this condition.⁴

In his report dated December 19, 1997, Dr. Kobrine noted appellant's history of injury and medical history and stated:

"I can find absolutely no evidence whatsoever of any neurologic impairment. The diagnostic studies are all absolutely normal. In my opinion there is no disability whatsoever from the accident of April 15, 1996 and I would clear [appellant] to return to unrestricted work activity. Clearly, taking care of a five-month-old baby at home requires more physical labor than her previous occupation and she does this with no help."

As there was no contemporaneous medical evidence supporting continuing disability due to appellant's accepted condition, and as Dr. Kobrine submitted a well-rationalized report finding that appellant's condition at the time of his examination was not due to her employment injury, the Office met its burden of proof to terminate appellant's compensation benefits, effective February 9, 1998.

⁴ Appellant also submitted an October 15, 1997 treatment note from Dr. John P. Byrne, an orthopedic surgeon, who did not discuss the cause of her condition.

The decision of the Office of Workers' Compensation Programs dated February 10, 1998 is hereby affirmed.

Dated, Washington, D.C.
October 28, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member