

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LATRICHIA BROWN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HOSPITAL, Philadelphia, Pa.

*Docket No. 98-1427; Submitted on the Record;
Issued October 6, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly determined that residuals of appellant's employment injury had ceased.

In the present case, the Office accepted that appellant, a diagnostic radiology technician, sustained a low back strain and a torn lateral meniscus in the right knee on March 6, 1994, when she slipped and fell in the performance of duty. Appellant underwent knee surgery on June 1, 1994, and returned to a light-duty position on August 8, 1994. By letter dated April 17, 1995, appellant was notified by the employing establishment that the light-duty position was no longer available, and she would be placed in a nonduty status as of April 19, 1995. The record contains a settlement agreement in a Merit Systems Protection Board action which indicates that appellant returned to work on January 2, 1996 as a file clerk, with back pay and leave restored for the period April 19, 1995 to January 1, 1996.

By letter dated April 26, 1996, the Office notified appellant that it proposed to terminate her compensation on the grounds that the weight of the medical evidence established that her employment-related condition had ceased. In a decision dated April 26, 1996, the Office terminated appellant's compensation benefits.

Appellant requested a hearing, and a hearing was held on November 19, 1996. By decision dated January 31, 1997, the hearing representative affirmed the termination decision.

The Board finds that the Office did not meet its burden of proof in terminating medical benefits.

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To 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.¹

The Board notes that in this case the record indicates that appellant had returned to work as of January 2, 1996. Appellant's representative indicated in a November 19, 1996 letter that appellant was not claiming entitlement to continuing compensation for wage loss, since she had returned to work and had her lost pay restored. The Office decision dated April 26, 1996 represents an adverse decision to the extent that it terminates entitlement to medical benefits.

In this case, the Office found a conflict between Dr. E. Balasubramanian, an attending orthopedic surgeon, and Dr. Noubar A. Didizian, an orthopedic surgeon serving as a second opinion referral physician. Dr. Didizian opined in a March 9, 1995 report that appellant's employment injury had resolved. Dr. Balasubramanian opined in an April 26, 1995 report that appellant had persistent pain in the lower back and right knee secondary to degenerative arthritis which was aggravated by the work injury.

The Office referred appellant, along with the case record and a statement of accepted facts, to Dr. Randall N. Smith, a Board-certified orthopedic surgeon selected as an impartial medical specialist. In a report dated May 22, 1995, Dr. Smith provided a history and results on examination. He stated in pertinent part:

"I have reviewed records, and it is my opinion that [appellant] has degenerative arthritis and discogenic disease in the lumbar spine, as well as degenerative arthritis of the right knee. I believe that this was aggravated by the fall of March 6, 1994.

"Basically, her present condition is as a result of the degenerative arthritis and not as a result of the March 6, 1994 fall. I do believe that she would have a lot of difficulty performing work that necessitated any lifting, carrying, bending, kneeling, crouching, and climbing. This would be necessary for her to perform her job as an x-ray technician without any limitations, but I believe that most of this is as a result of preexisting degenerative arthritis, with only a slight aggravation from the injury of 1994, *i.e.*, the slip in the parking lot in March. This injury, in itself, has healed and resolved."

With respect to the issue presented, the Board finds that Dr. Smith's statements are contradictory and do not resolve the question of whether appellant continued to have residuals of the employment injury had ceased. Although Dr. Smith stated that the injury, in itself, had resolved, in the previous sentence discussing appellant's current limitations, he stated that "most" of this was due to preexisting arthritis, with a slight aggravation from the employment injury. This statement would appear to support a continuing contribution from the employment injury, even if only a slight aggravation of an underlying condition.²

¹ *Furman G. Peake*, 41 ECAB 361 (1990).

² It is well established that any degree of aggravation by employment will be considered a compensable condition; *see Arnold Gustafson*, 41 ECAB 131 (1989).

The Office should have requested clarification from Dr. Smith as to whether appellant continued to have any residuals of the March 6, 1994 employment injury. It is, as noted above, the Office's burden to terminate medical benefits. The Board finds that Dr. Smith's report is not sufficient to resolve the conflict in the medical evidence and the Office has not met its burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated January 31, 1997 is reversed.

Dated, Washington, D.C.
October 6, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member