

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of JESSIE M. MILLINER and DEPARTMENT OF DEFENSE,
DEFENSE PERSONNEL SUPPORT CENTER, Philadelphia, Pa.

*Docket No. 99-38; Submitted on the Record;
Issued April 22, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation on January 3, 1998.

In the present case, appellant, then a 61-year-old sewing machine operator, filed a claim alleging that she sustained injuries in the performance of duty on October 20, 1981 when she tripped and fell while crossing a street. The Office accepted that appellant sustained contusions to both knees and the right side of her face and a posterior cervical strain/sprain. Appellant began receiving compensation for temporary total disability.

In a letter dated September 3, 1997, the Office advised appellant that it proposed to terminate her compensation on the grounds that the medical evidence established that her employment-related disability had ceased. By decision dated December 30, 1997, the Office terminated appellant's compensation effective January 3, 1998. Following a review of the written record, an Office hearing representative affirmed the termination by decision dated September 3, 1998.

The Board has reviewed the record and finds that the Office met its burden of proof in terminating appellant's compensation effective January 3, 1998.

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 her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹

In a report dated September 3, 1997, Dr. Kevin A. Mansmann, a Board-certified orthopedic surgeon serving as a second opinion referral physician, provided a history and results

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

on examination. He diagnosed bilateral knee pain without orthopedic substantiation. Dr. Mansmann reported acceptable range of motion for appellant's age, no effusion or significant swelling and no evidence of patellofemoral anterior compartment pain arthritis which would be consistent with the fall of her patella. Dr. Mansmann concluded, "I would not relate any of her complaints to an orthopedic problem as a result of any fall sixteen years ago, but rather age related."²

The Board finds that Dr. Mansmann provided a reasoned opinion, based on a complete background, that appellant did not continue to have an employment-related condition. This opinion constituted the weight of the evidence since there is no other contemporaneous medical evidence regarding appellant's current condition. The reports from appellant's attending physicians are not current and are of limited probative value to the issues presented. In a report dated April 26, 1991, Dr. E.L. Clark, an orthopedic surgeon, provided results on examination and stated that appellant was suffering from residual pain in both knees and traumatic osteoarthritis. He did not provide an opinion on causal relationship between a continuing condition and the employment injury. In a report dated January 26, 1993, Dr. Saleem Azeez, an internist, stated that appellant continued to have severe pain in both knees and remained totally disabled. He did not provide a reasoned opinion on causal relationship with employment.

Accordingly, the Board finds that the weight of the medical evidence establishes that appellant's employment-related condition had ceased by January 3, 1998.

The Board notes that the record contains prior development of the evidence regarding whether appellant had a psychiatric condition as a consequence of her employment injury. The Office found a conflict existed between an attending physician, Dr. Reuben E. Kron, a psychiatrist, and Dr. Jon Bjornson, a psychiatrist serving as a second opinion referral physician, as to whether appellant had chronic pain syndrome or depression as a consequence of her employment injury. In a report dated June 4, 1986, Dr. Perry Berman, a Board-certified psychiatrist, opined that there was no psychiatric or neurologic condition that was causally related to the employment injury. The Board finds that this opinion represented the weight of the evidence,³ and no additional medical evidence on this issue has been submitted.

Accordingly, the Board finds that the Office met its burden of proof in terminating compensation effective January 3, 1998 on the grounds that the medical evidence established that her employment-related condition had ceased by that date.

The decision of the Office of Workers' Compensation Programs dated September 3, 1998 is affirmed.

² The Board notes that the record also contains a report dated May 28, 1992 report from Dr. Henry S. Wieder, Jr., an orthopedic surgeon serving as an Office referral physician, opining that appellant's complaints were related to age, obesity and degenerative joint disease, not causally related to the employment injury.

³ It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict under 5 U.S.C. § 8123(a), the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight. *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

Dated, Washington, D.C.
April 22, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member