

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. GUTHRIE and DEPARTMENT OF THE AIR FORCE,
NEW JERSEY AIR NATIONAL GUARD, Fort Dix, NJ

*Docket No. 99-2137; Submitted on the Record;
Issued September 7, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits; and (2) whether appellant met her burden of proof to establish that she had any disability after May 13, 1998 causally related to her April 7, 1995 employment injury.

On April 7, 1995 appellant, then a 33-year-old pay technician, sustained a lumbosacral strain in the performance of duty. By decision dated May 5, 1997, the Office terminated her compensation benefits on the grounds that the weight of the medical evidence established that she had no continuing disability causally related to her April 7, 1995 employment injury. By decision dated May 13, 1998, an Office hearing representative affirmed the Office's May 5, 1997 decision.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office hearing representative dated May 13, 1998, which affirmed the May 5, 1997 Office decision terminating appellant's compensation benefits, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative which found that the Office met its burden of proof in terminating appellant's compensation benefits and herein incorporates by reference the findings and conclusions of the May 13, 1998 Office hearing representative decision. The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

The Board further finds that appellant failed to meet her burden of proof to establish that she had any disability after May 13, 1998 causally related to her April 7, 1995 employment-related lumbosacral strain.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In

order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.¹

Following the May 13, 1998 decision of the Office hearing representative affirming the Office's termination of appellant's compensation benefits, appellant requested reconsideration by letter dated October 15, 1998 and submitted additional evidence.

In a letter dated August 20, 1998, Dr. Steven B. Kirshner, appellant's attending orthopedic surgeon, referred the Office to his medical notes dated June 3, 1997 which related that appellant continued to have severe pain and could not perform even sedentary work. However, the June 3, 1997 notes are not sufficient to establish that appellant had any residuals of her April 7, 1995 employment injury after May 13, 1998, as they could not address appellant's condition as of May 13, 1998.

In a letter dated October 7, 1998, Dr. Kirshner stated:

"It is my opinion that [appellant's] current condition is directly related to her work injury dated April 7, 1995 as I feel the injury itself cause[d] her pain, problems, complaints and the result in disability. I state this with a reasonable degree of medical certainty based upon the fact that she had no previous problems with her back nor her leg."

This report does not contain the rationalized medical opinion necessary to establish disability after May 13, 1998. Furthermore, the Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relationship.² Therefore, this letter is not sufficient to establish that appellant had any residual disability or medical condition after May 13, 1998 causally related to her April 7, 1995 employment injury.

¹ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

² *Thomas D. Petrylak*, 39 ECAB 276, 281 (1987).

The decision of the Office of Workers' Compensation Programs dated March 16, 1999 is affirmed.

Dated, Washington, D.C.
September 7, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member