U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAUDIA GUERRA and DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, U.S. BORDER PATROL, Cotulla, TX

Docket No. 03-1914; Submitted on the Record;
Issued February 2, 2004

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective May 18, 2003 on the grounds that she no longer had any continuing disability due to her July 26, 2002 accepted employment injury.

On August 6, 2002 appellant, then a 26-year-old border patrol agent, filed a traumatic injury claim alleging that on July 26, 2002 she sustained a stress fracture to her right and left hips. Appellant stated that she was at the employing establishment's academy in Charleston, South Carolina and she went for a run with her class when she felt pain in her right hip. Appellant further stated that she continued to run and the pain increased that day. She stopped work on August 7, 2002.

By letter dated October 3, 2002, the Office accepted appellant's claim for a right hip strain/sprain.

In a March 20, 2003 medical treatment note, Dr. Philip Holzknecht, a Board-certified orthopedic surgeon and appellant's treating physician, found that appellant could perform full activities, but she might not be able to perform the exercises and activities of basic training.[1] The Office also received Dr. Holzknecht's March 21, 2003 treatment notes reiterating that, although appellant was released to unrestricted activities, she could not return to basic training due the required physical conditioning program. In an August 7, 2002 letter, Thomas J. Walters, Chief Patrol Agent at the employing establishment, advised Dr. Holzknecht that appellant was withdrawn from training for medical reasons. Mr. Walters requested that Dr. Holzknecht use the criterion on an attached checklist to determine whether appellant was physically capable of participating in training. He stated that "The Federal Law Enforcement Training Center physician will not permit [appellant] to resume training with physical impairment which would restrict her ability to participate fully in all activities in all of these activities." Dr. Holzknecht

[1] Appellant resigned from the employing establishment effective March 24, 2003.

completed and signed the checklist on March 20, 2003 indicating that appellant was capable of performing all the requirements of the training program except the physical conditioning demands.

On April 14, 2003 the Office issued a notice of proposed termination of appellant's compensation benefits finding that Dr. Holzknecht's March 20, 2003 treatment note established that appellant was no longer disabled. Appellant was given 30 days to provide additional evidence or argument if she disagreed with the proposed action. Appellant did not submit any additional medical evidence.

By decision dated May 22, 2003, the Office finalized the termination of appellant's compensation benefits effective May 18, 2003.

The Board finds that the Office improperly terminated appellant's compensation benefits effective May 18, 2003 on the grounds that she no longer had any continuing disability due to her July 26, 2002 accepted employment injury.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. 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] The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.[3]

In terminating appellant's compensation benefits on the grounds that she no longer had any disability due to her accepted employment-related right hip strain/sprain, the Office relied on Dr. Holzknecht's March 20, 2003 treatment note. Dr. Holzknecht provided the results of appellant's laboratory tests and bone scan. He diagnosed continued right hip pain and noted that the etiology was obscured. Regarding appellant's medical plan, Dr. Holzknecht stated that maximized orthopedic intervention was necessary for appellant at that time. He further stated that "I do not feel that [appellant] will be able to resume the training that would likely result in her going to school at South Carolina with the Border Patrol." Dr. Holzknecht noted that appellant understood that, although she could perform full activities, she might not be able to perform the exercises and activities required in basic training. He further noted that appellant would likely fail out from the program. Dr. Holzknecht recommended that appellant not return to basic training, but stated that she could perform full activities as tolerated.

In his March 21, 2003 treatment notes, Dr. Holzknecht stated that, "although [appellant] has been released to unrestricted activities, I do not feel that she would benefit from returning to basic training as I think that the physical conditioning program would provide adverse demands on her legs and likely result in her failing out of the program again." In light of this, he concluded that "we will have her do activities, but my recommendation is not to return to basic

[2] *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

[3] *Larry Warner*, 43 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

training at this time." He further concluded that appellant had no impairment rating for her condition.

On the checklist providing the performance requirements of the training program he completed and signed, Dr. Holzknecht placed a checkmark in the column marked "yes" indicating that appellant could fire a shotgun, rifle and submachine gun under handgun/shotgun stress. He also indicated that appellant could employ nonlethal control techniques such as, arrest techniques and defensive tactics. Further, Dr. Holzknecht indicated that appellant could perform cardiopulmonary resuscitation, employ impact weapons techniques, participate in physical efficiency battery, the confidence course and survival swimming, employ boxing techniques, operate a motor vehicle and withstand "OC" spray exposure in the face from six feet. Dr. Holzknecht, however, indicated that appellant could not participate in physical conditioning, which included activities such as, warm-up and cool down exercises, flexibility, calisthenics, weight training, jogging/running long distances, use of stationary exercise equipment, swimming and rowing exercises for two hours per session, two to five times per week. He opined that appellant could safely perform only those demands indicated by a mark in the "yes" column. Dr. Holzknecht concluded that "I doubt she will be able to return to basic training."

The Board has carefully reviewed Dr. Holzknecht's treatment notes and finds that the medical evidence is insufficient to establish that appellant no longer has any disability causally related to her July 26, 2002 employment injury. Dr. Holzknecht opined that appellant could not participate in basic training and perform physical conditioning activities while Mr. Walters of the employing establishment stated that appellant had to participate fully in all the training activities in order to resume training. Further, a description of the position of border patrol agent provides, among other things, the physical demands of the position, which included considerable and strenuous physical exertion. A description of the physical requirements of the border patrol agent position included "participation in physical training."

As Dr. Holzknecht opined that appellant could not participate in physical training, which is a requirement of her job as a border patrol agent. The Board finds that the Office improperly terminated appellant's compensation benefits on the grounds that her employment-related disability had ceased. Therefore, the Office has not met its burden of proof in terminating appellant's compensation in this case.

The May 22, 2003 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
February 2, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member