

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE C. ROGERS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Biloxi, Miss.

*Docket No. 96-1514; Submitted on the Record;
Issued July 22, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective January 11, 1992 on the grounds that she had no residual medical condition or disability causally related to her accepted employment conditions of chronic lumbar strain.

This is the second appeal in this case to the Board. The Board's decision and order of December 4, 1986 set forth the relevant facts and circumstances of the case and is hereby incorporated by reference.¹ In that decision, the Board set aside the Office's finding that appellant's disability had ceased effective August 6, 1986 and remanded the case for further development of the medical evidence. After such development, the Office reinstated appellant's compensation benefits for temporary total disability. On December 17, 1991 the Office notified appellant that it proposed termination of her compensation on the grounds that any continuing disability from her September 7, 1984 employment injury had ceased. In a decision dated January 22, 1992, appellant's compensation was terminated effective January 11, 1992. In a merit decision dated September 14, 1993, an Office hearing representative affirmed the Office's termination of appellant's compensation effective January 22, 1992, but remanded the case for further development of the evidence that was submitted subsequent to that termination. After further development of the evidence, the Office reaffirmed its termination of appellant's compensation effective January 11, 1992. In a decision dated December 14, 1994, an Office hearing representative affirmed the February 16, 1994 decision of the Office. In a merit decision dated January 18, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification.

The Board has carefully reviewed the entire case record in this appeal and finds that the Office properly terminated appellant compensation effective January 11, 1992.

¹ As appellant was not married at the time of the first appeal, it was filed as *Joyce C. Lewis*, Docket No. 86-2189 (issued December 4, 1986).

Under the Federal Employees' Compensation Act,² once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.³ After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁴

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁵ Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after January 11, 1992, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

In the present case, the Office initially terminated appellant's compensation by decision dated January 22, 1992 based on her failure to respond with additional evidence to the proposed notice of termination dated December 17, 1991. The proposed termination was based on the January 1990 work evaluation form completed by Dr. J.F. McGowin, a Board-certified orthopedic surgeon and Office referral physician, who reported that appellant was capable of working eight hours a day with lifting restrictions of 10 to 20 pounds, and the June 14, 1991 report by Dr. Richard Buckley, a neurosurgeon and appellant's treating physician. He reviewed several positions forwarded from appellant's rehabilitation counselor and indicated that there was no objective basis why she could not resume normal working activities. The January 22, 1992 termination of compensation effective January 11, 1992 was proper.

Subsequent to that decision, appellant submitted additional medical evidence, asserting that she had continuing medical conditions and disabilities that were causally related to her September 7, 1984 accepted employment injury. Appellant submitted medical records from the Gulf Coast Medical Center that revealed she was hospitalized on September 16, 1992 and from February 28 to March 5, 1993 for acute lumbar neuralgia. The records also indicate that she received emergency treatment for lumbar strain on several occasions and her records reflected a history of chronic lumbar neuralgia. Dr. Lance Barnes, an osteopath, was her treating physician during her hospitalizations and provided a discharge diagnosis of acute lumbar neuralgia. While Dr. Barnes did indicate that appellant usually was hospitalized three times a year for this condition, he did not report that appellant's chronic lumbar neuralgia was causally related to her accepted employment injury. A review of the emergency room reports also reflects that none of the emergency room physicians opined that the conditions for which appellant sought medical

² 5 U.S.C. §§ 8101-8193.

³ *William Kandel*, 43 ECAB 1011 (1992).

⁴ *Carl D. Johnson*, 46ECAB 804 (1995).

⁵ *Dawn Sweazey*, 44 ECAB 824 (1993).

⁶ *Mary Lou Barragy*, 46 ECAB 781 (1995).

attention were related to her September 1984 injury. In a report dated June 22, 1993, Barnes provided a review of his treatment of appellant which began in August 1983. He stated that he was aware of her September 7, 1984 employment injury and had provided continuing treatment for complaints of low back pain that were the result of her work-related accident. Dr. Barnes provided a synopsis of appellant's hospitalizations and indicated that the diagnosis for those medical treatments was chronic lumbar neuralgia. He predicted that appellant's condition would require three to four hospitalizations per year in the future. Dr. Barnes also concluded that appellant could perform clerical work with no labor intensive job assignments. This report is not rationalized and is insufficient to establish that appellant has any continuing disability causally related to her accepted employment injury. Dr. Barnes has not provided any explanation for his conclusion that the diagnosed condition was caused by appellant's 1984 employment injury, he has not specified what that injury was, and he has not provided any objective tests or evidence to support his conclusion. Consequently, his report is of diminished probative value since it is not based on a complete history of injury and is not well rationalized.

Appellant also submitted medical reports and office notes by Dr. Buckley. In office notes dated May 7, 1992, Dr. Buckley examined appellant after an absence of almost a year. He noted that she had a flare up of her back condition but related it to carrying her nephew, who was 13 years old, out of the house and to the hospital when he was suffering from smoke inhalation after a fire. As Dr. Buckley indicates that appellant's condition and the consequential pain radiating down her leg was due to an intervening cause, this condition and any disability stemming from it is not related to the accepted employment injury. In a report dated January 12, 1993, Dr. Buckley diagnosed degenerative lumbar disc disease and left sciatica, reported that appellant achieved maximum medical improvement on July 16, 1986 and indicated that there was no permanent impairment from appellant's September 1984 employment injury but appellant was limited to light-duty work, eight hours a day with restrictions on lifting and carrying. He indicated that appellant's injury was causally related to her employment injury. In response to a request by the Office for clarification of whether there was any objective basis for appellant's complaints and whether she had any residuals of her employment injury, Dr. Buckley provided a report dated October 11, 1993. He stated that "other than her obesity and minor degenerative changes in the lower back there was no medical rationale for inability to perform light working activities." Dr. Buckley indicated that he could not "state to any reasonable medical probability that [appellant's] current problems are related to an incident occurring in September of 1984." In office notes dated September 22, 1995, Dr. Buckley diagnosed chronic degenerative disc disease and mechanical back. Dr. Buckley's October 1993 report elaborates on his earlier reports which related appellant's medical condition to causes other than her accepted employment injury and supports the Office's termination of compensation. The office notes from September 1995 do not address the central issue of whether the diagnosed condition and any disability are causally related to the accepted employment injury., the notes are not sufficient to overcome the reports upon which the termination of compensation was based. The Office properly terminated appellant's compensation effective January 11, 1992, and appellant has not submitted sufficient evidence to establish any basis for modification of that determination.

The decision of the Office of Workers' Compensation Programs dated January 18, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 22, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member