

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE E. MISTER and DEPARTMENT OF VETERANS AFFAIRS,
SEPULVEDA VETERANS HOSPITAL, Sepulveda, Calif.

*Docket No. 96-897; Submitted on the Record;
Issued March 12, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she had any continuing disability after May 26, 1982 causally related to her accepted February 14, 1980 employment injury.

This is the second appeal of this case. By decision dated May 27, 1983,¹ the Board found that the report of Dr. Harold B. Markowitz, an impartial medical specialist, constituted the weight of the medical evidence and established that appellant's disability, causally related to the accepted injury, ceased by May 26, 1982.²

Appellant thereafter submitted several requests for reconsideration to the Office. The Office denied appellant's requests for reconsideration by decisions dated April 17 and 19, July 13 and December 1, 1995, after merit review.

The Board finds that appellant has not established that she had any continuing disability after May 26, 1982 causally related to her accepted February 14, 1980 employment injury.

In the prior appeal, the Board found that the weight of the medical evidence was represented by the report of Dr. Markowitz, a Board-certified orthopedic surgeon selected as the impartial medical specialist, which established that appellant had no residual disability or condition causally related to her employment injury, accepted for cervical, thoracic and lumbar strains, after May 26, 1982. The Board held that the report of the impartial medical specialist was entitled to the weight of the evidence as it was sufficiently well rationalized and based upon

¹ Docket No. 83-711 (issued May 27, 1983).

² The Office of Workers' Compensation Programs had accepted that appellant, a ward clerk fell on February 14, 1980 sustaining cervical, thoracic and lumbosacral strains.

a proper factual background, and the Office had met its burden of proof to terminate appellant's compensation benefits with receipt of this report.³

Once the Office has accepted a claim for compensation and has begun payment of compensation, it has the burden of establishing that the condition for which compensation is paid has ceased or is no longer causally related to the accepted employment injury.⁴ If, however, the Office meets its burden of proof and properly terminates compensation, appellant bears the burden of proof to establish continuing disability.⁵

In the present case, appellant bears the burden of proof to establish continuing disability. On March 15, 1995 appellant requested that the Office reconsider her claim. In support of this request for reconsideration, appellant alleged that due to her employment injury in 1980, a baby son died shortly after birth in April 1980 and that she developed hypertension resulting from the stress of the employment injury and the death of her son. Appellant submitted a report from Dr. J.T. Brooks, dated August 15, 1990. Dr. Brooks related that appellant was seen by his associate, Robert Skelton, an internist, as a consultant during a hospitalization on December 12, 1981. At that time, appellant's workup revealed nothing specific except obesity, hypertension, with blood pressure of 180/120, and headaches, with no specific cause for the hypertension noted. Dr. Brooks related that appellant was again seen in 1989 with chest pain, headaches and hypertension. While Dr. Brooks did provide a diagnosis of hypertension, he did not causally relate this condition to appellant's employment injury. As Dr. Brooks did not address the relevant question, that is whether appellant remained disabled after May 26, 1982 due to residuals of her accepted employment injury his report is of limited probative medical value.

Appellant also submitted a report dated March 16, 1988 from Dr. Gordon L. Clark, a Board-certified orthopedic surgeon, pertaining to an examination of appellant's medical records for the State Compensation Insurance Fund. Dr. Clark noted that appellant had sustained injuries on February 14, 1980 and July 25, 1985. Dr. Clark related that appellant's 1980 back injury left her with residual symptoms in the low back area and that apportionment was appropriate with respect to her July 25, 1985 injury. Dr. Clark concluded that 50 percent of appellant's present back condition would have been in its present state, absent the 1985 injury. While Dr. Clark concluded that appellant did have some residual symptoms from her 1980 employment injury, he again did not address the relevant issues in this case. Dr. Clark did not address whether or why residuals of the accepted strains would have caused appellant disability from work after May 26, 1982, therefore his report is of limited probative medical value.

In support of her June 8, 1995 request for reconsideration, appellant submitted progress notes from Dr. George Thomas, III, appellant's treating physician, dated from February 1980 to June 1982, as well as notes dated June 7 and August 2, 1993. In the June 14, 1982 note, Dr. Thomas noted chronic lumbosacral strain and back pain. Likewise in his July 7, 1993 note,

³ See *Thomas Bauer*, 46 ECAB 257 (1994).

⁴ *Gary R. Sieber*, 46 ECAB 215 (1994).

⁵ See *Virginia Davis-Banks*, 44 ECAB 389 (1993).

Dr. Thomas stated an impression of acute, severe lumbosacral strain, and in his August 2, 1993 note, Dr. Thomas stated an impression of acute thoracolumbar strain and acute and chronic moderate severe lumbosacral strain. In a report dated August 10, 1995, Dr. Thomas stated that as of December 18, 1980 appellant was “felt to be permanently disabled and stationary at that time with lower back pain.” He added that appellant was seen again on August 10, 1995 with an impression of severe lower back pain. On September 15, 1995 Dr. Thomas reported that appellant had fallen on her right knee on September 3, 1995 and had experienced an increase in her severe low back pain.

The Board notes that Dr. Thomas was appellant’s treating physician and his progress notes were of record at the time she was referred to Dr. Markowitz to resolve the conflict in medical opinion regarding appellant’s continuing disability. Dr. Thomas again examined appellant in 1993 and 1995 and continued to note his opinion that appellant had a chronic lumbosacral strain and thoracolumbar strain. The Board has held, however, that if appellant’s attending physician was on one side of the conflict in medical opinion which was resolved by an impartial specialist, additional reports of the attending physician are insufficient to overcome the weight of the impartial specialist or to create a new conflict in medical opinion.⁶ Dr. Thomas’ opinion regarding the continuing nature of appellant’s condition is not sufficient to outweigh the opinion of the impartial medical specialist that appellant’s accepted condition did cease in 1982.

Appellant also submitted a January 26, 1990 form report from Dr. Walter F. Jekot, which noted that appellant had chronic back pain, which was probably of permanent duration. As Dr. Jekot did not explain the medical basis of appellant’s pain complaints, did not explain how such was causally related to the accepted injury and did not explain why such would disable appellant, his report is also of limited probative medical value.

Finally, the Board notes that appellant has also submitted a social security determination to substantiate her claim of disability. The Board has held that approval of a disability claim by another federal agency under its rules and regulations is not determinative of a claimant’s entitlement to compensation under the Federal Employees’ Compensation Act.⁷

Appellant has not submitted the necessary probative medical evidence to establish continuing disability after May 26, 1982. The Office therefore properly denied appellant’s requests for reconsideration.

⁶ *Dorothy Sidwell*, 41 ECAB 857 (1990).

⁷ *See Harrison Combs, Jr.*, 45 ECAB 716 (1994).

The decisions of the Office of Workers' Compensation Programs dated December 1, July 13, April 19 and 17, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 12, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member