

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NETTIE B. THOMAS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Houston, TX

*Docket No. 99-545; Submitted on the Record;
Issued August 22, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to establish that residuals of appellant's September 18, 1983 employment injury resolved by July 24, 1998.

On September 18, 1983 appellant, then a food service worker, sustained an injury in the performance of her duties while bending over to remove food trays from a cart. Her attending orthopedist, Dr. F.O. McGehee, diagnosed traumatic injury to the lumbar and cervical spine with aggravation of her preexisting cervical arthritis. The Office accepted appellant's claim for the condition of low back strain.

Dr. McGehee continued to report minimal improvement in appellant's condition. He reported that she was totally disabled and should retire as a result of her medical condition. Appellant retired from federal employment and elected to receive disability compensation in lieu of retirement benefits.

On October 16, 1997 the Office referred appellant, together with copies of the medical record and a statement of accepted facts, to Dr. Henry D. Wilde, Jr., an orthopedist, for a second opinion examination.

In a report dated November 11, 1997, Dr. Wilde related appellant's history, medical course and current complaints. He described his findings on both physical and radiographic examination. Dr. Wilde diagnosed degenerative arthritis L1-S1 with marked changes at L5-S1, lumbar spondylosis without radiculopathy and lumbar sprain "remote and now recovered." He discussed the issue of injury-related residuals as follows:

"From review of the medical records and from the interview with the patient as well as her physical examination, it would appear to me that the patient had preexisting osteoarthritis of her lumbar spine which was aggravated by the

[injury] and did produce several months of muscle spasm compatible with a lumbar spine sprain. The patient has long recovered from the lumbar sprain, and there is no physical finding compatible with a continuation of this original diagnosis. Findings and complaints verbalized by the patient today I think are totally explained by her advanced age and general deterioration of her bony skeleton. I find no continuing findings that persist that are related to her original injury. Much of her ambulation problems and change of position complaints are due to the arthritis in her hip which is unrelated to her original injury.”

Dr. Wilde found that appellant was disabled from the position of food service worker. The decision not to return to this work, he explained, was not because of a persistence of a lumbar strain but because of preexisting osteoarthritis and the aging process over the 14 years since the injury occurred. “Typically a lumbar strain alone would not prevent [appellant] from working at her preinjury job as a food service worker, rather her advanced age of 82 and her general deterioration of her body are the sole causes.”

On June 24, 1998 the Office issued a notice of proposed termination of compensation and medical benefits. The Office advised that the weight of the medical evidence established that appellant had no continuing disability or medical condition as a result of her September 18, 1983 injury. The Office allowed appellant 30 days to submit additional evidence or argument. Dr. McGehee, having passed away, appellant submitted copies of two of his reports from 1982 and 1984.

In a decision dated July 24, 1998, the Office terminated appellant’s compensation benefits. The Office found that Dr. Wilde’s opinion constituted the weight of the medical evidence.

After appellant filed her appeal with the Board on October 21, 1998, the Office issued nonmerit decisions denying reconsideration on October 28 and December 17, 1998. Under the principles discussed in *Douglas E. Billings*,¹ these decisions, issued by the Office while the Board had jurisdiction over the case, are null and void.

The Board finds that the Office has met its burden of proof to establish that residuals of appellant’s September 18, 1983 employment injury resolved by July 24, 1998.

It is well established that, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² 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.³

¹ 41 ECAB 880 (1990).

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

In his November 11, 1997 report, Dr. Wilde, the orthopedist and second opinion physician, explained that appellant had long recovered from her lumbar sprain. He based this on a review of the medical records, his interview with appellant and her physical examination. There were no physical findings compatible with a continuation of this diagnosis. Rather, appellant's current findings and complaints were totally explained by her advanced age and the general deterioration of her bony skeleton. No continuing findings persisted that were related to her original injury. Further, Dr. Wilde made clear that appellant's current disability was not because of a persistence of a lumbar strain but because of preexisting osteoarthritis and the aging process over the 14 years since the injury occurred. A lumbar strain alone, he explained, typically would not prevent appellant from working at her preinjury job as a food service worker. Appellant's advanced age and the general deterioration of her body were the sole causes of her disability.

The Board finds that Dr. Wilde's opinion is well reasoned and is based on an accurate factual and medical history. Reports from Dr. McGehee in 1982 and 1984 are not relevant to whether residuals of appellant's September 18, 1983 employment injury resolved by July 24, 1998. Although Dr. McGehee reported that the employment injury had aggravated appellant's preexisting condition, he offered no reasoned medical opinion to establish that the aggravation was permanent. The Board finds that Dr. Wilde's opinion represents the weight of the medical opinion evidence in this case and justifies the Office's termination of benefits. The Office has met its burden of proof.

The July 24, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 22, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member