

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRIS D. PETERSON and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Durham, NC

*Docket No. 99-1165; Submitted on the Record;
Issued October 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective November 24, 1997 on the grounds that she had no disability due to her employment injury after that date.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective November 24, 1997 on the grounds that she had no disability due to her employment injury after that date.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

In December 1995 appellant, then a 32-year-old medical clerk, filed a traumatic injury claim alleging that she sustained an employment-related neck and upper back condition. The Office accepted that appellant sustained cervical and thoracic strains due to typing and answering telephones at work in November 1995. Appellant worked full time immediately after her injury but later worked for four hours per day in a light-duty position for the employing

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

establishment.⁵ By decision dated November 24, 1997, the Office terminated appellant's compensation effective November 24, 1997 on the grounds that she had no disability due to her employment injury after that date. The Office based its termination on the opinion of Dr. James A. Maultsby, a Board-certified orthopedic surgeon to whom it referred appellant. By decision dated and finalized November 10, 1998, an Office hearing representative affirmed the November 24, 1997 Office decision.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Maultsby, the Office referral physician. The September 17, 1997 report, of Dr. Maultsby establishes that appellant had no disability due to her employment injury after November 24, 1997.

In his report, Dr. Maultsby detailed appellant's factual and medical history including her history on injury and medical treatment. He noted that on examination appellant's passive spinal motion was greater than twice her active motion. Dr. Maultsby indicated that appellant tested positive for symptom magnification, that there was no objective weakness of her neck and that she displayed poor effort upon grip strength testing. He diagnosed resolved cervical and thoracic strains and nonwork-related fibromyalgia. Dr. Maultsby determined that appellant could perform the medical clerk position and stated:

"In summary there were no true objective findings present during the examination of [appellant], they were all subjective. The limitation of motion of her neck was voluntary. The diagnosis of fibromyalgia is primarily based on reported pain and general body tenderness but without trigger points (trigger points being pain that would cause referred pain distally). The subjective complaints definitely do not correspond with objective findings. I do not feel that the patient's current conditions are related to the work injury. The reported use of the telephone could not have caused the overall total body pain that she is experiencing now."⁶

The Board has carefully reviewed the opinion of Dr. Maultsby and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Maultsby's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Maultsby provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁷ He provided medical rationale for his opinion by explaining that, upon examination and diagnostic testing, appellant did not exhibit any objective residuals of her employment injury. Dr. Maultsby

⁵ Appellant briefly returned to working eight hours per day but later went back to working four hours per day.

⁶ Dr. Maultsby recommended that appellant progressively increase her work hours over the next month from four to eight hours per day. He did not indicate that this work plan was necessitated by any employment-related condition.

⁷ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

further explained that appellant's continuing problems were due to nonwork-related problems such as fibromyalgia and noted that symptom magnification played a role in her condition. He noted that appellant's work injury was the type of condition which would have resolved itself.⁸

The record contains reports of Dr. Ronald Sha, an attending Board-certified family practitioner, but these reports are of limited probative value on the relevant issue of the present case. In a report dated August 27, 1997, Dr. Sha recommended work restrictions, including lifting no more than 10 pounds and working no more than 4 hours per day and indicated that appellant suffered from chronic neck pain secondary to degenerative joint disease and low back pain secondary to myofascial sprain. This report is of limited probative value because he did not provide an opinion that appellant's continuing disability was due to the accepted employment injury, cervical and thoracic strains.⁹ Rather, Dr. Sha suggested that appellant's problems were related to nonwork-related problems, including a preexisting degenerative neck condition and a low back condition. In form reports dated between September and December 1997, he diagnosed chronic trapezius myofascial sprain and checked boxes indicating that appellant's condition was related to her November 30, 1995 employment injury. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to show causal relationship.¹⁰ Dr. Sha did not provide medical rationale to support his opinion that appellant's soft-tissue employment injury continued to cause disability.¹¹

⁸ In a report dated September 8, 1997, Dr. Verne Schmickley, a clinical psychologist to whom the Office referred appellant, diagnosed dysthymic disorder, somatoform pain disorder and dependent-type personality disorder. He indicated that these conditions were not employment related and noted that appellant was prone to psychophysiological musculoskeletal tension. The Office has not accepted that appellant has an employment-related emotional condition.

⁹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹¹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

The decision of the Office of Workers' Compensation Programs dated and finalized November 10, 1998 is affirmed.

Dated, Washington, DC
October 2, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member