

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNDA A. HERRINGTON and VETERANS ADMINISTRATION,
JAMES A. HALEY HOSPITAL, Tampa, Fla.

*Docket No. 96-1333; Submitted on the Record
Issued April 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has established that she had any continuing disability after February 6, 1994 causally related to her May 30, 1991 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant, a licensed practical nurse, sustained low back strain, left shoulder and arm sprains as a result of a fall from a chair on May 30, 1991. Appellant received temporary total disability wage- loss benefits as of October 23, 1991. The Office terminated appellant's compensation benefits, effective February 6, 1994, by decision dated January 18, 1994, on the grounds that the weight of the medical evidence established that appellant's disability resulting from the injury of May 30, 1991 had ceased. The Office based its termination of compensation upon the second opinion evaluation of Dr. Richard F. Lyster, a Board-certified orthopedic surgeon, who concluded that appellant could return to work in her previous position and that appellant was no longer disabled due to the accepted injury. The Office also noted that appellant's treating orthopedic surgeon, Dr. Fabio F. Fiore, had reported on December 6, 1991 that appellant had a preexisting degenerative osteoarthritis of the lumbar spine, which was not related to the employment injury, and that in a November 17, 1992 OWCP-5 form report he indicated that appellant could work eight hours a day "to tolerance" with no physical restrictions.

By decision dated December 11, 1994 and finalized on December 12, 1994, an Office hearing representative affirmed the termination of appellant's compensation benefits. The Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated December 11, 1994 and finalized on December 12, 1994, is in accordance with the facts and law in this case and hereby adopts the findings and conclusions of the hearing representative. Once the Office has accepted a claim for compensation and has begun payment of compensation, it has the burden of establishing that the condition which compensation is paid has ceased or is no longer causally related to the accepted employment injury.¹ If, however, the Office meets its

¹ Gary R. Sieber, 46 ECAB 215 (1994).

burden of proof and properly terminates compensation, appellant bears the burden of proof to establish continuing disability.² As the Office did meet its burden of proof to terminate appellant's compensation benefits, appellant bears the burden of proof to establish continuing disability after February 6, 1994 causally related to the accepted injury.

Following the hearing representative's decision, on September 29, 1995 appellant's representative requested that the Office reconsider appellant's claim. In support of this request for reconsideration appellant's representative submitted a number of progress notes dated from October 7, 1994 to March 28, 1995 from Dr. Thomas A. DiGeronimo, a Board-certified neurologist. The Office denied modification of the prior decision, after merit review, on January 12, 1996.

In his reports, Dr. DiGeronimo noted that appellant had a history of chronic lumbar sacral sprain with disc bulge and facet hypertrophy in the lumbar sacral area. Dr. DiGeronimo indicated that appellant had decreased flexion of the hips and had difficulty walking. Dr. DiGeronimo indicated that he treated appellant with trigger point injections for pain and he recommended physical therapy. In his March 28, 1995 report, Dr. DiGeronimo also indicated that appellant was not presently capable of working. Dr. DiGeronimo offered no medical opinion as to whether appellant's current condition was causally related to the accepted injury, and if so how the accepted injury, which was accepted for lumbar and left shoulder arm strains, had caused the conditions for which he treated appellant. Dr. DiGeronimo also did not explain why medically appellant was not capable of returning to her former employment. As Dr. DiGeronimo did not provide a rationalized medical opinion, based upon a proper factual background, explaining why appellant had continuing disability causally related to the accepted injury the Office properly denied modification of the prior decision, which determined that appellant was not entitled to compensation benefits after February 6, 1994.³

² See *Virginia Davis-Banks*, 44 ECAB 389 (1993).

³ *Mark A. Cacchione*, 46 ECAB 148 (1994).

The decision of the Office of Workers' Compensation Programs dated January 12, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 24, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member