

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA G. PERKINSON and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Vicksburg, Miss.

*Docket No. 98-344; Submitted on the Record;
Issued April 22, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective March 19, 1997.

In the present case, appellant filed a claim for a low back injury in the performance of duty on August 6, 1992. Appellant worked intermittently and then stopped working in March 1995. The Office accepted the claim for lumbar strain, aggravation of degenerative disc disease at L5-S1, anxiety reaction and a stomach ulcer as a consequence of the anxiety reaction. By letter dated February 6, 1997, the Office advised appellant that it proposed to terminate her compensation on the grounds that the weight of the medical evidence established that she no longer had a continuing employment-related disability. In a decision dated March 19, 1997, the Office terminated appellant's compensation. Appellant requested reconsideration and by decision dated August 19, 1997, the Office denied modification of the prior decision.

The Board has reviewed the record and finds that the Office did not meet its burden of proof in terminating compensation in this case.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹

In the instant case, the Office has accepted that appellant sustained lumbar injuries as well as an anxiety reaction. The Board notes that the record contains significant medical development as to both the physical and emotional conditions. With respect to the back, a second opinion referral physician, Dr. S.J. Wilder, an orthopedic surgeon, diagnosed

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

degenerative disc disease and a herniated nucleus pulposus in a November 28, 1995 report. Dr. Wilder opined that appellant continued to have an employment-related disability.

In terminating compensation, the Office relies on evidence from another second opinion referral physician, Dr. Robert R. Smith, a neurosurgeon. In a July 11, 1996 report, Dr. Smith provided a history and results on examination, stating that appellant had degenerative disc problems with a great deal of “supratentorial overlay and perhaps depression contributes.” He concluded that “most probably, [appellant] can be released to some kind of light-duty schedule. I did not find any significant neurological or mechanical findings indicating major back dysfunction.” Clearly this report is not sufficient to terminate compensation, since Dr. Smith does not offer any opinion that appellant is no longer disabled as a result of the employment injuries. In a letter dated July 22, 1996, the Office enclosed a copy of appellant’s job description and requested that Dr. Smith answer questions regarding appellant’s condition. Dr. Smith checked a box “yes” that appellant could return to her position as a secretary, without providing any additional explanation. It is well established that the checking of a box “yes” is of limited probative value without accompanying medical rationale to support the opinion.² Dr. Smith does not provide any medical reasoning or explanation. He had earlier indicated that appellant could probably be released to some kind of light duty and it is not clear whether the checking of a box “yes” represents a change in that opinion or whether his understanding of a “light-duty schedule” included appellant’s date-of-injury job. The Office has the burden of proof to terminate compensation and the Board finds that Dr. Smith’s reports are not of sufficient probative value to meet that burden.

With regard to appellant’s emotional condition, the Board notes that a second opinion referral physician, Dr. Mario R. Pineda, a psychiatrist, had opined in an April 10, 1996 report that appellant continued to be disabled for her secretary position. An attending psychologist, Dr. James P. Flanders, checked a box “yes” on March 12, 1996 that appellant could return to her date-of-injury position provided she did not have to work with a certain supervisor. The Office found that Dr. Flanders represented the weight of the evidence, but Dr. Flanders does not offer a well-reasoned opinion in the March 12, 1996 report or in subsequent reports, on the issue of a continuing employment-related disability.

Accordingly, the Board finds that the medical evidence is not sufficient to establish that appellant’s employment-related disability had ceased. The Office has not met its burden of proof in this case.

² See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

The decisions of the Office of Workers' Compensation Programs dated August 19 and March 19, 1997 are reversed.

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member