

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BELINDA SMITH and VETERANS ADMINISTRATION,
VETERANS HOSPITAL, Coatesville, Pa.

*Docket No. 95-2880; Submitted on the Record;
Issued February 18, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant was totally disabled after May 31, 1995 due to residuals of her November 9, 1992 lumbosacral strain injury.

The Office of Workers' Compensation Programs accepted that appellant sustained lumbosacral strain in the performance of duty on November 9, 1992. Thereafter she received appropriate compensation benefits.

On March 29, 1993 appellant resigned from federal employment and on April 13, 1993 she underwent a functional capacity evaluation which revealed symptom magnification and inappropriate illness behavior. On May 4, 1993 appellant's treating physician, Dr. Daniel L. Zimet, a Board-certified orthopedic surgeon, completed a work restriction evaluation and indicated that appellant could work 8 hours a day with 4-hour limits on sitting, walking, standing and lifting with a 10-pound lifting limit. In an attached follow-up evaluation Dr. Zimet stated that appellant could do light work if it were available and referred to the work restrictions he had outlined.

By report dated November 1, 1993, Dr. David L. Willner, a Board-certified orthopedic surgeon, reiterated a statement of accepted facts, provided appellant's history, discussed her present complaints and noted physical examination results. He opined in response to Office questions, that the effects of appellant's work injury were no longer present in the form of physical residuals, that her disability was based almost entirely upon her subjective symptoms and that when appellant's nonphysical components of this disability were dissipated, she could be expected to return to her preinjury level of employment. Dr. Willner opined that appellant's inability to work could be considered to be only partially disabling and that she could safely work in an area that did not place any great demands on her spine, with limited bending and with no lifting over 10 pounds.

In a March 3, 1994 psychiatric report, Dr. David Behar, a Board-certified psychiatrist, examined appellant, diagnosed her as having an unspecified adjustment reaction due to pain and opined that there was no psychiatric reason for her to be out of work. He suggested that appellant be placed on light duty not involving lifting heavy patients as a way to desensitize her to the real work situation.

In a March 30, 1994 report, Dr. Andre O. Williams, an osteopath, noted appellant's history, examined her and diagnosed chronic lumbosacral strain with possible left L5-S1 or L4-5 facet joint injury with resultant chronic pain syndrome. He emphasized the necessity of appellant returning to work as soon as possible.

By decision dated July 12, 1994, the Office terminated appellant's continuing compensation benefits finding that the weight of the medical evidence supported that the effects of appellant's work injury had ceased. The Office found that the reports of Drs. Willner, Behar and Williams constituted the weight of the medical evidence. As appellant's request for an appeal was filed on August 20, 1995 the Board does not have jurisdiction to review this decision.¹

Appellant requested a hearing on the termination of her compensation benefits.

By report dated January 26, 1995, appellant's treating physician, Dr. Daniel L. Zimet, a Board-certified orthopedic surgeon, reviewed her treatment history, noted her history of complaints, indicated that at her most recent evaluation on January 24, 1994 she was working 37 hours per week for QVC, reported her physical examination results, stated her diagnosis as cervical and lumbar strain with C6 radiculopathy and opined that appellant's disability was significant but not total, noting her success with working at QVC.

A hearing was held on February 3, 1995 at which appellant testified.

By decision dated May 31, 1995, the hearing representative affirmed the prior Office decision finding that the evidence of record did not support that appellant's cervical condition was related to her November 9, 1992 lumbar strain injury, that both Drs. Willner and Zimet had indicated that appellant could return to work with restrictions and hence that she was no longer disabled for work as a result of her November 9, 1992 employment injury. The hearing representative also found, however, that the medical evidence of record did not support that all residuals of appellant's accepted work injury had ceased, such that she remained entitled to medical care benefits until such time as the evidence demonstrated cessation of all injury residuals.

The Board finds that appellant was not totally disabled after May 31, 1995 due to residuals of her November 9, 1992 lumbosacral strain injury.

An employee returning to light duty or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability

¹ See 20 C.F.R. § 501.3(d)(2).

by the weight of reliable, probative and substantial evidence and to show that he or she cannot perform the light duty.² As part of this burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.³

The medical evidence in this case supports that appellant is capable of performing light duty for eight hours a day and provides her working restrictions. Therefore the burden shifted to appellant to prove that she remained totally disabled. However, she did not submit and there is no evidence in the case record, any substantial medical evidence supporting appellant's claim that she remains totally disabled after 1993. Further, appellant has not submitted any evidence sufficient to establish that her claimed cervical condition was related to the November 9, 1992 lifting incident during which she sustained the accepted lumbosacral strain.

Consequently, appellant has not met her burden of proof to establish that her condition changed after 1993 resulting in a recurrence of temporary total disability, or that she sustained a cervical condition on November 9, 1992 in the performance of duty.

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 31, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 18, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

² *Terry R. Hedman*, 38 ECA 222, 227 (1986).

³ *Id.*