

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN M. DOPSON and DEPARTMENT OF VETERANS AFFAIRS,
COLUMBIA VETERANS HOSPITAL, Columbia, S.C.

*Docket No. 96-1096; Submitted on the Record;
Issued June 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has any continuing disability on or after May 10, 1989 causally related to her accepted employment injury of lumbosacral strain occurring on July 24, 1987.

The Board has duly reviewed the case on appeal and finds that appellant has no continuing disability on or after May 10, 1989 causally related to her accepted employment injury of lumbosacral strain occurring on July 24, 1987.

This is the third appeal in this case.¹ In its decision dated March 3, 1993,² the Board found that the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective May 10, 1989. However, the Board remanded the case for further development of the issue of whether appellant had any continuing disability on or after May 10, 1989 causally related to her accepted employment injuries. The facts and circumstances of the case as set out in the prior decision are adopted herein by reference. Following the Board's March 3, 1993 decision, the Office issued a decision on April 1, 1993 denying appellant's claim for continuing disability. Appellant, through her attorney, requested an oral hearing and by decision dated April 21, 1994 and finalized April 22, 1994, the hearing representative affirmed the Office's April 1, 1993 decision. Appellant requested reconsideration

¹ In an Order dated December 3, 1990, the Board remanded the case for reconstruction of the case record and an appropriate decision. Docket No. 90-1748.

² Docket No. 92-1232.

on April 18, 1995 and by decision dated August 15, 1995, the Office denied modification of the April 22, 1994 decision.³

An employee seeking benefits under the Federal Employee's Compensation Act⁴ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ To establish a causal relationship between any disability, claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

In support of her claim for continuing disability, appellant submitted a note dated September 9, 1991 from Dr. Gal G. Margalit, a surgeon, noting appellant's range of motion of the cervical and dorsolumbar spines. He stated appellant's thermograms were positive for L4-5 and C6 nerve irritation related to herniated discs at L4-5 and L5-S1. Dr. Margalit stated that appellant was fully disabled from returning to any form of occupation. This report is not sufficient to meet appellant's burden of proof in establishing continuing disability as Dr. Margalit did not provide an opinion that appellant's current disability was due to her accepted condition of lumbosacral strain. Instead, he attributed her disability to herniated discs, conditions not accepted by the Office. Furthermore, Dr. Margalit did not provide medical rationale explaining how or why appellant's accepted condition resulted in the injuries he described.

In a report dated December 28, 1989, Dr. Margalit noted appellant's history of injury including a back injury in 1984 occurring when appellant worked in the private sector.

³ Appellant filed her appeal with the Board on February 16, 1996. Therefore, the Office lacked the jurisdiction to issue the February 28, 1996 decision denying appellant's request for reconsideration and this decision is null and void; *see Arlonia B. Taylor*, 44 ECAB 591 (1993).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁶ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁷ *James Mack*, 43 ECAB 321 (1991).

Dr. Margalit stated that there was not a great deal of change in her thermograms from 1985 with regards to her back. He diagnosed chronic back pain which was totally disabling and permanent. This report is not sufficient to meet appellant's burden of proof as Dr. Margalit appears to attribute appellant's current condition not to her 1987 employment injury, but to an injury in 1985 which was not related to federal employment.

In a report dated September 19, 1994, Dr. Margalit stated:

"It is my opinion that as a result of the injuries you received in 1987, the majority, if not all of your problems, occurred in a chronic fashion and from which you are currently suffering. Those include the abnormalities of the C6 nerve findings which were not present prior to 1987 as well as your chronic complaints of pain with your spine and the effect it has taken on you mentally including depression, anxiety, etc."

Although Dr. Margalit provided an opinion that appellant's current conditions and disability is causally related to her accepted employment injury, he failed to provide any medical rationale supporting his opinion. Dr. Margalit did not provide medical reasoning explaining how either the C6 nerve abnormalities or depression and anxiety were related to a lumbosacral strain. Furthermore, Dr. Margalit did not describe the biomechanical processes by which a lumbosacral strain in 1987 could result in chronic pain seven years later.

Appellant submitted several documents which lack probative value in establishing her claim. Appellant submitted a note from Dr. Margalit dated July 22, 1993. However, as this note was not signed by the physician it has no probative value in establishing appellant's claim.⁸ In support of her claim, appellant submitted a favorable decision from the Social Security Administration. The Board has held that an administrative law judge's decision that appellant was disabled under the Social Security Act has no evidentiary value in a case under the Federal Employees' Compensation Act (FECA) as entitlement to benefits under that Act does not establish entitlements to benefits under the FECA.⁹ Appellant also submitted a series of reports regarding her obsessive-compulsive disorder. As the Office has not accepted that appellant developed an emotional condition due to factors of her federal employment, this evidence is not relevant to the issue of whether appellant has continuing disability causally related to her accepted lumbosacral strain.

As appellant has failed to submit the necessary rationalized medical opinion evidence to establish a causal relationship between her accepted employment injury and her current disability or conditions, she has failed to meet her burden of proof and the Office properly denied her claim.

⁸ *Merton J. Sills*, 39 ECAB 572 (1988).

⁹ *Daniel Deparini*, 44 ECAB 657, 659-60 (1993).

The decision of the Office of Workers' Compensation Programs dated August 15, 1995 is hereby affirmed.

Dated, Washington, D.C.
June 8, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member