

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MYRTICE C. HAYNES and DEPARTMENT OF THE ARMY,
ANNISTON ARMY DEPOT, Anniston, Ala.

*Docket No. 96-2289; Submitted on the Record;
Issued June 18, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective February 4, 1996.

In the present case, appellant filed a claim alleging that she sustained a back injury in the performance of duty on March 15, 1984 when she lifted an instrument and twisted her back. Appellant stopped working on March 26, 1994 and did not return to work. The Office accepted the claim for low back strain and a herniated disc at L4-5.

In a letter dated June 27, 1995, the Office advised appellant that it proposed to terminate her compensation. The Office stated that the weight of the evidence was represented by a second opinion referral physician, Dr. John M. Higginbotham, who opined the residuals of the March 15, 1984 injury had ceased. Appellant then submitted a report dated July 11, 1995 from Dr. John R. Payne, an orthopedic surgeon. Dr. Payne stated that it was possible the L3-4 disc was injured in 1984 and further deterioration had occurred because of that injury, noting that there was no MRI (magnetic resonance imaging) at that time and therefore the status of the L3-4 disc could not be documented.

The Office then declared that a conflict in the medical evidence existed as to whether appellant continued to have an employment-related condition. The Office referred appellant for examination by Dr. Joseph C. Kendra, a Board-certified orthopedic surgeon. By letter dated December 5, 1995, the Office advised appellant that it proposed to terminate her compensation. The Office indicted that the weight of the evidence was represented by Dr. Kendra.

In a decision dated January 10, 1996, the Office terminated appellant's compensation effective February 4, 1996. By decision dated April 24, 1996, an Office hearing representative affirmed the termination decision.

The Board has reviewed the record and finds that the Office met its burden of proof in terminating appellant's compensation.

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 this case, the Office found a conflict between Dr. Higginbotham, an Office referral physician, and an attending physician, Dr. Payne, as to whether appellant continued to have residuals of an employment-related condition. In a report dated October 25, 1995, Dr. Kendra, the orthopedic surgeon serving as an impartial medical specialist, diagnosed degenerative disc disease at L3-4, with mild changes at L4-5. Dr. Kendra stated in pertinent part:

"I feel she does not demonstrate residuals related to the work related injury of March 15, 1984, *i.e.*, a ruptured disc at the L4-5 region. The moderate to severe findings on L3 could be the cause of her discomfort in her back. However, again, this is not considered her work-related injury.

"I believe her current condition is, indeed, related to underlying degenerative disc disease more severe at the L3-4 level. This is supported by both x-ray examination as well as MRI examination from the current year which shows that the L4-5 level is relatively clear. She did not demonstrate any abnormal findings on her myelogram back in 1984 after her injury at the L3-4 level. Had there been evidence of a ruptured disc, this would surely have been visible on the myelogram performed at that time. In all medical probability, the L4-5 disc rupture as well as her lumbar strain resolved and as a natural progression of aging which may be exaggerated by her increased weight, cause the findings of degenerative disc disease at the L3-4 region."

Dr. Kendra has provided a reasoned opinion, based on a complete background, that appellant's employment injury has resolved. He also indicates that the L3-4 degenerative findings are the result of aging, and not the March 15, 1984 employment injury. It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.² The Board finds that Dr. Kendra's report is entitled to special weight and represents the weight of the evidence in this case. The Board notes that following submission of Dr. Kendra's report, appellant submitted a January 6, 1996 from Dr. Payne, who reiterated his opinion regarding appellant's back condition. Dr. Payne was on one side of the conflict in the medical evidence that was resolved by

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

² *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

Dr. Kendra and his report is not sufficient to outweigh the special weight given the report of the impartial medical specialist, or to create a new conflict.³

The Board finds that the weight of the evidence establishes that appellant's employment-related condition had resolved by February 4, 1996. The Office therefore met its burden of proof in terminating compensation in this case.

The decisions of the Office of Workers' Compensation Programs dated April 24 and January 10, 1996 are affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

³ See *Josephine L. Bass*, 43 ECAB 929, 939 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).