

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LENA HOERNI and DEPARTMENT OF COMMERCE,
BUREAU OF CENSUS, Jeffersonville, Ind.

*Docket No. 96-2387; Submitted on the Record;
Issued June 25, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

The Board has duly reviewed the record and finds that the Office met its burden of proof in this case.

In the present case, the Office accepted that appellant sustained acute back and neck sprains and temporary aggravation of degenerative disc disease at L4-5 as a result of a slip on a wet floor on February 10, 1984. The Office terminated appellant's compensation benefits, effective March 5, 1995, by decision dated February 15, 1995, on the grounds that the weight of the medical evidence established that appellant's disability resulting from the accepted injury had ceased. By decision dated May 8, 1996, an Office hearing representative affirmed the termination of appellant's compensation benefits. On July 10, 1996 the Office denied appellant's application for merit review.

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

The Board finds that as there is no medical evidence of record that the accepted conditions continued to disable appellant after March 5, 1996, the Office met its burden of proof in this case.

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

The evidence of record indicates that appellant's treating physician, Dr. Michael D. Becker, a Board-certified family practitioner, has treated appellant since the February 1984 injury. Dr. Becker initially offered the diagnoses of acute back and neck sprain and degenerative disc disease. Dr. Becker continued to submit annual reports to the Office. On March 13, 1992 Dr. Becker opined that appellant had degenerative disc disease and osteoarthritis, however, he noted that she continued to decline further evaluation by such means as myelogram, epidural block or neuromuscular consultation, to definitively diagnosis her condition. On August 9, 1993 Dr. Becker completed a work restriction evacuation form wherein he indicated that appellant's condition would not improve unless she agreed to surgery and that appellant remained totally disabled for work. On September 12, 1994 Dr. Becker stated that he had reviewed appellant's chart back to 1984. He noted that a computerized tomography (CT) scan performed 1984 showed a "probable disc," however, at that time appellant declined myelogram or any other evaluation as she did not want to consider surgery as an alternative treatment. Dr. Becker stated that to date, appellant had not had any further evaluation to determine conclusively whether she had an arthritic or disc condition. In a report dated July 28, 1995, Dr. Becker stated that he had a long discussion with appellant and had explained to her that her 1984 CT scan showed a questionable disc condition, which was never proven as appellant refused to have subsequent testing. Dr. Becker stated that he had discussed a magnetic resonance imaging (MRI) study with appellant which would be performed, not to look for a surgical problem, but for diagnosis of appellant's condition as disc related or arthritis, realizing "that if it is a disc it would prove her case, whereas if it is arthritis it could disprove her case." Appellant did undergo an MRI scan on September 21, 1994 which indicated that the alignment of the lumbar spine was unremarkable, with no evidence of spinal stenosis, no evidence of bulging disc or disc herniation at L4-5 and no evidence of disc herniation at L5-S1. The MRI did reveal some mild spondylosis and a small ventral epidural defect behind T 12. As Dr. Becker noted through the years, appellant's diagnoses were based upon her subjective complaints rather than diagnostic testing. After appellant did undergo MRI evaluation in September 1994, Dr. Becker did not indicate that the accepted diagnoses of acute back and neck strains, and temporary aggravation of degenerative disc at L4-5 continued to disable appellant.

To clarify the extent of appellant's continuing disability arising from the accepted injury, the Office referred appellant to Dr. James W. Harkess, a Board-certified orthopedic surgeon, on July 7, 1994 for a second opinion evaluation. In a report dated July 18, 1994, Dr. Harkess stated that current x-rays of appellant's cervical and lumbosacral spines showed that appellant had diffuse osteoporosis which was compatible with her age and heterotopic ossification in the anterior longitudinal ligament of her neck and mild lipping of the superior borders of L3-4, with no dramatic loss of disc space anywhere in her neck or in her lumbar spine. Dr. Harkess stated that he could not find unequivocal signs of herniated disc or of serious impairment during his examination of appellant and he stated that he believed appellant was either a psychoneurotic or a severe symptom exaggerator. Dr. Harkess stated that he had reviewed appellant's medical record and could not find any evidence that appellant had a herniated disc or neurologic impairment.

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and

completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.² Dr. Harkess carefully reviewed and summarized appellant's medical record, conducted a thorough medical examination, and thereafter precisely explained why he had concluded that appellant was no longer disabled due to the accepted conditions, but rather had osteoporosis which was compatible with her age, and symptom magnification. As there is no other medical evidence of record to support a finding that the accepted conditions did continue to disable appellant after March 5, 1995, the Office properly terminated appellant's compensation benefits as of that date.

The decisions of the Office of Workers' Compensation Programs dated July 10 and May 8, 1996 are hereby affirmed.

Dated, Washington, D.C.
June 25, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

² *Clara T. Norga*, 46 ECAB 473 (1995).