

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA J. MASON and DEPARTMENT OF THE AIR FORCE,
OKLAHOMA CITY AIR LOGISTICS CENTER, TINKER AIR FORCE BASE, OK

*Docket No. 98-1453; Submitted on the Record;
Issued December 14, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective February 1, 1998 on the grounds that she had no disability due to her June 7, 1990 employment injury after that date.

The Board finds that the Office did not meet its burden of proof in its January 16, 1998 decision to terminate appellant's compensation effective February 1, 1998 on the grounds that she had no disability due to her June 7, 1990 employment injury after that date.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.³ Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In the present case, the Office accepted that appellant sustained an employment-related lumbar strain and herniated nucleus pulposus at L3-4 and paid compensation for periods of disability. The Office authorized the performance in July 1994 of a surgical decompression at L3-4. By decision dated January 16, 1998, the Office terminated appellant's compensation effective February 1, 1998 on the grounds that she had no disability due to her June 7, 1990 employment injury after that date. The Office based its termination of appellant's compensation on the opinion of Dr. Stanley Pelofsky, an attending Board-certified neurosurgeon.

In a report dated April 4, 1995, Dr. Pelofsky stated he evaluated appellant on that date and noted:

“The patient has lumbar degenerative disc disease and in the past has been diagnosed as having a lateral disc herniation at L3-4. The patient, however, has not been compliant in weight reduction, back exercises, cessation of smoking, physical conditioning, etc. She, in my opinion at present, would [be] a very poor candidate for surgical intervention. On exam[ination], there is no evidence of an active radiculopathy and in my opinion surgery is therefore not indicated. It is my opinion that this patient can return to gainful employment at any time. I feel that she sustained a seven percent permanent disability to the body as a whole as a result of her injury. I base this on her history, her previous studies and her physical examination as well as her clinical course.”

This report of Dr. Pelofsky is not sufficient to justify termination of appellant's compensation effective February 1, 1998 because it does not contain a clear opinion, fortified by medical rationale, that appellant no longer had disability due to her June 7, 1990 employment injury. He did not clearly indicate that appellant no longer had disability due to her employment-related injury, particularly with regard to her herniated nucleus pulposus at L3-4. Dr. Pelofsky did not describe appellant's employment injury in any detail or provide a rationalized description of the medical process through which this condition would have resolved and ceased to cause disability.⁷ Moreover, he noted that appellant could return to “gainful employment” but did not clearly specify that appellant could return to her regular work as a painter.⁸

⁷ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

⁸ In a letter dated November 18, 1997, a case manager for Dr. Pelofsky indicated that he had informed her via the telephone that he had not examined appellant since April 1995 but that his opinion regarding her condition had not changed. This document does not provide any further explanation of Dr. Pelofsky's opinion regarding appellant's condition. The record also contains a December 29, 1997 report in which Dr. C. Randall Jenkins, an attending physician Board-certified in emergency medicine, diagnosed degenerative disc disease and chronic low back and left leg pain. Dr. Jenkins indicated that, with respect to her pain, appellant's primary problems were her deconditioning, obesity and nicotine addiction, but he did not provide any opinion regarding whether her employment-related disability had ceased.

The decision of the Office of Workers' Compensation Programs dated January 16, 1998 is reversed.

Dated, Washington, D.C.
December 14, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member