

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CORA GREEN and DEPARTMENT OF THE NAVY, MARINE CORPS
DEVELOPMENT & EDUCATION COMMAND, Quantico, VA

*Docket No. 98-1815; Submitted on the Record;
Issued December 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

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

In the present case, the Office accepted that appellant, then a 43-year-old dry cleaning presser, twisted her right ankle on February 12, 1970 sustaining sprain and traumatic arthritis of the right ankle. The Office terminated appellant's compensation benefits by decision dated April 27, 1998, on the grounds that appellant's treating physician, Dr. Marriott C. Johnson, a Board-certified orthopedic surgeon, had provided a well-rationalized opinion that appellant's injury-related disability had ceased.

The Board has duly reviewed the case record and finds that the Office met its burden of proof to terminate compensation benefits.

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

Appellant's treating physician, Dr. Johnson, in a report dated March 5, 1993, related an accurate history of injury that appellant had ankle sprain in 1970 with continuing pain discomfort. He noted that he had seen appellant in 1980 and 1987, with no other visits or care by his office. Thereafter, Dr. Johnson related an extensive physical examination of appellant's right ankle. He noted that appellant's range of motion of the right ankle matched the range of motion in her left ankle and that she had fluid on both lower legs, with no ligamentous instability in either ankle. Dr. Johnson also noted that x-rays were taken of both ankles for comparison and

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

baseline. This x-ray evaluation of both ankles, he related, showed a “little degeneration and spurring around the medial and lateral malleous,” with no difference between the two ankles on x-ray. Dr. Johnson related that examination of appellant’s lower extremities revealed equal muscle mass and strength. Based upon his examination findings and appellant’s past medical history, he concluded that appellant had no residuals of her right ankle condition and that her current medical problems were caused by low back complaints and her weight. Finally, Dr. Johnson noted that any limitations appellant had now were caused by heart, blood pressure, low back and weight conditions, which had no relationship to her original injury, from which she had recovered.

Dr. Johnson’s report was thorough, based on an accurate factual background and was well rationalized. As appellant did not submit any medical evidence to the record that she in fact remained disabled due to the accepted employment injury, there is no other probative medical evidence of record regarding this issue and Dr. Johnson’s report constitutes the weight of the medical evidence.² The Board also notes that Dr. Johnson’s report was consistent with his previous reports dated September 2, 1980, July 27, 1981 and September 22, 1983 wherein he essentially reported normal physical examinations of appellant’s right ankle, normal x-ray examinations of the right ankle, except with “little degenerative change mainly around the medial malleolus and the medial talus.” Dr. Johnson related that he could not correlate appellant’s degenerative joint disease with her ankle sprain injury and he questioned why appellant had not returned to work since 1970.

While the Board generally requires that the Office base a decision to terminate benefits upon current medical evidence,³ for 17 years prior to termination of benefits in this case, appellant’s treating physician, Dr. Johnson, had related that appellant was no longer disabled due to residuals of the accepted injury. Dr. Johnson’s unrefuted medical opinion constitutes the weight of the medical evidence in this case. The Office did meet its burden of proof to terminate benefits in this case, based upon Dr. Johnson’s reports.

² *Samuel Theriault*, 45 ECAB 586 (1994).

³ *Id.*

The decision of the Office of Worker's Compensation Programs dated April 27, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 17, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member