

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET COLOMBINI and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER,
Chillicothe, OH

*Docket No. 99-1093; Submitted on the Record;
Issued December 20, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability resulting from her accepted October 14, 1971 employment injury.

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

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ The Office burden

¹ 5 U.S.C. §§ 8101-8193.

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing a rationalized medical opinion based on a proper factual and medical background.⁵

In the instant case, appellant filed a notice of traumatic injury on October 22, 1971 alleging that she pulled ligaments on the left side of her body on October 14, 1971 when she pushed on the spreader feeder. Appellant stopped work on November 3, 1971 and returned to light duty on December 6, 1971. The Office accepted the claim for muscle strain in the left lower quadrant of the abdomen and aggravation of preexisting lordosis with paravertebral muscle spasms. On May 24, 1972 appellant filed a claim for a recurrence of disability and stopped work on that date. Appellant's application for disability retirement was approved. On March 30, 1998 appellant was placed on the civil service annuity rolls.

On January 29, 1998 the Office issued a notice of proposed termination of compensation on the grounds that appellant no longer suffered from any residuals of her work-related injuries. On March 2, 1998 the Office terminated appellant's compensation and medical benefits effective March 29, 1998 relying upon the November 17, 1997 report by Dr. Boyd Bowden, III.⁶ The Office found that the February 12, 1998 report by Dr. G. Todd Schulte⁷ to be of less probative value as his opinion was based upon an inaccurate history of the employment injury and he did not provide an opinion on the relationship of appellant's condition and her accepted employment injury.

Appellant requested an oral hearing, through her counsel, which was held on October 29, 1998. The hearing representative affirmed the termination order on January 7, 1999.

The Board finds that Dr. Bowden's report is sufficient to meet the Office's burden of proof in terminating compensation. On November 17, 1997 Dr. Bowden diagnosed degenerative arthritis of the lumbar spine without root irritation and reported that there was no muscle spasm or lumbar lordosis at the time of examination. He related, based upon a review of the medical records and examination of appellant, that aggravation of appellant's lumbar lordosis was not present as she had flattened lumbar lordosis. Dr. Bowden also noted that there was no paravertebral muscle spasm at the time of examination and that, based upon the medical reports, appellant suffers from degenerative arthritis of the lumbar spine which was due to the aging process and not to her accepted October 14, 1971 employment injury. He then opined, based upon the objective findings, that appellant could return to gainful employment and that her current impairment was related to her preexisting arthritis in the thoracic and lumbar spine due to the aging process.

The Board finds that Dr. Schulte's February 12, 1998 report is insufficient to create a conflict with the report of Dr. Bowden. In addition, Dr. Schulte's opinion did not relate appellant's current physical condition to her accepted employment injury. The magnetic resonance imaging test dated February 23, 1998, performed for Dr. Schulte by Dr. Stephen J.

⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁶ A Board-certified orthopedic surgeon.

⁷ Dr. Schulte specializes in pain management.

Pomeranz,⁸ also fails to provide any opinion regarding the causal connection between appellant's current condition and her employment injury.

The Board therefore finds that the weight of the medical evidence rests with the opinion of Dr. Bowden, the second opinion physician, who provided a rationalized explanation of why appellant had no continuing disability due to her accepted employment injury and why her current disability is nonwork related. Dr. Bowden's opinion is sufficient to meet the Office's burden of proof in terminating appellant's compensation.⁹

The decisions of the Office of Workers' Compensation Programs dated January 7, 1999 and March 2, 1998 are hereby affirmed.

Dated, Washington, D.C.
December 20, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ Board-certified in diagnostic radiology with special competence in nuclear radiology, neurocardiology.

⁹ See *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician's opinion was thorough, well rationalized and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).