

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREA L. DWYER and DEPARTMENT OF THE NAVY,
NAVAL SUBMARINE BASE, Groton, CT

*Docket No. 99-2242; Submitted on the Record;
Issued December 8, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective June 10, 1998 on the grounds that she had no disability due to her February 9, 1997 employment injury after that date.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective June 10, 1998 on the grounds that she had no disability due to her February 9, 1997 employment injury after that date.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

On February 9, 1997 appellant, then a 43-year-old nurse, sustained a left knee contusion when she fell at work. The Office authorized an arthroscopy which was performed on April 24, 1997 by Dr. James O. Maher, an attending Board-certified orthopedic surgeon. During the surgery, it was discovered that appellant had chondromalacia of the left patella and a chondroplasty was performed. Appellant returned to light-duty work for four hours per day in

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

August 1997 and regular duty in September 1997, but she experienced problems and in October 1997 was returned to light-duty work for six hours per day by Dr. Maher.

By decision dated June 9, 1998, the Office terminated appellant's compensation effective June 10, 1998 on the grounds that she had no disability due to her February 9, 1997 employment injury after that date. The Office based its termination on the December 8, 1997 report of Dr. Roger S. Pocze, a Board-certified orthopedic surgeon, to whom it referred appellant for a second opinion. By decision dated and finalized February 17, 1999, an Office hearing representative affirmed the Office's June 9, 1998 decision.

The Board finds that the December 8, 1997 report of Dr. Pocze is not sufficiently well rationalized in its conclusions to justify the termination of appellant's compensation effective June 10, 1998. In his report, Dr. Pocze noted that appellant continued to have objective evidence of patellofemoral joint sensitivity which he indicated that was consistent with the injury she sustained on February 9, 1997. Dr. Pocze stated that appellant could perform "full-time gainful employment" but noted that she could not engage in repetitive stair climbing or constant squatting. It remains unclear whether appellant was capable of performing her regular job as a nurse because that position requires walking, sitting and standing for up to eight hours per day as well as climbing, bending, stooping, kneeling and pushing. Hence, Dr. Pocze's report is equivocal with respect to the existence of continuing disabling residuals of the February 9, 1997 employment injury.⁵

Moreover, Dr. Pocze did not adequately explain the medical process through which appellant's employment injury, a left knee contusion, would have resolved itself and did not otherwise adequately explain the reasons for appellant's continuing problems. The Board has noted that an opinion which does not contain adequate medical rationale in support of its opinion on causal relationship is of limited probative value.⁶ Such medical rationale is especially necessary in that appellant's attending physician, Dr. Maher, continued to suggest that she had employment-related residuals through mid 1998.⁷ As noted above, Dr. Maher indicated in October 1997 that appellant could only work for six hours per day due the effects of her employment injury.⁸

⁵ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal is of limited probative value regarding the issue of causal relationship).

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

⁷ Dr. Maher noted that appellant continued to have objective findings such tenderness along the left medial joint line.

⁸ It should be noted that the record also contains a March 4, 1999 deposition transcript in which Dr. Paul D. Fadale, an attending Board-certified orthopedic surgeon, indicated that appellant continued to have disabling residuals of her February 9, 1997 employment injury. On September 11, 1998 Dr. Fadale had performed an arthroscopy of appellant's left knee with open lateral release.

For these reasons, the Office did not meet its burden of proof to terminate appellant's compensation effective June 10, 1998 on the grounds that she had no disability due to her February 9, 1997 employment injury after that date.

The decision of the Office of Workers' Compensation Programs dated and finalized February 17, 1999 is reversed.

Dated, Washington, D.C.
December 8, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member