

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCES T. TILLMAN and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Houston, Tex.

*Docket No. 97-1468; Submitted on the Record;
Issued February 4, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective September 3, 1996.

In the present case, appellant, a housekeeping aide, filed a claim alleging that she sustained a left heel injury in the performance of duty on January 6, 1971 while running down steps. The Office accepted the claim for a torn Achilles tendon, tendinitis, and chronic edema of the lower extremities and phlebitis secondary to the tendinitis. Appellant began receiving compensation for temporary total disability.

By letter dated August 1, 1996, the Office advised appellant that it proposed to terminate her compensation on the grounds that the medical evidence established that her employment-related disability had ceased. In a decision dated September 3, 1996, the Office terminated appellant's compensation. By decisions dated September 26, 1996 and January 23, 1997, the Office denied modification of the termination decision.

The Board has reviewed the record and finds that the Office met its burden of proof in terminating appellant's compensation for wage loss effective September 3, 1996.

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

In the present case, the Office referred appellant, along with medical records and a statement of accepted facts to Dr. Raymond Alexander, a Board-certified internist. In a report

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

dated June 27, 1996, Dr. Alexander provided a history and results on examination. He stated in pertinent part:

“From the problems resulting from the injury of January 6, 1971, none of them appear to be active at this time. Her chronic tenosynovitis of the left ankle is latent at this time. She has no redness, warmth, swelling, or crepitations of the Achilles area, or the ankle....

“The torn Achilles tendon also appears to have resolved. There is no palpable defect. She does have good range of motion of her left ankle and hind foot, and, in fact, this is better than the range of motion for her right side. Although she exhibits generalized deconditioning, she does not exhibit any extraordinary degree of weakness for this area....

“The chronic edema of the lower extremity is controlled with Dyazide. She has no edema at this time.

“The thrombophlebitis of the lower extremity is poorly documented. Normally a venogram or a Doppler study, or other noninvasive studies are required to accurately identify this problem. These do not appear to have been performed. She does not have any clinical signs or symptoms of thrombophlebitis at this time.

“The patient is not able to return to work to the type of employment in the housekeeping department which she held at the time of her injury. Her inability to work is not due to the tendinitis of the left Achilles tendon or to any previous rupture and is not due to her edema or thrombophlebitis. Instead, it is due to her morbid obesity and her generalized deconditioning. The diabetes mellitus with a secondary effect on the peripheral nervous system and the secondary effects of insulin use further contribute to this disability.”

Dr. Alexander thus provided a reasoned opinion, based on a complete background, indicating that none of appellant’s employment-related conditions continued to be disabling. The Board finds that this represented the weight of the medical evidence in this case. The record does not contain a contemporaneous report from the attending physician, Dr. Wesley C. Gustafson, Jr., a family practitioner, and his prior report dated October 26, 1992 primarily discussed disability due to diabetes, obesity and hypertension, which are not accepted as employment-related conditions.

Accordingly, the Board finds that the Office properly terminated appellant’s compensation on September 3, 1996 based on the weight of the medical evidence. The Board notes that once the Office has met its burden to terminate compensation, the burden shifts to appellant to establish that he had disabling residuals causally related to federal employment.² In this case, appellant submitted a September 6, 1996 report from Dr. Edith Jones, an internist, who

² *George Servetas*, 43 ECAB 424, 430 (1992).

diagnosed myalgia and myositis, hypertension, degenerative arthritis and Parkinson's Disease. Dr. Jones stated that appellant related the onset of symptoms to a fall in 1971, without further discussion of the relevant issues. In a report dated November 27, 1996, Dr. Donald E. Baxter, an orthopedic surgeon, stated that on examination there was weakness of the left foot with a weak push-off and Dr. Baxter opined that appellant was "still disabled from work because of the weakness in her leg." Dr. Baxter did not, however, provide a complete history nor a reasoned medical opinion relating any disabling weakness in the leg to the 1971 employment injury. Accordingly, the Board finds that the evidence submitted after the September 3, 1996 termination decision is of diminished probative value and is insufficient to establish entitlement to compensation for disability after that date.

The decisions of the Office of Workers' Compensation Programs dated January 23, 1997, September 26 and 3, 1996 are affirmed.

Dated, Washington, D.C.
February 4, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member