

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCILLE R. LOCKETT and DEPARTMENT OF DEFENSE,
ARMY AIR DEFENSE SCHOOL, Fort Bliss, Tex.

*Docket No. 97-1484; Submitted on the Record;
Issued February 2, 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 compensation benefits effective January 23, 1997.

The Office accepted appellant's claim for a chronic lumbosacral sprain with discogenic syndrome and cervical spine strain. Appellant began receiving temporary total disability benefits. Appellant has not worked since her employment injury on June 26, 1970.

By letter dated June 24, 1992, Dr. Pritam B. Dandade, a Board-certified thoracic surgeon and appellant's treating physician, stated that appellant was under his treatment, that he had referred her to a chiropractor for treatment of her neck and back, and that she would receive therapy for her back and neck problems. By letter dated November 1, 1995, the Office requested additional information from Dr. Dandade including whether there was current objective evidence of appellant's back strain and a rationalization as to how her condition was causally related to the June 26, 1970 employment injury. The Office did not receive a response. The other most recent report by a physician treating appellant is from Dr. Philip M. Prieto, a general surgeon, dated September 11, 1990. He performed a physical examination and stated that since the June 26, 1970 employment injury, appellant had been incapacitated indefinitely from normal activities and was 100 percent physically disabled. Dr. Prieto stated that appellant must not do strenuous exercise such as bending or squatting. He stated that appellant's prognosis remained poor and her health had been worsening with age.

In a report dated November 21, 1996, Dr. Randy J. Pollet, a Board-certified orthopedic surgeon and a second opinion physician, considered appellant's history of injury, performed a physical examination, reviewed x-rays and diagnosed old age, osteoporosis, osteoarthritis and dizziness unrelated to her June 26, 1970 employment injury. He stated that there was no objective evidence that appellant's back or neck sprain caused her current symptoms of pain in her back, neck and shoulder and that she could return to regular work without restrictions. Dr. Pollet stated that appellant should have improved within 12 to 16 weeks of the June 26, 1970

employment injury. He stated that appellant did not require physical therapy or chiropractic manipulation.

On December 9, 1996 the Office issued a notice of proposed termination of benefits and medical treatment, stating that the weight of the evidence established that appellant's work-related condition had ceased. Specifically, the Office relied on Dr. Pollet's November 21, 1996 report that appellant was no longer disabled due to the June 26, 1970 employment injury. The Office gave appellant 30 days to respond.

Appellant submitted a statement dated December 17, 1996 in which she stated that she told Dr. Pollet she had pain and swelling in her legs and feet, with severe pain in her right hip, right groin and in her neck and face. She stated that on November 27, 1996 she was hospitalized and treated for numbness in her right leg and excruciating pain in her left leg. Appellant stated that she was under Dr. Dandade's care and that a blood clot had dissolved leaving numbness in her legs and feet. She also stated that she had advanced glaucoma and macular deterioration of the retina which she attributed to the June 26, 1970 employment injury. Appellant stated that she had internal bleeding and developed bronchitis in the hospital.

By decision dated January 22, 1997, the Office terminated benefits effective January 23, 1997, stating that the medical evidence of record established that appellant had no continuing disability or medical condition as a result of the June 26, 1970 employment injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation.

Once the Office has accepted 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 disability has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

In the present case, the November 21, 1996 opinion of Dr. Pollet, a Board-certified orthopedist and second opinion physician, constitutes the weight of the evidence. In his report, Dr. Pollet diagnosed osteoporosis, osteoarthritis, and dizziness and opined that these conditions were related to old age and were not related to the June 26, 1970 employment injury. He found no objective evidence of appellant's current symptoms of neck, back and shoulder pain and stated that she could return to work without restriction and required no further medical treatment. Dr. Pollet stated that appellant should have improved within 12 to 16 weeks of the June 26, 1970 employment injury. Dr. Dandade's June 24, 1992 letter is not probative because he stated that appellant was receiving therapy and had been referred to a chiropractor but did not address whether appellant was disabled and, if so, whether the disability was work related. Dr. Prieto's September 11, 1990 report is not sufficiently recent to be probative on the issue of whether

¹ *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

² *Larry Warner*, 43 ECAB 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

appellant is currently disabled due to her June 26, 1970 employment injury. Dr. Pollet's November 21, 1996 report in which Dr. Pollet found that appellant was no longer disabled due to her June 26, 1970 employment injury justifies the Office's termination of benefits.

The decision of the Office of Workers' Compensation Programs dated January 22, 1997 is hereby affirmed.

Dated, Washington, D.C.
February 2, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member