

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NADINE E. MIDKIFF and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, NATIONAL FOREST, Colville, Wash.

*Docket No. 98-1951; Submitted on the Record;
Issued February 23, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective February 12, 1997.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 12, 1997.

Appellant filed a claim on June 16, 1978 alleging that she injured her back in the performance of duty. The Office accepted her claim for back strain on September 18, 1978. Appellant filed a second claim for back injury on June 17, 1979 and the Office accepted this claim for lumbosacral strain, extruded disc and permanent aggravation of degenerative arthritis. By decision dated February 12, 1997, the Office terminated her compensation benefits effective that date. Appellant requested an oral hearing and by decision dated September 8, 1997, the hearing representative affirmed the Office's February 12, 1997 decision. She requested reconsideration and the Office denied modification of its February 12, 1997 decision on April 5, 1998.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

In this case, appellant's attending physician, Dr. Joel E. Cleary, a Board-certified orthopedic surgeon, diagnosed lower back pain with degenerative joint disease related to her employment injury. The Office referred appellant for a second opinion evaluation with Dr. Scott Van Linder, a Board-certified orthopedic surgeon, on June 17, 1992. Dr. Linder diagnosed diffuse degenerative arthritis and degenerative disc disease and found that these conditions were not causally related to appellant's employment injuries. In a report dated December 14, 1992, Dr. Cleary stated that an extruded disc fragment would alter the mechanics of the spine, leading to slow degenerative disc disease which in turn led to degenerative joint disease with facet arthropathy and chronic pain conditions. He found that appellant's current conditions were due to her accepted employment injury.

Section 8123(a) of the Federal Employees' Compensation Act,⁵ provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

In this case, the Office properly found a conflict of medical opinion evidence between appellant's attending physician, Dr. Cleary who offered medical reasoning in support of his opinion that appellant's current condition continued to be causally related to her accepted employment injuries, and the second opinion physician, Dr. Linder, who opined that appellant's current conditions were not so related. The Office properly referred appellant for an impartial medical examination with Dr. Warren J. Adams, a Board-certified orthopedic surgeon.

In a report dated September 28, 1995, Dr. Adams noted appellant's history of injury, her medical history and reviewed the statement of accepted facts. He opined that the degenerative condition of appellant's spine preexisted her employment injuries and that the employment injuries did not cause the accepted condition of extruded disc. Dr. Adams provided findings from the medical records in support of his opinion. He further found that appellant's lumbosacral strain/sprain had long resolved. Dr. Adams found that the aggravation of appellant's degenerative arthritis was temporary with respect to the 1978 and 1979 employment injuries as these injuries could not change the natural course of the underlying degenerative conditions. He found there were no objective findings of disability and no residuals of the 1978 and 1979 employment injuries.

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁶

⁴ *Id.*

⁵ 5 U.S.C. §§ 8101-8193, 8123(a).

⁶ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

Dr. Adams' report was based on a proper history of injury and he provided his findings that there were no objective signs of disability. He concluded that appellant had no disability and no residuals as a result of her accepted employment injury based on the physical findings and the medical reports of record. Dr. Adams' report is entitled to the weight of the medical evidence and establishes that appellant had no continuing condition or disability as a result of her accepted employment injury at the time of his report.

Appellant submitted additional medical evidence including two reports from Dr. Kathleen R. Schuerman, an osteopath. Dr. Schuerman concluded that appellant's current condition was due to her employment injury, but failed to provide medical rationale supporting her opinion. Appellant also submitted a report dated January 14, 1998 from Dr. William E. Bronson, a Board-certified orthopedic surgeon. Dr. Bronson noted appellant's symptoms and found her physical examination essential normal. He noted that x-rays revealed that appellant's degenerative spinal condition had worsened and recommended further testing. Dr. Bronson did not provide an opinion on the causal relationship between appellant's current condition and her accepted employment injury.

As appellant has not submitted any rationalized medical opinion evidence establishing that she has continuing disability or medical residuals causally related to her accepted employment injury, she failed to establish continuing entitlement to disability.

The decisions of the Office of Workers' Compensation Programs dated April 5, 1998 and September 8, 1997 are hereby affirmed.

Dated, Washington, D.C.
February 23, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member