

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURA J. LANKILA and DEPARTMENT OF AGRICULTURE,
SIX RIVERS NATIONAL FOREST, Eureka, Calif.

Docket No. 97-1624; Submitted on the Record;
Issued June 3, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

In a decision dated January 31, 1997, the Office terminated appellant's compensation benefits on the grounds that compensation cannot be paid based on subjective complaints alone and in the absence of objective findings. The Office found that the weight of the medical opinion evidence from the treating and second opinion physicians documented an ongoing claim based on subjective complaints.

The Board finds that the Office improperly terminated appellant's compensation benefits.

The record contains medical opinion evidence explaining that appellant had objective findings and that she did not need neurological findings or abnormal x-rays to have pain. The Office's own physician, Dr. Eugene G. Padel, an orthopedic surgeon, diagnosed chronic muscular ligamentous strain, cervicothoracic, lower thoracic and low lumbar spine. Dr. Padel reported that this was a direct result of the injury of February 7, 1989. He noted subjective and objective findings, and he stated: "She does continue to suffer residuals of the injury of February 7, 1989. The medical records have continuing documentation from the date of injury to present confirming the relationship." When questioned by the Office to explain how appellant was disabled based on a relatively normal physical examination, what objective tests supported his opinion and how a strain can still be active almost eight years after the injury, he reported there were no "purely objective findings," but he did make positive findings on physical examination and explained that appellant's chronic muscular ligament strain represented a post-traumatic pain syndrome that was not uncommon and medically was put in a diagnostic pigeon hole of a chronic muscular ligamentous strain or a chronic myofascial pain syndrome. Dr. Padel further explained that the limitations in appellant's tolerance for activity were his best estimate of her ability to function in the face of the residuals of her injury and her general deconditioning.

The Board finds that Dr. Padel's opinion fails to justify the Office's termination of compensation benefits. It is well established that, once the Office accepts a claim, it has the burden of proof 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 The Office's procedure manual provides that, having accepted a claim and initiated payments, the Office may not terminate compensation without a positive demonstration, by the weight of evidence, that entitlement to benefits has ceased.³ The inadequacy or absence of a report in support of continuing benefits is not sufficient to support termination, and benefits should not be suspended for that reason.⁴

The Office has not met its burden of proof.

The January 31, 1997 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, D.C.

June 3, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (July 1993).

⁴ *Id.*, Chapter 2.812.7(c)(1).