

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SONDRA L. ELIZONDO and PEACE CORPS,
Washington, D.C.

*Docket No. 97-2602; Submitted on the Record;
Issued June 2, 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 properly denied continued medical treatment for appellant's accepted injury.

The Office accepted that appellant, a former Peace Corps volunteer, sustained a brain tumor while in the performance of duty on December 21, 1995, and authorized a craniotomy. Appellant left the employing establishment on December 27, 1995.

In a January 15, 1996 medical report, Dr. Robert J. Coffey, Board-certified in neurological surgery, stated that appellant had undergone a craniotomy on January 12, 1996, that she was making a satisfactory recovery, and, "[B]ecause of the very indolent nature of this type of lesion, in all likelihood she will be followed with imaging studies over the years to come." He noted that a follow-up magnetic resonance imaging (MRI) scan would be performed in the next three to six months.

On February 7, 1996 the Office authorized wage-loss compensation to February 22, 1996 and advised appellant that she would need to submit additional claims for wage loss beyond that date.

On February 26, 1996 appellant filed a claim for wage loss from December 21, 1995.¹

In a medical report dated February 28, 1996, Dr. Coffey stated that appellant was totally disabled until at least May 1, 1996.

On April 5, 1996 the Office authorized "a postoperative recheck" and an MRI scan of appellant's head which was scheduled for that week.

¹ The Board notes that the date on appellant's claim should read February 26, 1996 vice February 26, 1995.

On June 26, 1996 a nurse consultant requested that Dr. Robert P. Dinapoli, appellant's treating physician Board-certified in neurology, address whether appellant's stress and anxiety were related to her work-related injury.

In a July 3, 1996 medical report, Dr. Dinapoli stated:

"I would not feel that the difficulties you related can be directly attributed to the presence of her brain tumor or the necessary surgery for this. I would not consider her to be impaired or disabled in any way. I would be hopeful that she will be able to resume any kind of work of her choosing."

On July 15, 1996 the Office's consulting nurse requested that Dr. Coffey provide an opinion regarding Dr. Dinapoli's July 3, 1996 medical report, his opinion regarding whether appellant had reached maximum medical improvement, and whether any limitations would attend her return to work as a result of her accepted condition. In a memorandum for the record dated July 26, 1996, the nurse consultant noted that Dr. Coffey telephoned the Office on July 22, 1996 and concurred with Dr. Dinapoli's assessment.

In a decision dated August 12, 1996, the Office denied appellant's claim for benefits on the grounds that the evidence of record established that the work-related disability had ceased as of July 3, 1996.

In response to an October 7, 1996 request from the nurse consultant regarding appellant's medical costs for her April 1997 medical examination, the Office, in an October 29, 1996 letter decision, notified appellant that it would not authorize further medical treatment.

On October 23, 1996 appellant requested reconsideration. In support of her request appellant submitted a September 23, 1996 medical report from Dr. Dinapoli who stated that appellant would be reevaluated in April 1997 as a result of her brain tumor and subsequent surgery. He noted: "We are optimistic that she will remain seizure free and that eventually she may be withdrawn from her medication. We feel her long-term prognosis is excellent."

In a letter decision dated October 29, 1996, the Office notified appellant that no more further medical treatment for her was authorized.

On January 8, 1997 appellant requested reconsideration seeking expenses for her April 1997 follow-up medical consultation which was intended to include a neurological examination and an MRI brain scan. On January 22, 1997 the Office denied appellant's request.

On March 31, 1997 appellant requested reconsideration "seeking ... medical benefits only." In support of her request, appellant's submitted a February 20, 1997 letter from the nurse consultant who stated that appellant's doctors' intended to reevaluate appellant in April 1997 in order to verify that her tumor had not returned and to address her medical needs including use of prescription drugs. Appellant also submitted an appointment note from the treating clinic for April 7, 1997. By decision dated July 11, 1997, the Office denied appellant's application for review finding that the evidence submitted in support of the application was not sufficient to warrant review of the prior decision.

The Board finds that the Office improperly terminated appellant's medical benefits for the accepted injury.

In his January 15, 1996 report, Dr. Coffey, appellant's surgeon, stated that appellant would require annual imaging studies to ensure that the tumor which the Office had accepted as work related did not recur. Further, her treating physician, Dr. Dinapoli, stated on September 23, 1996 that appellant would be reevaluated in April 1997 to update her condition. The Board notes that although Dr. Dinapoli stated that he believed appellant was fit for work, he was addressing whether appellant's stress and anxiety were causally related to her accepted injury. He further conditioned his response by noting that he was hopeful that she would be able to return to work.

In light of the reports from both Drs. Coffey and Dinapoli, the Office has not met its burden of proof to establish that all residuals related to appellant's work-related injury have ceased. As the reports from Drs. Coffey and Dinapoli support continuing employment residuals, the Office improperly terminated medical benefits for the accepted injury.²

The decisions of the Office of Workers' Compensation Programs dated July 11 and January 22, 1997, and October 29 and August 12, 1996 are hereby reversed.³

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

² *Leopoldo Flores*, 46 ECAB 738 (1995).

³ The Board notes that subsequent to the Office's July 11, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).