

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA L. MINSK and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS AGENCY, Boston, MA

*Docket No. 98-1388; Submitted on the Record;
Issued November 17, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation.

On April 4, 1997 appellant, then a 54-year-old contract administrator, filed a notice of traumatic injury, alleging that she injured her left shoulder, hand and elbow on April 2, 1997 when she slipped on ice and fell while in the performance of her federal employment. On July 1, 1997 the Office accepted the claim for lumbar radiculopathy and appellant received compensation for total temporary disability.

On July 11, July 22 and August 4, 1997 Dr. Albert A. Ackil, appellant's treating physician and a neurologist, completed attending physician's reports, Form CA-20a. He diagnosed lumbar radiculopathy and checked "yes" to indicate that the condition was due to the injury for which compensation was claimed and to indicate that appellant was totally disabled.

On July 21, 1997 Dr. Ackil noted low back pain and leg pain. He indicated that appellant was not capable of doing any type of work.

On September 2, 1997 the Office requested a second opinion examination from Dr. Gordon F. Lupien, a Board-certified orthopedic surgeon. On September 26, 1997 he reviewed the history of appellant's injury and previous injuries. Dr. Lupien also reviewed the history of appellant's medical treatment. On September 23, 1997 he conducted a physical examination. Dr. Lupien noted that appellant stood with her trunk listed to the right and forward. He indicated that appellant demonstrated no voluntary back motion and that she walked with a slow, shuffling gait. Dr. Lupien noted that appellant refused to walk on her toes or heels and that she jumped inappropriately when her back was lightly touched. He indicated that her deep tendon reflexes were absent, but that muscle power and sensation were intact. Dr. Lupien noted that straight leg raising was inconsistent with 85 degrees in the sitting position bilaterally and limited to the tabletop in the supine position. He stated that appellant could sit

and lie on her left side without difficulty. Dr. Lupien indicated that appellant's examination revealed no objective evidence of nerve root compression or any incapacitating structural lesion of her musculoskeletal system. He stated that appellant's behavior with respect to gait analysis, straight leg raising and palpation of her back was inconsistent, indicating that she attempted to influence his opinion.

On September 3, September 10, September 26, November 6 and December 19, 1997 Dr. Ackil again completed attending physician's reports, Form CA-20a. He diagnosed lumbar radiculopathy and checked "yes" to indicate that appellant's condition was due to the injury for which compensation is claimed and to indicate that appellant was totally disabled.

On January 13, 1998 the Office issued a "Notice of Proposed Termination of Compensation and Medical Benefits" based upon the opinion of Dr. Lupien. Appellant was allowed 30 days to respond.

On January 22, 1998 Dr. Ackil indicated that appellant was totally disabled from any type of work and stated that appellant continued to be symptomatic from her work-related injury of April 2, 1997. He stated that appellant had lumbar radiculopathy as well as lumbar disc injury.

By decision dated February 13, 1998, the Office terminated appellant's benefits. In an accompanying memorandum, the Office indicated that the well-rationalized report of Dr. Lupien constituted the weight of the medical evidence.

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

Once the Office accepts a claim, it has the burden of proving that the disability 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 federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.² Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.³ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁴

In the present case, Dr. Lupien provided a well-rationalized second opinion evaluation. He reviewed appellant's history of injury and medical treatment. Dr. Lupien also completed a thorough physical examination. In this regard, he noted that appellant walked with a slow shuffling gait and that she refused to walk on her toes or heels. Dr. Lupien further indicated that appellant's straight leg raising was inconsistent with 85 degrees in the sitting position bilaterally

¹ *Frederick Justiniano*, 45 ECAB 491 (1994).

² *Id.*

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

⁴ *Id.*

and limited to the tabletop in the supine position. He also found that appellant jumped inappropriately when her back was lightly touched. Based on appellant's behavior regarding gait analysis, straight leg raising and palpation of the back, Dr. Lupine concluded that appellant's condition had resolved.

In contrast, Dr. Ackil failed to provide any explanation for his conclusion that appellant suffered residuals from her April 2, 1997 employment injury. In his numerous attending physician reports, Dr. Ackil diagnosed lumbar radiculopathy, but merely checked "yes" on the form to indicate that the condition was due to the employment injury and that it was totally disabling. Nevertheless, a medical report which checks a box on a form report "yes" with regard to whether a condition is employment related, is of diminished probative value without further detail and explanation.⁵ Moreover, Dr. Ackil failed to provide any rationale for his opinions he provided in letters dated July 21, 1997 and January 22, 1998. In his July 21, 1997 report, Dr. Ackil concluded without any explanation that appellant was not capable of performing any type of work. On January 22, 1998 he stated that appellant was totally disabled from any type of work, that appellant remained symptomatic from her work-related injury of April 2, 1997. Dr. Ackil again failed to provide any explanation for his conclusion. Consequently, because his reports failed to contain a medical rationale, they are entitled to little probative value.⁶ The weight of the medical evidence, therefore, rests with the well-rationalized opinion of Dr. Lupien establishing that appellant's condition relating to her April 2, 1997 injury had resolved.

The decision of the Office of Workers' Compensation Program dated February 13, 1998 is affirmed.

Dated, Washington, D.C.
November 17, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁵ *Alberta S. Williamson*, 47 ECAB 569 (1996); *Lester Covington*, 47 ECAB 539 (1996).

⁶ *Thomas L. Hogan*, 47 ECAB 323 (1996); *Carolyn F. Allen*, 47 ECAB 240 (1995).