

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BEVERLY M. McELROY and U.S. POSTAL SERVICE,  
POST OFFICE, West Palm Beach, FL

*Docket No. 99-956; Submitted on the Record;  
Issued November 12, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant had disability on or after October 19, 1994 due to her August 29, 1990 employment injury.

The Board finds that appellant did not have disability on or after October 19, 1994 due to her August 29, 1990 employment injury.

Under the Federal Employees' Compensation Act,<sup>1</sup> when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>2</sup> However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.<sup>3</sup> Once the Office of Workers' Compensation Programs has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</sup> After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

<sup>3</sup> *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

<sup>4</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>5</sup> *Id.*

<sup>6</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

In the present case, the Office accepted that appellant sustained an aggravation of a low back strain at work on August 29, 1990 and paid compensation for periods of disability. By decision dated October 19, 1994, the Office terminated appellant's compensation effective October 19, 1994 on the grounds that appellant had no disability due to her August 29, 1990 employment injury after that date. The Office based its termination on the opinions of Dr. Paul Maluso, a Board-certified orthopedic surgeon acting as an Office referral physician, and Dr. Raymond E. Gilmer, Jr., an attending Board-certified orthopedic surgeon. By decisions dated February 8, 1996, July 15 and October 1, 1997, and October 20, 1998, the Office denied modification of its October 19, 1994 decision.

The Board notes that the Office met its burden of proof to terminate appellant's compensation effective October 19, 1994 by determining that the weight of the medical evidence rested with the well-rationalized opinions of Dr. Maluso and Dr. Gilmer. In a report dated August 27, 1992, Dr. Maluso diagnosed "chronic lumbosacral/strain" but noted that the limited objective findings showed that appellant was able to perform her regular duties for the employing establishment. In reports dated May 2 and September 19, 1994, Dr. Gilmer indicated that appellant's continuing problems were due to her preexisting degenerative condition rather than her August 29, 1990 employment injury. Both the opinions of Dr. Maluso and Dr. Gilmer are based on a complete and accurate factual and medical history. Both physicians provided rationale for their opinions by noting the lack of objective evidence for any disabling residuals of the August 27, 1992 employment injury.

After the Office's October 19, 1994 decision terminating appellant's compensation effective October 19, 1994, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after October 19, 1994 due to residuals of her August 29, 1990 employment injury. Given that the Board has found that the Office properly relied on the opinions of Dr. Maluso and Dr. Gilmer in terminating appellant's compensation effective October 19, 1994, the burden shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her August 29, 1990 employment injury after October 19, 1994.<sup>7</sup>

Appellant submitted a November 9, 1995 report in which Dr. Gilmer indicated that her back sprain was chronic. However, he did not provide a clear opinion that appellant's August 29, 1990 employment injury continued to cause disability for work, especially in light of

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<sup>7</sup> Appellant also sustained an employment injury on December 28, 1996 for which she received compensation. This injury is not the subject of the current appeal.

his prior 1994 reports.<sup>8</sup> Appellant also submitted October 9, 1996 and January 3, 1997 reports of Dr. K. Michael Davidson, a Board-certified orthopedic surgeon who began treating her more than six years after her August 29, 1990 employment injury. In his January 3, 1997 report, Dr. Davidson stated that “some of the low back problem directly stems from the August 29, 1990 accident” and resulted in the diagnosis of “mechanical low back problem” which was contained in his October 9, 1996 report. This report, however, is of limited probative value on the relevant issue of the present case in that it did not contain adequate medical rationale in support of Dr. Davidson’s conclusions on causal relationship.<sup>9</sup> Although Dr. Davidson reviewed the prior medical evidence, he did not adequately explain how it showed that appellant continued to have disability due to her August 29, 1990 employment injury. Dr. Davidson did not explain why appellant’s continuing condition would not be solely due to the progression of her preexisting degenerative condition.

The decision of the Office of Workers’ Compensation Programs dated October 20, 1998 is affirmed.

Dated, Washington, D.C.  
November 12, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>8</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

<sup>9</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).