

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREA E. EDMUNSON and DEPARTMENT OF THE ARMY,
SIERRA ARMY DEPOT, Herlong, CA

*Docket No. 97-2812; Submitted on the Record;
Issued October 8, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability resulting from the accepted work injury.

The Board has carefully reviewed the record evidence and finds that the Office has not met its burden of proof in terminating appellant's disability benefits.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

In this case, appellant was a 53-year-old health and occupational safety specialist when she sustained injury on September 22, 1988. Her notice of traumatic injury, filed on September 26, 1988, was accepted for temporary aggravation of cervical spondylosis⁴ after she reached into a lower file drawer to remove case files that had jammed and felt severe pain in her

¹ 5 U.S.C. § 8101 *et seq.* (1974).

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ Spondylolysis is defined as the dissolution of a vertebra, a condition marked by platyspondylia, aplasia of the vertebral arch, and separation of the pars interarticularis. *DORLAND'S ILLUSTRATED Medical Dictionary* (27th ed. 1988).

neck, shoulders and arms. Appellant stopped work and continued to receive medical treatment for this condition.

On March 22, 1993 Dr. William N. Dawson Jr., a Board-certified neurosurgeon and appellant's treating physician, discharged appellant from treatment except for yearly check-ups and stated that she was totally disabled for the position of health and safety specialist, in which she was injured. Dr. Dawson completed a disability form indicating that appellant could work four hours a day, within certain physical limitations and repeated this conclusion in 1994.

On August 24, 1995 the Office wrote to Dr. Dawson requesting that he respond to several inquiries, including the following: "List current objective findings of the accepted condition; does appellant's current disability result from the work injury; complete the enclosed disability form; explain with medical rationale how appellant is still disabled from the 1988 injury; and distinguish between temporary and permanent aggravation of her preexisting spondylosis."

On September 13, 1995 Dr. Dawson clarified that appellant's diagnosis was chronic degenerative disc disease related to C5-6 and S1 radiculopathy. He stated that appellant "should be considered disabled from the job that she had," that he would return her to work for four hours a day, in sedentary work with no lifting.

Following on Dr. Dawson's reports, the Office referred appellant, along with the medical records, a statement of accepted facts, and a list of questions, to Dr. Wesley Kinzie, a Board-certified orthopedic surgeon, for a second opinion evaluation.

Dr. Kinzie, in a report dated December 5, 1995, took an accurate history of appellant's 1988 work injury and her current complaints; reviewed the medical records, including magnetic resonance imaging (MRI) scans of the cervical spine done on November 18, 1994 and April 12, 1990, April 3, 1990 x-rays of the cervical spine and nerve conduction studies done on July 5, 1989 and January 10, 1996; and thoroughly examined appellant, finding essentially symmetrical reflexes, ability to toe and heel walk and generalized decrease in pinprick sensation in the left leg. He found no specific objective signs of a current aggravation of appellant's spondylosis but noted a very restricted range of motion. Dr. Kinzie opined that her condition, objectively, had returned "to a normal progression of the underlying spondylosis," as shown by the x-rays and MRI scans. Noting that appellant's pain level had increased, he stated that her continued subjective symptoms were "most likely" a natural progression of her degenerative spondylosis and were nonindustrial in nature, given that she had not worked since 1988.

Based on Dr. Kinzie's December 5, 1995 report, the Office issued a notice of proposed termination of compensation on April 30, 1996, providing appellant with 30 days to respond.

In a report dated June 10, 1996, Dr. Dawson concluded that the 1988 work injury permanently aggravated appellant's underlying spondylosis. He explained that appellant never got over the pain from her injury, that the injury "probably increased the speed with which she got cervical spondylosis," and that the condition would not have been aggravated to the point that it is now, absent the 1988 injury.

On July 2, 1996 the Office terminated appellant's compensation, effective that date, on the grounds that Dr. Kinzie's report established that she no longer suffered from a temporary aggravation of her cervical spondylosis. Appellant requested an oral hearing, which was held on June 24, 1997. On August 12, 1997 the hearing representative affirmed the Office's termination of appellant's compensation on the same grounds.

Where employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the period of disability related to the aggravation.⁵ When the aggravation is temporary and leaves no permanent residual, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors have on the underlying condition.⁶

The Office terminated appellant's compensation benefits based upon a finding that Dr. Kinzie's report constituted the weight of the medical evidence and established that appellant's accepted condition of temporary aggravation of cervical spondylosis had ceased.

Section 8123 of the Act⁷ provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination to resolve the conflict.⁸

At the time the Office terminated appellant's compensation benefits on July 2, 1996 there was a conflict in the medical opinion evidence as to whether appellant remained disabled due to residuals of her employment injury. Dr. Dawson explained that appellant's chronic degenerative cervical condition would not have progressed to the point that it had, without the employment injury. He also stated that appellant was not able to return to her former employment and at most could work four hours a day, with numerous physical restrictions. Dr. Kinzie, however, opined that appellant's current condition was a normal progression of the underlying degenerative condition and that the employment injury no longer caused any disability.

As a conflict existed in the medical opinion evidence between Drs. Dawson and Kinzie, which the Office did not resolve with an impartial medical evaluation before terminating appellant's medical benefits, the Office did not meet its burden of proof to terminate appellant's compensation benefits.⁹

⁵ *John Watkins*, 47 ECAB 597, 600 (1996).

⁶ *Richard T. Devito*, 39 ECAB 668, 673 (1988); *Ann E. Kernander*, 37 ECAB 305, 310 (1986).

⁷ 5 U.S.C. § 8123(a).

⁸ *Shirley L. Steib*, 46 ECAB 309, 316 (1994); see *Dallas E. Mopps*, 44 ECAB 454, 456 (1993) (finding that the Office properly referred the claim to an impartial medical examiner because of a conflict in the opinions of a psychiatrist and an psychologist).

⁹ See *Warren L. Divers*, 47 ECAB 574 (1996).

The August 12, 1997 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, D.C.
October 8, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member