

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. WALKER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Augusta, GA

*Docket No. 98-778; Submitted on the Record;
Issued September 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective May 26, 1996.

On February 19, 1988 appellant, then a 51-year-old nursing assistant, filed a notice of traumatic injury and claim, alleging that on February 18, 1988 she injured her right hand on a door handle. Appellant stopped work on February 19, 1988. She returned to work on March 11, 1988. The Office accepted appellant's claim for contusion and sprain of the right wrist and rupture of the extension tendon. On August 5, 1988 appellant filed a claim for recurrence of disability beginning July 12, 1988. She stopped work on November 7, 1988. Thereafter, appellant retired. Appellant received appropriate compensation for temporary total disability and elected to receive Federal Employees' Compensation Act benefits in lieu of civil service retirement. On November 14, 1989 appellant received a 2 percent schedule award for permanent impairment of the right hand for 4.88 weeks of compensation from August 29 to October 1, 1989.

In a letter dated February 21, 1996, the Office notified appellant that it proposed termination of her compensation on the grounds that she no longer had any residuals of her accepted employment injuries. In a decision dated May 22, 1996, the Office terminated appellant's compensation effective May 26, 1996. By decision dated May 27, 1997, an Office hearing representative affirmed the May 22, 1996 decision of the Office. In a decision dated October 29, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish that modification of the prior decisions was warranted.

The Board has duly reviewed the entire case record on appeal and finds that the Office properly terminated appellant's compensation effective May 26, 1996.¹

Under the Act,² once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.³ After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁴

In the present case, the Office terminated appellant's compensation based on the second opinion examination and report of Dr. John Savage a Board-certified orthopedic surgeon. In a report dated September 21, 1995 and office notes dated September 20, 1995, Dr. Savage noted appellant's history of injury and indicated that physical examination of appellant revealed a well-healed scar on her right hand, that appellant could not make a fist and that she had restricted range of motion in her hand. He reported a history of diabetes, hypertension, asthma, coronary artery disease and rheumatoid arthritis. Dr. Savage found that appellant's ongoing condition was in no way related to her accepted injuries of 1988. He concluded that appellant's condition had resolved and that she was suffering from rheumatoid disease, diabetes and vascular disease. As appellant did not respond to the Office's proposed termination of compensation, which was based on the report by Dr. Savage, the Office properly terminated appellant's compensation based on this well-reasoned and rationalized report. Subsequent to this decision, appellant submitted a report by Dr. Michael R. Baker, a Board-certified internist specializing in rheumatology. In a report dated February 26, 1996, Dr. Baker indicated that appellant did have rheumatoid arthritis but reported that the radiographic evidence and physical examination did not support the contention that appellant's disability was attributable solely to her rheumatoid arthritis. He noted that while the rupture of the extensor tendon was not an uncommon event in a rheumatoid hand, the evidence did not indicate that inflammation was the cause of the tendon rupture. Dr. Baker concluded, however, that he would defer to orthopedist or occupational specialists concerning whether surgical repair of the tendon injury was successful and concerning appellant's ability to function following said tendon injury. As Dr. Baker did not reach a conclusion regarding whether appellant had any residuals of her accepted employment injuries, his opinion cannot overcome the report by Dr. Savage and does not establish that appellant had any continuing disability as a result of her February 1988 injury. Appellant also submitted a report by Dr. James L. Becton, a Board-certified orthopedic surgeon and appellant's treating physician of record, at the time of injury. In a report dated April 29, 1997, Dr. Becton indicated that appellant's hand looked normal but she could not close her little finger or ring

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on January 13, 1998, the only decisions before the Board are the Office's May 29 and October 29, 1997 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193.

³ *William Kandel*, 43 ECAB 1011 (1992).

⁴ *Carl D. Johnson*, 46 ECAB 804 (1995).

finger into a fist and had decreased range of motion in her hand. He concluded that appellant had a 10 percent permanent impairment of her little finger and a 5 percent impairment of the ring finger. The report by Dr. Becton is not probative concerning the issue of whether appellant had any residual disability as a result of her accepted employment injury. Although Dr. Becton provided an impairment rating, he did not provide a medical rationale for his conclusion regarding the degree of impairment and he did not provide any discussion concerning whether appellant was disabled by her accepted injuries. Thus, the weight of the medical evidence rests with the well-reasoned and rationalized report of Dr. Savage, which clearly addresses appellant's disability status and excludes her accepted employment injuries as a cause for any disability. The Office properly terminated appellant's compensation effective May 26, 1996.

The decisions of the Office of Workers' Compensation Programs dated October 29 and May 29, 1997 are hereby affirmed.

Dated, Washington, D.C.
September 14, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member