

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. DARBY and DEPARTMENT OF VETERANS AFFAIRS,
Brecksville, OH

*Docket No. 98-209; Submitted on the Record;
Issued January 24, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on March 1, 1997.

The Office accepted appellant's claim for an abdominal muscle strain, lumbar sprain with right radiculopathy and post-traumatic stress disorder. Her work-related injury occurred on March 21, 1992 when appellant, then a staff nurse, was assisting a patient who became combative and fell on her. Appellant stopped working for the employing establishment on April 30, 1992. She received temporary total disability benefits. In 1993, appellant worked part time in a private nursing home but further injured herself when a chair slipped out from beneath her as she attempted to sit down. In August 1993, appellant sought rehabilitation services with the state and with their aid, obtained a Bachelor of Science (B.A.) in nursing at Case Western Reserve University in 1996.

By decision dated February 20, 1997, the Office terminated benefits, effective March 1, 1997, stating that the medical evidence of record established that appellant's work-related conditions had resolved.

In terminating benefits, the Office relied on the opinions of the referral physicians, Dr. Robert T. Segraves, a Board-certified psychiatrist and neurologist, and of Dr. Sheldon Kaffen, a Board-certified orthopedist, dated June 12 and October 16, 1996, respectively. In his June 12, 1996 report, Dr. Segraves considered appellant's history of injury, reviewed numerous medical documents and diagnostic tests of record, performed a psychiatric examination, and concluded that appellant was not suffering from a post-traumatic stress disorder. He stated that appellant did not experience intense fear during the event of her injury and was not experiencing a sense of numbing, derealization, depersonalization, dissociative amnesia, flashbacks, avoidance of similar events or significant impairment in function. Dr. Segraves also found no evidence of anxiety and depressive disorders or panic disorder. He stated that there were minimal if any residuals from her March 21, 1992 employment injury.

In his October 16, 1996 report, Dr. Kaffen considered appellant's history of injury, performed a physical examination and reviewed a magnetic resonance imaging (MRI) scan dated April 30, 1992 which showed a bulging disc of L4-5 without nerve compression foraminal stenosis or canal stenosis. He also reviewed an electromyogram (EMG) and nerve conduction studies dated May 18 and June 16, 1992 which were normal. Dr. Kaffen concluded that there were no objective medical findings to support the presence of the residuals from appellant's injuries of abdominal muscle strain and lumbar strain with right radiculopathy. He opined that appellant required no further medical treatment and could return to her usual job of a staff nurse.

On February 22, 1996 appellant's treating physician, Dr. Robert C. Erwin, an osteopath, stated that he had not treated appellant since January 12, 1995 and her status was unknown to him.

In an attending physician's report dated May 19, 1994, Dr. E.A. Benedetto, appellant's treating psychologist, diagnosed anxiety history which progressed to post-traumatic stress disorder and indicated in an accompanying report dated January 7, 1993 that she had treated appellant for nine visits from May 4 to August 31, 1992.

In an undated letter received by the Office on August 22, 1997, appellant requested reconsideration of the Office's February 20, 1997 decision. She submitted evidence including progress notes dated from April 30, 1992 through May 16, 1996 documenting her medical condition with references, *inter alia*, to weakness in the right thigh, pain in the thigh and hip and anxiety and stress, a report from Robert Elias, a professional clinical counselor and social worker, dated June 6, 1997, a report from Dr. Erwin dated August 11, 1997 and an affidavit from appellant dated August 20, 1997.

In his June 6, 1997 report, Mr. Elias, a clinical counselor and social worker, stated that appellant had not seen him since June 1996, that when appellant first came to him she was immobilized but the therapy helped mobilize her to obtain her nursing degree, and appellant required a supportive work environment in order to succeed. He stated that at the time he last saw appellant, she could work in a position where she had some authority but would not be subject to harsh criticism or psychotic patients. Mr. Elias stated that appellant's post-traumatic stress disorder "seemed to be triggered" when a nonqualified person would accuse her of poor work performance and not doing her job properly.

In his August 11, 1997 report, Dr. Erwin stated that he treated appellant in January, February, April and July 1997 and her subjective complaints of low back pain with right radiculopathy, shoulder pain and discomfort and weakness of her right side, particularly her right leg, persisted. He stated that her movement and gait while in the examining area were compatible with her subjective complaints. Dr. Erwin opined that due to appellant's persistent complaints of varying degrees of severity, the overriding problem remained that of weakness in the right upper extremity and right lower extremity and that these levels of weakness also varied based on activities particularly associated with fatigue. He stated that appellant had participated very vigorously in a strengthening exercise program which failed to impact the endurance of the damaged musculature. Dr. Erwin opined that appellant "could never" work in the capacity of a floor nurse but could carry out sedentary work consisting of no lifting, bending, excessive walking, persistent standing or sitting. He also opined that appellant would need to be allowed

to change position frequently and would need handicapped access so as not to require extensive walking to and from the parking lot to her work site. Dr. Erwin stated that appellant had worked to improve herself in spite of ongoing subjective complaints and positive objective findings.

In her affidavit dated August 20, 1997, appellant described her medical condition since her injury and her efforts with the rehabilitation. She stated that she continued to have flare-ups of her physical and emotional conditions which required treatment from time to time and were especially triggered by stressful events.

By letter dated September 22, 1997, the Office denied appellant's request for modification.

The Board finds that the Office met its burden of proof to terminate compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has been determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

In the present case, the opinions of the referral physicians, Dr. Segraves dated June 12, 1996 and Dr. Kaffen, dated October 16, 1996, establish that appellant recovered from her March 21, 1992 employment injury. In his June 12, 1996 report, Dr. Segraves considered appellant's history of injury, performed a psychiatric examination, and found that appellant had no symptoms of post-traumatic stress disorder, anxiety and depressive disorder and panic disorder. He concluded that there were minimal if any residuals from appellant's March 21, 1992 employment injury. In his October 16, 1996 report, Dr. Kaffen, a Board-certified orthopedist, considered appellant's history of injury, reviewed diagnostic tests, performed a physical examination and found no objective medical findings to support appellant's residuals from the accepted injuries. He stated that appellant required no further medical treatment and could return to her usual work of a staff nurse.

No evidence of record which appellant submitted effectively counters these doctors' opinions. Mr. Elias' June 6, 1997 opinion in which he opined that appellant required a supportive environment and should not be subject to harsh criticism or psychotic patients is not probative as Mr. Elias, a clinical counselor and social worker, does not qualify as a physician within the meaning of the Act.³ Moreover, Dr. Erwin's August 11, 1997 opinion is also not probative. In his report, Dr. Erwin stated that appellant's subjective complaints of pain included low back pain with right radiculopathy, shoulder pain and discomfort and weakness on her right

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Larry Warner*, 43 ECAB 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

³ *See Jeannine E. Swanson*, 45 ECAB 325, 336 (1993); *Ceferino L. Gonzales*, 32 ECAB 1591, 1594 (1981).

side and her movement and gait while in the examining area were consistent with her complaints. He stated that appellant had damaged musculature which did not respond to a vigorous strengthening program. Further, Dr. Erwin restricted appellant to sedentary work with no lifting, bending, persistent standing or sitting, the opportunity to change position frequently and access to handicapped parking to minimize walking to work. He, however, did not provide a rationalized opinion as to how appellant's residuals from her March 21, 1992 employment injury persisted.⁴ Dr. Erwin stated that there was positive findings but other than her movement and gait, did not describe what they were. Further, his report is incomplete as he did not have the history of appellant's further injuring herself in 1993 at the private nursing home when she slipped while trying to sit in a chair. Moreover, the progress notes appellant submitted dated from April 20, 1992 through May 16, 1996 do not address causation and therefore are not probative. Inasmuch as the opinions of Drs. Segraves and Kaffen are well rationalized, they justify the Office's termination of benefits.

The decisions of the Office of Workers' Compensation Programs dated September 22 and February 20, 1997 are hereby affirmed.

Dated, Washington, D.C.
January 24, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁴ See *Kurt R. Ellis*, 47 ECAB 505, 508 (1996).