

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PENNEE L. MILL and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 98-917; Submitted on the Record;
Issued January 27, 2000*

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she had any employment-related disability after May 7, 1993, the date she resigned from the employing establishment.

On January 30, 1996 appellant, then a 47-year-old facilities management specialist, filed an occupational disease claim alleging that she sustained an aggravation of a preexisting migraine condition which she attributed to factors of her federal employment including fluorescent lighting, computer use, customer complaints and a backlog of work. She indicated that she first became aware that her condition was aggravated by factors of her employment on March 30, 1993. Appellant voluntarily resigned from her position on May 7, 1993 pursuant to an incentive program.

In a report dated January 7, 1996, Dr. Joel C. Konikow, appellant's attending Board-certified family practitioner, provided a history of appellant's migraine condition and stated his opinion that her condition was aggravated by her employment. He related that appellant first consulted him in 1992 for a 15-year history of headaches, including menstrual migraines and other types of migraines. Dr. Konikow related that appellant had a strong family history of migraine headaches and her own condition began when she was five or six years old but did not become a severe problem until the late 1980's. He related that her migraines worsened in frequency and severity from 1988 to 1993. Dr. Konikow stated that after appellant left her job at the employing establishment on May 7, 1993 her condition improved. He stated his opinion that her condition was aggravated by stress caused by her employment but that her migraines went back to a level consistent with her previous migraine history after she left the employing establishment in May 1993.

In reports dated October 17 and November 7, 1996, Dr. B. Robert Aigner, a Board-certified neurologist and Office of Workers' Compensation Programs' referral physician, stated that the contribution of the job stress related to her aggravation of her migraine condition would

have ceased when she quit working at that job, in May 1993, but that she would continue to have headaches as there were other factors contributing to her migraine condition.

By letter dated January 29, 1997, the Office accepted that appellant sustained a temporary aggravation of her migraine condition which ceased when appellant left her job at the employing establishment in May 1993.¹

The Board finds that appellant has failed to meet her burden of proof to establish that she had any employment-related disability after May 7, 1993, the date she resigned from the employing establishment.

Under the Federal Employees' Compensation Act,² 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.³ However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.⁴

In this case, the Office accepted that appellant sustained a temporary aggravation of a migraine condition which ceased when she resigned her position at the employing establishment. She contends, however, that the employment-related aggravation of her migraine condition caused disability after her May 7, 1993 resignation.

In a report dated January 7, 1996, Dr. Konikow, appellant's attending Board-certified family practitioner, provided a history of appellant's condition and stated his opinion that her preexisting migraine condition was aggravated by her employment. He related that she had a strong family history of migraine headaches and her own condition began when she was five or six years old but did not become a severe problem until the late 1980's. Dr. Konikow related that her migraines worsened in frequency and severity from 1988 to 1993 but her condition improved after she resigned her job at the employing establishment on May 7, 1993. He stated his opinion that appellant's condition was temporarily aggravated by stress caused by her employment but that her migraines went back to a level consistent with her previous migraine history after she left the employing establishment in May 1993. As Dr. Konikow opined that appellant's preexisting migraine condition was temporarily aggravated by her employment but such aggravation ceased when she left the employing establishment on May 7, 1993, this report does not support her claim that her employment-related aggravation of her condition continued beyond May 7, 1993.

¹ The Board notes that additional material was submitted to the file subsequent to the Office's January 29, 1997 decision. The Board has no jurisdiction to consider this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² 5 U.S.C. §§ 8101-8193.

³ *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

⁴ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

In reports dated October 17 and November 7, 1996, Dr. Aigner, a Board-certified neurologist and Office referral physician, stated that the contribution of the job stress related to her aggravation of her migraine condition would have ceased when she quit working at her job, in May 1993, but that she would continue to have headaches as there were other factors contributing to her migraine condition. As Dr. Aigner opined that the job stress which aggravated appellant's preexisting migraine condition would have ceased when she left the employing establishment in May 1993, this report is not sufficient to discharge appellant's burden of proof to establish continuing disability due to the employment-related aggravation of her migraine condition.

The January 29, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 27, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member