

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARDEN E. BUTLER and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Bensalem, PA

*Docket No. 98-1172; Submitted on the Record;
Issued January 31, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective May 2, 1993.

This case is on appeal to the Board for the second time.¹ On the first appeal, the Board reviewed an August 4, 1995 decision, by which the Office denied appellant's request for reconsideration of its April 13, 1993 decision terminating benefits, finding that appellant's reconsideration request was untimely because appellant filed her request on April 28, 1995, more than a year after the Office's April 13, 1993 decision was issued, and did not present clear evidence of error. In its decision, the Board found that the Office erred in finding that appellant's reconsideration request was untimely as appellant filed the request within a year of the Office's last merit decision dated May 6, 1994. The Board therefore vacated the Office's August 4, 1995 decision, and remanded the case to the Office for consideration of appellant's reconsideration request.

The Office accepted appellant's claim for contusion to the head and postconcussion syndrome. In her November 20, 1990 report, Dr. Laura S. Willingmyre, a Board-certified internist, stated that, based on her physical examination and a review of the electroencephalogram (EEG) and computerized axial tomography (CAT) scan, appellant "may suffer from post-traumatic cephalgia for up to three years" and a neurologist might better be able to address appellant's problem. She stated that "[o]ccasionally head trauma will result in prolonged symptomatology which may seem out of proportion to the initial injury."

The Office referred appellant to a second opinion physician, Dr. Richard A. Bennett, a Board-certified psychiatrist and neurologist. In a report dated March 27, 1992, Dr. Bennett considered appellant's history of injury, and reviewed some of the medical records, noting that

¹ Docket No. 95-2754 (issued December 17, 1997). The facts and history surrounding the prior appeal are set forth in the prior decision and are hereby incorporated by reference.

many of them pertained to unrelated problems such as epigastric burning. He noted that appellant had chronic, continuous headaches, a past history of hypertension, that she had a normal EEG, a normal CAT scan, and a magnetic resonance imaging (MRI) scan of her back dated November 8, 1990 showing a mild bulging disc at L4-5 and L5-S1. Dr. Bennett found that appellant's neurological examination was normal. He stated that appellant's April 3, 1990 employment injury did not cause any permanent neurological impairment. Dr. Bennett disagreed with one of appellant's treating physician, Dr. Karen M. Scardigli, an osteopath, that appellant had post-traumatic cephalgia. He stated that appellant "may, indeed, have headaches, but these are not related to that episode of trauma." He concluded that there was no evidence of any neurological impairment directly related to the April 3, 1990 employment injury. Dr. Bennett stated that appellant did not require further treatment and could return to work without restrictions.

By decision dated April 13, 1993, the Office terminated appellant's compensation benefits effective May 2, 1993, stating that the weight of the medical evidence established that appellant's disability resulting from the April 3, 1990 employment injury ceased no later than May 2, 1993.

By letter dated February 2, 1994, appellant requested reconsideration of the Office's decision and submitted the medical report of Dr. Brian B. McKnight, a rheumatologist. In his report dated February 3, 1994, Dr. McKnight considered appellant's history of injury, performed a physical examination, and reviewed x-rays and blood tests. He diagnosed, *inter alia*, right carpal tunnel syndrome, kyphoscoliosis, and hypermobility syndrome with associated generalized osteoarthritis and prescribed medication and a knee brace.

By decision dated May 6, 1994, the Office denied modification of the April 13, 1993 determination decision.

By letter dated April 28, 1995, appellant requested reconsideration of the Office's decision and submitted the medical reports of Dr. S. Manzoor Abidi, a Board-certified psychiatrist and neurologist, dated September 14, 1994, January 3 and June 2, 1995. In his September 14, 1994 report, Dr. Abidi considered appellant's history of injury, performed a physical examination, and noted that the MRI scan of appellant's head done in April 1993 and repeated in August 1994 was unchanged with deep white matter and small vessel ischemic changes of a diffuse nature. He considered that appellant had other medical problems consisting of hypertension, hiatal hernia, diverticulitis and angina. Dr. Abidi diagnosed post-traumatic, left-sided headaches with features of vascular type of headaches and opined that she was unable to work. In his report dated January 3, 1995, he noted that appellant's neurological examination was normal and stated that appellant's post-traumatic headaches were "chronic in nature" and would require treatment with medication on an indefinite basis. Dr. Abidi stated that his diagnoses was based on appellant's history rather than any abnormalities on his examination or neuroimaging.

In his report dated June 2, 1995, Dr. Abidi reiterated that appellant sustained head trauma on April 3, 1990, had recurrent headaches at the site of the trauma and had not responded completely to treatment. He noted that appellant did not have a history of headaches prior to the April 3, 1990 employment injury. Dr. Abidi stated that appellant's left-sided headaches were

directly related to the April 3, 1990 employment injury. He also opined that, because the headaches had persisted for five years since the time of trauma, he regarded them as permanent and that appellant required ongoing medical treatment.

By decision dated August 4, 1995, the Office denied appellant's reconsideration request. Appellant appealed to the Board, and as noted above, by decision dated December 17, 1997, the Board vacated the Office's August 4, 1995 decision and remanded it to the Office.

By decision dated March 3, 1998, the Office denied modification, finding that Dr. Bennett's March 27, 1992 medical opinion established that appellant had no work-related residuals from her April 3, 1990 employment injury and was able to return to her usual work without restrictions.

The Board finds that the Office properly terminated benefits in its April 13, 1993 decision relying on Dr. Bennett's opinion, and in its affirmance of that decision in its May 6, 1994 decision. The Board finds, however, that, since the issuance of those decisions, a conflict arose in the evidence between Dr. Bennett's and Dr. Abidi's opinions and the case is not in posture for decision.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.³

In the present case, the Office terminated benefits on April 13, 1993 relying on Dr. Bennett's opinion that appellant had no neurological impairment related to the April 3, 1990 employment injury and could return to work without restrictions. Dr. Bennett's opinion is complete and well rationalized and justified the Office's termination of benefits on April 13, 1993. As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had a disability causally related to her accepted injury.⁴ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵

Dr. McKnight's February 3, 1994 opinion is not probative because Dr. McKnight did not address whether the conditions he diagnosed, including right carpal tunnel syndrome and

² *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

³ *Larry Warner*, 46 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ *See George Servetas*, 43 ECAB 424 (1992).

⁵ *See* 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, 45 ECAB 383 (1994).

kyphoscoliosis, were employment related. The Office therefore properly denied appellant's request for modification on May 6, 1994.

In her second request for modification, appellant submitted Dr. Abidi's reports dated September 14, 1994, January 3 and June 2, 1995. In his June 2, 1995 report, Dr. Abidi opined that appellant had recurrent headaches at the site of the head trauma on April 3, 1990, that appellant did not have a history of headaches prior to the April 3, 1990 employment injury, and the appellant's left-sided headaches were directly related to the April 1990 injury. He stated that the headaches were permanent and required ongoing treatment. In his September 4, 1994 report, Dr. Abidi stated that appellant was unable to work due to her post-traumatic, left-sided headaches.

Dr. Abidi's opinion that appellant was disabled due to work-related headaches creates a conflict between Dr. Bennett's March 27, 1992 opinion that appellant completely recovered from her April 3, 1990 employment injury. Section 8123(a) of Federal Employees' Compensation Act provides that where there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.⁶ The case must therefore be remanded for the Office to refer the case and appellant with a statement of accepted facts to an impartial medical specialist to evaluate the medical evidence and provide a rationalized opinion on the issue of whether appellant's recurrent headaches are causally related to the April 3, 1990 employment injury. The Office should then make a *de novo* decision based on the augmented record.

The decision of the Office of Workers' Compensation Programs dated March 3, 1998 is hereby vacated, and the case remanded for further development consistent with this decision.

Dated, Washington, D.C.
January 31, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁶ 5 U.S.C. § 8123(a); *Esther Velasquez*, 45 ECAB 249, 252-53 (1993).

Bradley T. Knott
Alternate Member