

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of QUINCY B. DAWSON and DEPARTMENT OF AGRICULTURE,
NATIONAL FINANCE CENTER, New Orleans, LA

*Docket No. 99-1418; Submitted on the Record;
Issued July 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant had disability after October 17, 1993 due to her February 23, 1987 employment injury.

The Board finds that appellant did not have disability after October 17, 1993 due to her February 23, 1987 employment injury.

This is the third appeal in the present case. In the first appeal, the Board issued a decision and order¹ on June 9, 1994 in which it affirmed the October 1993 decision of the Office of Workers' Compensation Programs on the grounds that the Office properly terminated appellant's compensation effective October 17, 1993 because she had no disability after that date due to her February 23, 1987 employment injury, a low back strain. The Board found that the weight of the medical evidence rested with the opinions of Dr. Gordon P. Nutik and Dr. Santo J. LoCoco, both Board-certified orthopedic surgeons to whom the Office referred appellant. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.²

After the Board's June 9, 1994 decision, appellant submitted additional evidence which she felt showed that she had disability after October 17, 1993 due to her February 23, 1987 employment injury. By decision dated August 13, 1998, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she had

¹ Docket No. 94-1335.

² Appellant filed a second appeal in July 1995 but the Board, in an order dated February 19, 1998, dismissed the appeal due to lack of jurisdiction.

employment-related disability after October 17, 1993. By decision dated February 19, 1999, the Office denied modification of its August 13, 1993 decision.³

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.⁶

The Board has found that the Office met its burden of proof to terminate appellant's compensation effective October 17, 1993 by determining that the weight of the medical evidence rested with the well-rationalized opinions of the Office medical advisers, Drs. Nutik and LoCoco. Given that the Board has found that the Office properly relied on the opinion of Drs. Nutik and LoCoco in terminating appellant's compensation effective October 17, 1993, the burden shifts to appellant to establish that she is entitled to compensation after that date.

The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her February 23, 1987 employment injury after October 17, 1993. Appellant submitted medical reports, dated between 1995 and 1998, concerning the treatment of problems concerning her hearing, obesity, sleep apnea and tentorial meningioma. However, these conditions have not been accepted as employment related and the reports bear no relevance to whether she had disability after October 17, 1993 due to her February 23, 1987 employment injury, a low back strain. Appellant submitted a May 15, 1995 report in which an attending physician noted that she reported having low back pain, but the report does not contain any back diagnosis or opinion on causal relationship. Therefore, the report is of no probative value on the relevant issue of the present case.⁷

³ The record also contains a January 19, 1999 decision in which the Office denied appellant's request for a review of the written record, but appellant has not requested appeal of this decision to the Board.

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁷ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship).

The decisions of the Office of Workers' Compensation Programs dated February 19, 1999 and August 13, 1998 are affirmed.

Dated, Washington, D.C.
July 10, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member