

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH T. BYNUM and VETERANS ADMINISTRATION,
MEDICAL CENTER, Richmond, VA

*Docket No. 98-850; Submitted on the Record;
Issued June 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant established that she was disabled from work on and after November 15, 1996 as a result of her May 16, 1995 employment injury.

On May 17, 1996 appellant, then a 45-year-old rehabilitation technician, filed a notice of traumatic injury and claim for compensation, alleging that on May 16, 1996 she sustained a head and neck injury when she was accidentally knocked down by a fellow coworker and hit her head on a wall. The Office of Workers' Compensation Programs accepted the claim for a cervical strain. Appellant received continuation of pay and compensation for wage loss for the period May 16 through November 14, 1996. Appellant filed a series of claims for continuing compensation for wage loss on and after November 15, 1996. She has not worked since May 16, 1996.

Appellant was initially treated by Dr. William K. Fleming, a Board-certified orthopedic surgeon. An x-ray of the cervical spine dated May 16, 1996 was interpreted as normal, while a computerized axial tomography (CAT) scan taken of appellant's head on May 16, 1996 showed a cystic appearing lesion in the right parietal white matter of uncertain origin. The CAT scan noted, however, that the lesion did not represent an acute trauma.

In reports dated May 23 and June 4, 1996, Dr. Fleming, a Board-certified orthopedist, diagnosed a "sprain of the trapezius, left worse than right, and a sprain of the lumbar paraspinal," which he opined was consistent with appellant's history of injury on May 16, 1996. He prescribed physical therapy but was uncertain when appellant would be able to return to work.

In June 18, 1996 report, Dr. Fleming, noted that appellant was not taking her physical therapy as prescribed. He stated: "[appellant] still has tenderness about the neck and back area. She is wearing a Philadelphia collar and complains that everything is hurting. I have informed [her] that I cannot give her permission to stay out of work. If she has problems, Dr. [Basava] Raj [a Board-certified neurologist] should be able to support her."

In a report dated September 18, 1996, Dr. Raj stated that he had seen appellant on June 12, 1996 on referral from Dr. Fleming. He described appellant's history of injury, physical findings and medical treatment. Dr. Raj noted appellant's complaints of continuing neck pain, headaches and lower back pain. He diagnosed occipital neuralgia, fibromyalgia syndrome of the neck and lumbosacral sprain, which he related to the May 16, 1996 work injury. He stated that appellant would require another two to three months before she could return to work. Dr. Raj prescribed medication and a course of physical therapy.

In a follow-up report dated October 29, 1996, Dr. Raj stated that appellant was given a trigger injection for her complaints of neck, back and left shoulder pain. He released appellant to work in a sedentary activity effective November 15, 1996, noting that, "if the workplace does not have any sedentary activity, then I will have to work with her to increase her capability with an exercise and work-hardening program."

Although Dr. Raj approved appellant for sedentary work effective November 15, 1996, appellant did not return to work. The record indicates that, on November 15, 1996, appellant by counsel wrote Dr. Raj and alleged that the employing establishment had "no intention of accommodating your patient's disability" and asked him to reconsider his decision to return appellant to work.

In a January 17, 1997 report, Dr. Raj noted that appellant continued to have neck and low back pain, unrelieved by physical therapy. He diagnosed chronic neck and back pain with headaches. Dr. Raj stated: "I am extending [appellant's] disability to April 30, 1997, but more than likely, she will not be capable of going back to her current job with the [employing establishment]."

In a letter dated February 7, 1997, the employing establishment directed appellant to return to work, noting that her job as a rehabilitation technician was fully sedentary. When appellant failed to return to work, she was subsequently separated from her employment on March 7, 1997.¹

In a (Form CA-20a) an attending physician's report dated April 9, 1997, Dr. Raj diagnosed neck and back sprain and indicated with a check mark on the form that appellant was disabled from work.

In a decision dated October 27, 1997, the Office denied appellant's claim for continuing compensation for wage loss on or after November 15, 1996 on the grounds that the medical evidence was insufficient to establish that she was disabled from work.

The Board finds that appellant is not entitled to continuing wage-loss compensation on or after November 15, 1996.

¹ Appellant submitted a physician's note signed by Dr. Julie Samuels that included a hand-written date of examination as October 29, 1996 and a return to work date of December 31, 1996. The employing establishment apparently suspected that the note was falsified and contacted Dr. Samuels, who denied having seen appellant on October 29, 1996 and stated that the dates of examination and return to work were not in her handwriting. Dr. Samuels advised that she had not treated appellant since July 1996.

A person who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that an injury occurred in the performance of duty as alleged and that disability for employment was sustained as a result thereof.³ To establish entitlement to continuation of pay or monetary compensation benefits, an employee must establish through competent medical evidence that the disability from work resulted from the employment injury.⁴

In the instant case, the Office accepted appellant's claim for cervical strain and paid compensation benefits. Although appellant's treating physician, Dr. Raj specifically approved appellant for a return to sedentary duty effective November 15, 1996, it appears that Dr. Raj may have changed his disability opinion based on the unsubstantiated allegation of appellant that the employing establishment would place her back to work in a job that was not sedentary in nature. The Board notes that the employing establishment indicated that appellant could perform sedentary activities in her regular position as a rehabilitation technician. There is nothing in the record to suggest that the employing establishment would not accommodate appellant's work restrictions.

Furthermore, in extending appellant's disability to April 30, 1997, Dr. Raj failed to explain from a medical standpoint why appellant was no longer able to perform sedentary work as suggested by his earlier reports. Because Dr. Raj did not offer any medical rationale or explanation as to why he suddenly changed his opinion regarding appellant's disability from work, the Board concludes that Dr. Raj's opinion subsequent to his October 29, 1996 report is not reasoned. Because appellant failed to submit a reasoned opinion to support her claim for wage loss after November 15, 1996, the Board finds that the Office properly denied her claim for compensation.

² 5 U.S.C. §§ 8101-8193.

³ See *Charlene R. Herrera*, 44 ECAB 361 (1993); *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁴ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Daniel R. Hickman*, 34 ECAB 1220 (1983). As used in the Act, the term "disability" means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.

The decision of the Office of Workers' Compensation Programs dated October 27, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 8, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member