

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSA L. HALE and DEPARTMENT OF DEFENSE,  
DEFENSE PERSONNEL SUPPORT CENTER, Philadelphia, PA

*Docket No. 98-2349; Submitted on the Record;  
Issued May 18, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant established any disability for the periods of August 26, 1996 through March 1, 1997; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits effective August 24, 1996.

On August 1, 1996 appellant, then a 54-year-old supply technician, filed a notice of occupational disease alleging that she suffered joint pain or arthritis as a result of her federal employment. She stated that she sprained her left knee in October 1996 and that on July 23, 1996 she started to ache. Appellant stated that she became so cold on July 23, 1996 that her knees, shoulders and back hurt. She stopped working on July 23, 1996. Appellant subsequently indicated that air conditioning and cold air made her swell. She stated that since she fell in 1986 she developed degenerative joint disease in both knees, shoulders and her back. Appellant also stated that she twisted her left knee on November 2, 1996 when she left her desk to go to a copying machine.

On August 9, 1996 Dr. Larry N. Finkelstein, an osteopath and appellant's treating physician, treated appellant for low back and knee pain. On August 21, 1996 he diagnosed a lumbar sprain and chronic low back pain. Dr. Finkelstein recorded a history from appellant indicating that the air conditioning at her work exacerbated her arthritis. He also noted that a fall in 1986 resulted in chronic low back and knee pain. Dr. Finkelstein checked "yes" to indicate that appellant's conditions were caused or aggravated by her employment. He elaborated that appellant's 1986 fall and, more recently, her exposure to cold temperatures were the employment activities, which caused or aggravated her condition. On August 23, 1996 he diagnosed lumbar and knee degenerative joint disease and stated that pain was related to a cold environment. On August 29, 1996 Dr. Finkelstein again noted that appellant stated that her pain was worsened by cool conditions or air conditioning. He noted appellant's history of chronic low back and knee pain and related the pain to appellant's fall in 1986. Dr. Finkelstein stated that appellant's August 13, 1996 x-rays, were positive for degenerative joint disease of the knees as well as degenerative disease of the spine. He indicated that appellant improved when not exposed to air

conditioning. He diagnosed chronic low back pain, bilateral degenerative joint disease of the knees and lumbar spinal degenerative disc disease. Dr. Finkelstein opined that there was a relationship with cold exposure and exacerbation of pain as this was shown in other patients with arthritis and because appellant stated that her condition worsened when exposed to air conditioning.

On December 11, 1996 the Office accepted the claim for an episode of exacerbation or arthritis due to cold working conditions, which ceased once appellant left the employing establishment's building on her last day of work on July 23, 1996. The Office accepted the claim for an episode of exacerbation of arthritis on February 14, 1997.

On December 19, 1996 Dr. Finkelstein indicated that appellant should be able to work in a heated room. Dr. Finkelstein stated, however, that appellant told him that her arthritis was not solely dependent on temperature. He noted that appellant reported persistent pain due to her arthritis.

On January 21, 1997 appellant submitted a claim for compensation, Form CA-7, claiming compensation for wage loss from August 26 through December 31, 1996. Appellant subsequently submitted claims for continuing compensation, Forms CA-8, requesting compensation for wage loss from January 1 through March 1, 1997.

On January 23, January 31, February 11 and March 7 1997 Dr. Finkelstein diagnosed lumbar sprain and degenerative joint disease. He checked "yes" to indicate that appellant's condition was due to the July 23, 1996 injury for which compensation was claimed and indicated that she was totally disabled. Dr. Finkelstein indicated that appellant had remained disabled since the date of the original injury.

On March 5, 1997 the Office indicated that appellant's claims for compensation could not be processed without additional medical information. The Office advised that it would refer appellant for a second opinion examination.

On May 1, 1997 the Office referred appellant to Dr. Erwin R. Schmidt, a Board-certified orthopedic surgeon, for a second opinion examination. On May 15, 1997 Dr. Schmidt reviewed appellant's complaints and her history of injury and treatment. He also performed a physical examination. Dr. Schmidt stated that appellant had an "extensive arthritis involving both knees and the lumbar spine by history." He indicated that physical therapy could return appellant to work in a limited-duty capacity. On June 27, 1997 the Office requested that Dr. Schmidt provide an opinion with medical rationale addressing whether appellant continued to suffer from any condition and/or disability due to employment factors or the July 23, 1996 injury. On July 16, 1997 Dr. Schmidt indicated that he reviewed Dr. Finkelstein's reports and the x-ray evidence of record. He stated that the medical evidence indicated that appellant had preexisting degenerative arthritis involving her lumbar spine and both knees prior to July 23, 1996. Dr. Finkelstein stated that appellant's leaving work on July 23, 1997 was due to cold temperatures from air conditioning related to this preexisting degenerative injury and not from an injury.

By decision dated July 22, 1997, the Office denied appellant's entitlement to both compensation and medical benefits effective August 24, 1996 because it found that the medical

evidence confirmed that appellant recovered from the effects of the acute exacerbation of her preexisting, underlying condition of degenerative joint disease due to cold air conditioning in her workplace prior to July 23, 1996.

On August 11, 1997 appellant requested a hearing, which appellant's representative later changed to a request for a review of the written record.

By decision dated April 23, 1998, the Office hearing representative affirmed the Office's July 22, 1997 decision. The Office found that appellant failed to establish through a rationalized medical opinion that she suffered any condition or disability beginning after August 24, 1996 causally related to her work-related injury. The hearing representative further indicated that she found that appellant failed to establish that the treatment she sought was causally related to the accepted work-related injury.

The Board initially finds that appellant failed to establish any disability for the periods of August 26, 1996 through March 1, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> As part of this burden, the claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.<sup>3</sup>

In the instant case, appellant failed to present any rationalized medical evidence based upon a complete factual and medical background establishing disability for the period of August 26, 1996 through March 1, 1997 due to her employment.<sup>4</sup> Although appellant's treating physician, Dr. Finkelstein, checked "yes" in his reports dated January 23, January 31, February 11 and March 7, 1997, to indicate that appellant's condition was due to the July 23, 1996 injury for which compensation was claimed and to indicate that she was totally disabled for these periods, such opinions, given by a physician checking a box on a form, are entitled to little weight<sup>5</sup> and are insufficient to meet appellant's burden of proof.

The Board also finds that the Office failed to meet its burden to terminate medical benefits effective August 24, 1996.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Joseph T. Gulla*, 36 ECAB 516 (1985).

<sup>4</sup> *See Donald Leroy Ballard*, 43 ECAB 876 (1992).

<sup>5</sup> *Lester Covington*, 47 ECAB 539 (1996).

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.<sup>6</sup> After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.<sup>7</sup> Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.<sup>8</sup> To terminate authorization of medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, no longer requires medical treatment.<sup>9</sup>

In this case, the Office accepted appellant's claim for an episode of exacerbation of arthritis. Dr. Schmidt, the second opinion physician and a Board-certified orthopedic surgeon, provided the only medical opinion evidence suggesting that appellant's employment-related condition and/or disability ceased after August 23, 1996. In his May 15, 1997 report, however, Dr. Schmidt failed to specifically address whether appellant continued to suffer residuals from her accepted employment injury. After the Office requested a supplemental opinion, Dr. Schmidt opined on July 16, 1997 that appellant's leaving work on July 23, 1996 due to cold temperatures from air conditioning related to her preexisting degenerative arthritis and not from an injury. The Office, however, already accepted that appellant suffered an exacerbation of her preexisting arthritis. Moreover, Dr. Schmidt again failed to address whether appellant continued to have residuals from the accepted injury. Because this is the only medical evidence supporting the Office's termination of medical benefits, it failed to meet its burden of proof to establish that appellant no longer suffered any condition or disability from her July 23, 1996 accepted employment injury.

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<sup>6</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>7</sup> *Id.*

<sup>8</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>9</sup> *Id.*

Accordingly, the decision of the Office of Workers' Compensation Programs dated April 13, 1998 is hereby affirmed in part and set aside in part and the case remanded for further development consistent with this opinion.

Dated, Washington, D.C.  
May 18, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member