

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN GRAMS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Long Beach, CA

*Docket No. 00-2390; Submitted on the Record;
Issued August 31, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective May 27, 1999; and (2) whether the Office properly denied appellant's requests for recurrence of disability for the periods April 2 through 21, 1999 and April 26 through May 12, 1999.

On October 6, 1998 appellant, then a 58-year-old social worker, was crossing a road on the employing establishment premises when she was hit by a car and knocked to the ground. She filed a claim for contusions and abrasions to the ankles, knees, right lower leg, left hand and both elbows. Appellant indicated that she also had pain in the neck, low back, hips and headaches. The Office accepted appellant's claim for abrasions and contusions to the elbows, hip, knees and ankles and a lumbar strain. Appellant received continuation of pay for the period October 6 through November 20, 1998. She returned to work on November 23, 1998 for four hours a day. On March 25, 1999 she increased her working hours to six hours a day. Appellant received authorization for leave buyback for the period November 26, 1998 through April 1, 1999.

On April 23, 1999 appellant filed a claim for recurrence of disability. She indicated that she stopped working on April 22, 1999 and noted that her pay would stop on April 26, 1999. Appellant stated that she had been limited by constant pain in her back, hips and legs which caused extreme fatigue. She commented that she was unable to walk more than 10 minutes without significant pain. Appellant complained that she could sit for only 15 minutes at a time. She described the recurrence as a gradual increase in pain, which began shortly after she increased her work to six hours a day. She indicated that she developed increasingly severe pain in her hips which made it more difficult to work. Appellant also filed a claim for 28 hours of leave used for the period April 2 through 21, 1999 and for total disability for the period April 26 through May 12, 1999.

In a May 27, 1999 decision, the Office terminated appellant's compensation effective that date on the grounds that appellant no longer had any residuals arising from the October 6, 1998 employment injury. The Office further denied appellant's claims for recurrences of disability for

the periods April 2 through 21, 1999 and April 26 through May 12, 1999 on the grounds that her disability for those time periods were due to conditions unrelated to her employment.

Appellant requested a hearing before an Office hearing representative which was conducted on December 16, 1999. In a March 15, 2000 decision, the hearing representative affirmed the Office's decision.

The Board finds that the Office improperly terminated appellant's compensation.

Once the Office accepts 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.¹

In an October 13, 1998 report, Dr. Alexander O. Francini, a physiatrist, stated that appellant had multiple areas of discomfort due to the employment injury, including the cervical spine, the lumbar spine, left knee, right knee, left ankle, left hand and bilateral elbows. Dr. Francini noted appellant had discomfort and weakness in the left leg due to polio and the employment injury. He diagnosed cervical strain, lumbar strain, hand contusion, bilateral elbow contusions, bilateral knee contusions and left ankle contusion. Dr. Francini noted that appellant's preexisting postpolio syndrome might contribute to a slow recovery. In a November 12, 1998 report, he indicated that a magnetic resonance imaging (MRI) scan showed extensive L3-4 and L4-5 broad-based disc bulges leading to moderate to severe canal stenosis at the L4-5 level. Dr. Francini found no disc herniations. He diagnosed lumbar stenosis, lumbalgia and multiple contusions. In a March 24, 1999 report, Dr. Francini indicated that appellant wanted to attempt to work six hours a day. He diagnosed improving lumbar strain and sprain and pain secondary to postpolio degenerative disease.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Ibrahim Yashruti, a Board-certified orthopedic surgeon, for an examination and second opinion. In an April 1, 1999 report, Dr. Yashruti stated that appellant had atrophy of the left leg due to polio. He reported that sensory and motor examinations of the arms were normal. Dr. Yashruti stated that a sensory examination of the legs was normal but the motor examination showed weakness in the left leg due to polio. He noted that an MRI scan of the cervical spine, taken on March 22, 1999, showed small anterior and posterior osteophytes with mild joint hypertrophy at C5-6, mild foraminal narrowing bilaterally and a disc bulge at C3-4. Dr. Yashruti indicated that an MRI scan of the lumbar spine, taken at the same time, showed moderate to severe multilevel lumbar spondylosis with central canal and foraminal narrowing. He diagnosed degenerative disc disease of the cervical spine, degenerative disc disease of the lumbar spine with central canal and foraminal narrowing and resolved contusions of the left leg. Dr. Yashruti stated that appellant's positive physical examination findings were due to the left leg polio. He found no evidence of strain, contusion or sprain. Dr. Yashruti stated that appellant's symptoms and treatment currently was due to degenerative changes in the lumbar spine. He concluded that the conditions caused by the October 6, 1998 employment injury had resolved and appellant had

¹ Jason C. Armstrong, 40 ECAB 907 (1989).

no continuing residuals of the accepted conditions. Dr. Yashruti indicated that appellant's findings were due to the underlying degenerative change with spondylosis, stenosis, foraminal narrowing as well as the natural progression of the disease. He noted that objective findings supported appellant's subjective complaints but stated that the objective findings were due to her nonwork-related condition. Dr. Yashruti indicated that any employment-related aggravation of appellant's preexisting condition had ceased.

In a May 5, 1999 report, Dr. Francini stated that appellant had a cervical sprain and strain, lumbar sprain and strain and knee discomfort as a result of the October 6, 1998 employment injury. He indicated that appellant had a preexisting condition which caused no disability prior to the employment injury. Dr. Francini commented that she was a fully functional employee, working 50 hours a week prior to the employment injury. He stated that, after the employing establishment, due to the preexisting condition and the accident, she had a precipitating event that caused her disability. Dr. Francini noted that Dr. Yashruti indicated that appellant could touch her toes which he concluded was inaccurate. He concluded that Dr. Yashruti's conclusions were suspect and his opinion baseless. Dr. Francini stated that appellant was injured at work and her current disability and pain were caused by the employment injury. He indicated that the preexisting condition caused impairment but no previous disability but appellant now had impairment and disability as a result of the employment injury.

In a December 16, 1999 report, Dr. Susan Perlman, a Board-certified neurologist, gave a history of appellant's polio and the October 6, 1998 employment injury. Dr. Perlman stated that appellant was a polio survivor. She indicated that appellant currently had signs of postpolio related dysfunction with increased weakness, decreased endurance and secondary pain that appeared to be actively dependent in areas where weakness was most notable and support most tenuous. Dr. Perlman stated that lumbosacral stenosis had been ruled out by reported modest findings on an MRI scan and electrical studies. She concluded that appellant represented the classic case of a polio survivor with perhaps mild postpolio symptomatology preceding a severe injury to soft tissue. Dr. Perlman stated that soft tissue injuries in polio survivors in their areas of polio involvement take much longer to heal and could be chronic if not approached appropriately. She indicated that appellant's employment injury led directly to the progression of postpolio related symptomatology.

The reports of Dr. Yashruti and Dr. Francini contain conflicting findings and reach different conclusions. Dr. Yashruti stated that appellant's only physical findings were related to her postpolio syndrome. He concluded, based on his examination, that appellant's injuries arising from the October 6, 1998 incident had resolved, leaving no residuals. Dr. Francini stated that appellant's continuing disability was still causally related to the October 6, 1998 employment injury, particularly as it affected her preexisting postpolio syndrome. He noted that Dr. Yashruti's report contained physical findings that were inaccurate, particularly on appellant's ability to reach and bend. Dr. Perlman's report, submitted after the termination of compensation, added to the conflict in the medical evidence. She stated that soft tissue injuries in postpolio patients take longer to heal. On that basis, she concluded that appellant's disability remained causally related to the October 6, 1998 employment injury. As there exists a conflict in the medical evidence, the Office has not met its burden of proof in finding that appellant's disability, due to the October 6, 1998 employment injury, has ceased.

The Board notes that appellant claimed compensation for periods of recurrence of disability for periods between April 2 and May 12, 1999. As noted above, Dr. Francini stated that appellant's disability was causally related to her October 6, 1998 employment injury while Dr. Yashruti, on the other hand, found the effects of the employment injury had resolved. Therefore, there exists a conflict in the medical evidence on whether appellant's recurrences of disability during the period in question were causally related to the October 6, 1998 employment injury. The case must therefore be remanded for referral of appellant, together with a statement of accepted facts and the case record, to an appropriate impartial medical specialist for an examination and opinion on whether appellant's recurrences of disability for the period April 2 through May 12, 1999, were causally related to the October 6, 1998 employment injury.

The decision of the Office of Workers' Compensation Programs, dated March 15, 2000, is hereby reversed. The case is remanded for further action as set forth in this decision.

Dated, Washington, DC
August 31, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member