

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORRAINE G. WILBOURNE and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER,
Bronx, NY

*Docket No. 99-2234; Submitted on the Record;
Issued August 28, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective February 13, 1997 on the grounds that she had no disability due to her January 19, 1996 employment injury after that date.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective February 13, 1997 on the grounds that she had no disability due to her January 19, 1996 employment injury after that date.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

On January 19, 1996 appellant, then a 53-year-old dietician, sustained employment-related cervical and lumbosacral sprains due to a fall at work on that date. Appellant received compensation for periods of disability.⁵ By decision dated February 13, 1997, the Office terminated appellant's compensation effective February 13, 1997 on the grounds that she had no

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ Appellant indicated that she "hurt my back and shoulder."

disability due to her January 19, 1996 employment injury after that date. The Office based its termination on the opinion of Dr. Sanford R. Wert, a Board-certified orthopedic surgeon, who served as an Office referral physician. By decisions dated January 20, 1998 and March 24, 1999, the Office denied modification of its February 13, 1997 decision.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Wert. His December 16, 1996 report establishes that appellant had no disability due to her January 19, 1996 employment injury after February 13, 1997.

In his report, Dr. Wert reported the findings of diagnostic testing, including testing obtained shortly after the January 19, 1996 injury and detailed the results of his examination. He diagnosed degenerative disc disease of the cervical spine and resolved cervical and lumbosacral sprains. Dr. Wert stated:

“It should first be mentioned that I found this claimant’s response on physical examination to be excessive or more likely exaggerated. She complained of pain upon the slightest touch and was voluntarily guarding against most movements, which of course influenced the measurements on examination. On physical exam[ination] I found no objective findings to substantiate her complaints. It is, therefore, my opinion that there is no accident-related orthopedic disability.

“The computerized tomography scan, magnetic resonance imaging [scan] and x-rays taken of the cervical spine all revealed findings of degenerative disease, which indicates her problems with respect to the cervical spine were preexisting and not caused as a result of the accident of January 19, 1996.

“The claimant is capable of resuming full-time normal employment with no restrictions or limitations. She is also capable of performing all of her pre-accident activities of daily living and tasks, with no restrictions or limitations.

“The claimant has achieved maximum medical improvement from treatment. There is no further orthopedic-related treatment indicated.”

The Board has carefully reviewed the opinion of Dr. Wert and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Wert’s opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Wert provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant’s condition which comported with this analysis.⁶ He provided medical rationale for his opinion by explaining that appellant did not exhibit any objective signs of her soft-tissue employment injuries, cervical and lumbosacral sprains. Dr. Wert further explained

⁶ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

that appellant's continuing complaints were due to her preexisting degenerative disease and nonfunctional factors.⁷

Appellant submitted reports of Dr. Raphael Cilento, an attending physician specializing in orthopedic surgery and neurosurgery. In a report dated March 13, 1996, Dr. Cilento diagnosed concussion and post-concussion syndrome; post-traumatic neurobehavioral distress disorder from a diffuse axonal brain injury; acute cervical spine strain with muscle spasms; severe headache related to compression of neurovascular bundles by paravertebral muscle spasms due to tearing of cervical myoligamentous structures; myofascitis of the neck and shoulders with reflex muscle spasms in the paravertebral muscles; lumbosacral spine sprain; cervical spine injury with unnatural subluxations at C4-5 and C6; right cervicobrachial neuralgia due to a fall injuring the cervical spine; right acromioclavicular joint damage with partial tearing of the capsule; separation and subluxation of the right wrist carpal ligaments; right elbow strain; internal derangement of the right shoulder; vestibulopathy from the diffuse axonal brain injury; and ischial bursitis of the right buttock. He indicated that appellant was totally disabled due to her January 19, 1996 fall. Dr. Cilento noted that appellant did not have any medical problems prior to her fall.

In a report dated January 30, 1997, Dr. Cilento stated that appellant continued to experience residuals of the January 19, 1996 employment injury. He argued that the Office failed to accept that appellant sustained employment-related injuries, including head injuries, in addition to the cervical and lumbosacral sprains that were accepted. Dr. Cilento asserted that only a neurological specialist could evaluate appellant's condition. In reports dated March 17, 1997 and December 22, 1998, he provided assessments of appellant's condition which were similar to those contained in his prior reports. Dr. Cilento indicated that appellant's "altered state of consciousness after the accident showed that appellant sustained a traumatic brain injury on January 19, 1996.

The reports of Dr. Cilento are of limited probative value on the relevant issue of the present case in that he did not provide adequate medical rationale in support of his conclusion on causal relationship.⁸ Appellant's claim was accepted for cervical and lumbosacral sprains and Dr. Cilento did not adequately explain how appellant could have sustained a severe head injury

⁷ In a report dated August 15, 1996, Dr. Paul M. Brisson, a Board-certified orthopedic surgeon, to whom the Office referred appellant, indicated that appellant's organic findings were not consistent with her reported neck and shoulder symptoms and diagnosed rotator cuff tendinitis, chronic cervical sprain, cervical disc degeneration and resolving lumbosacral sprain. He noted that appellant's symptoms had been amplified and were in excess of her clinical condition. Dr. Brisson stated that appellant appeared to have employment-related disability and noted that "her symptoms are manifestly severe and by themselves make a return to work in any capacity impossible." Although he indicated that appellant had employment-related disability, Dr. Brisson did not explain how such a finding comported with his reportage of inconsistent and amplified complaints. Moreover, Dr. Brisson's opinion does not relate to appellant's condition around the time her compensation was terminated in early 1997.

⁸ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

due to the January 19, 1996 fall.⁹ A review of the medical evidence reveals that the medical reports from the period shortly after appellant's January 19, 1996 injury provide no history that appellant hit her head when she fell on January 19, 1996 or that she had head-related complaints during that period.¹⁰ He did not otherwise explain how appellant's accepted soft-tissue injuries continued to cause disability.¹¹

For these reasons, the Office properly terminated appellant's compensation effective February 13, 1997 on the grounds that she had no disability due to her January 19, 1996 employment injury after that date.

The March 24, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 28, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁹ Dr. Cilento suggested that causal relationship was shown by the fact that appellant did not exhibit head-related symptoms prior to January 19, 1996. However, the Board has held that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between a claimed condition and employment factors. *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁰ In her initial accounts of the January 19, 1996 fall, appellant did not provide any indication that she hit her head. In a report dated June 6, 1996, Dr. John Ryder, a clinical psychologist, to whom Dr. Cilento referred appellant, indicated that appellant had a traumatic brain injury and post-traumatic stress disorder, which were due to her January 19, 1996 injury. However, Dr. Ryder would not be qualified to diagnose a physical condition such as a traumatic brain injury and he did not provide an adequate explanation for his diagnosis of post-traumatic stress disorder. Moreover, appellant has not filed a claim for an employment-related emotional condition.

¹¹ In the absence of any indication that appellant sustained a neurological injury it was appropriate for the Office to refer appellant to an orthopedic specialist.