

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCILLE KAMINISKI and DEPARTMENT OF THE NAVY,
NAVAL AMMUNITION DEPOT, Hawthorne, NV

*Docket No. 00-1359; Submitted on the Record;
Issued March 29, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established a period of employment-related disability after June 18, 1981, the date her compensation benefits were terminated.

In a decision dated December 16, 1983, the Board affirmed a decision dated April 27, 1983 with respect to termination of appellant's compensation benefits.¹ The history of the case is contained in the December 16, 1983 decision and is incorporated herein by reference.

In a letter dated September 4, 1997, appellant requested reconsideration of her claim. In a decision dated November 30, 1999, the Office of Workers' Compensation Programs found that the September 4, 1997 request for reconsideration was insufficient to warrant modification.²

The Board has reviewed the record and finds that appellant has not established entitlement to compensation after June 18, 1981.

After termination or modification of 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.³

¹ Docket No. 83-1465. The Board notes that the Office terminated appellant's compensation by decision dated July 14, 1981; the April 27, 1983 decision denied modification of the prior decision.

² The Office had issued an October 22, 1997 decision finding the reconsideration request untimely. On November 10, 1999 the Board issued an order granting the Director's motion to set aside the October 22, 1997 decision and remand the case for an appropriate decision.

³ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

As noted above, the Board affirmed the termination of compensation benefits in this case. The burden of proof is therefore on appellant to establish entitlement to compensation after June 18, 1981. With her September 4, 1997 request for reconsideration, appellant submitted an August 7, 1997 report from Dr. Arturo Llanos, a family practitioner. Dr. Llanos stated that appellant had a long-standing history of asthma, with a hospitalization in January 1997 for exacerbation of asthma and pneumonia. He does not, however, discuss causal relationship with the employment injury or exposure to chemicals during federal employment, nor does he provide a specific period of disability for work after June 18, 1981.

The remainder of the evidence submitted was previously considered by the Board in its prior decision. In the absence of a reasoned medical opinion, based on a complete background, establishing a period of disability after June 18, 1981 causally related to appellant's federal employment, the Board finds that appellant has not met her burden of proof in this case.

The Board notes that the record contains an Office decision dated February 29, 2000, denying a request for reconsideration. Appellant filed her appeal on February 1, 2000. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case, and those Office decisions which change the status of the decision on appeal are null and void.⁴ The February 29, 2000 decision is therefore null and void.

The decision of the Office of Workers' Compensation Programs dated November 30, 1999 is affirmed.

Dated, Washington, DC
March 29, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Douglas E. Billings*, 41 ECAB 880, 895 (1990).