

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN H. HULSEY and DEPARTMENT OF THE ARMY,
ARMY DEPOT, Anniston, AL

*Docket No. 00-2561; Submitted on the Record;
Issued April 12, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective August 30, 1999.

On February 27, 1990 appellant, then a 46-year-old supply clerk, was injured in the performance of duty when she pushed back the chair that she was sitting in, lost her balance and fell to the floor. The claimant stopped work the next day and sought medical treatment. The Office accepted the traumatic injury claim for a contusion to the left leg and temporary aggravation of thrombophlebitis. Appellant received appropriate compensation and returned to regular duty on June 18, 1990. She next sustained a recurrence of disability on March 12, 1991 when she experienced left leg symptoms and stopped work entirely. Appellant has not returned to work and began receiving compensation on the periodic rolls.

On December 20, 1991 appellant underwent construction of saphenous vein crossover graft to repair total occlusion of the left iliac vein. She had a graft insertion on February 7, 1992 and removal of the graft on May 7, 1992.

From July 1992 through July 1994, appellant was under the care Dr. John G. Hankins, an internist, for treatment of thrombophlebitis. The record indicates that appellant was essentially on medication and wore support stockings to reduce her left leg cramps.

In an office note dated October 1, 1996, Dr. Hankins noted that he had reviewed a June 27, 1996 venogram.¹ He indicated that appellant's abnormalities were bothersome but that she was doing as well as could be expected.

Dr. Hankins was subsequently requested by the Office to provide a reasoned medical opinion addressing the extent of appellant's disability for work. In a letter received by the Office

¹ Dr. Hankins indicated that appellant had not been in his office since July 1994.

on October 17, 1997 letter, he advised that he had not examined the claimant since October 8, 1996 and was unable to address questions regarding her medical status.

On March 18, 1999 the Office referred appellant, along with a copy of the medical record and a statement of accepted facts to Dr. John R. Kingsley, a Board-certified specialist in vascular surgery, for a second opinion examination. Dr. Kingsley examined the claimant on April 15, 1999. In a report dated April 29, 1999, he noted that appellant suffered a pulmonary emboli following a hysterectomy and that a vena cava filter was placed to protect her from recurring emboli. Dr. Kingsley noted that there was an assumption based on the medical record that appellant suffered from preexisting thrombophlebitis of her legs and/or her iliac veins. He noted that work injury prompted a new development of left leg iliofemoral vein thrombosis, documented by venography. Dr. Kingsley opined that, while “there is an association of injury to the left leg thrombophlebitis, falling from a chair would not ordinarily precipitate such an event.” The report goes on to discuss the venous ultrasonography performed on April 22, 1999, which showed deep vein venous flow as normal without obstruction. An arterial examination was also noted as being normal.² The only abnormal finding identified by Dr. Kingsley involved valvular insufficiency of the right leg femoral and popliteal veins, and valvular insufficiency of her left leg femoral and popliteal and greater saphenous veins. He stated:

“She does not currently have obstruction to flow, she does not currently have deep vein thrombosis. She reveals evidence of thrombolysis of her previous thrombosis. These findings do not provide evidence for her subjective complaints of left leg pain. [Appellant] describes having recurring episodes of pain and having the sensation that her ‘blood clots come and go.’ Appellant is on chronic Coumadin anticoagulation and recurring deep vein thrombosis is unlikely.”

Dr. Kingsley opined that appellant has a current disability identified as venous insufficiency syndrome secondary to valvular incompetence of her deep veins, bilateral lower extremities. He indicated that at the time of his examination there was minimal swelling which was a situation to be treated with compression stockings or proper panty hose support. Dr. Kingsley concluded as follows:

“Her complaint of pain is fairly severe, not explained by her vascular findings. Based upon our findings to date, she would not be restricted from performing normal work duties.... My opinion is that [appellant] has a stable situation. She will require long-term Coumadin anticoagulation. She will also require venous compression stockings to relieve lower extremity swelling. Her pain syndrome is not related to either arterial or venous disease. My recommendation is that she be referred to a pain clinic for diagnosis and treatment of her discomfort. Otherwise, I believe she could return to work to perform any activity which would not place her at risk for hemorrhage. This would require a more sedentary position and one which would not require standing throughout the day.”

² The laboratory report dated April 22, 1999 is contained in the record. It states that there is no evidence of deep vein thrombosis. There were chronic changes with the deep femoral vein of appellant’s left leg suggesting previous thrombus. Valvular insufficiency was reported within the femoral and popliteal veins in both the right and left legs. Valvular incompetence is noted in the left leg greater saphenous vein.

In a supplemental report dated June 22, 1999, Dr. Kingsley responded to questions posed by the Office. He advised that the exact date when the accepted temporary aggravation of appellant's thrombophlebitis had ceased was difficult to determine from the records available to him. Dr. Kingsley noted that Dr. Hankins' October 8, 1996 treatment note had referenced a venogram report of June 27, 1996 that was not of record but showed "abnormalities." He stated that "[a]s best as can be determined, sometime after 1996 or between then and now, the patient developed recanalization of her venous thrombosis with a restoration of flow through the vein system."

In his June 22, 1999 report, Dr. Kingsley further stated:

"Question two concerns her diagnosis of chronic venous insufficiency syndrome and whether or not this is related to her work injury. Again, the answer to this question cannot be answered in an absolutely black and white manner. [Appellant] suffered a recurring deep vein thrombosis following a hysterectomy several years prior. This prompted placement of a vena cava umbrella. The initial episode of vein thrombosis, assuming her left leg was also involved, was responsible for her chronic venous insufficiency syndrome. Again, I do not have records from her hospitalization at which time she suffered vein thrombosis following her hysterectomy. If indeed her left leg was involved in the thrombotic process, this was the primary cause of her current disability. She may have had exacerbation of this injury at a later date when she fell over the chair, but this was not the initiating event causing her venous insufficiency."

On July 19, 1999 the Office issued a notice of proposed termination of compensation which found that the weight of the medical evidence of record established that the claimant has no continuing condition or disability causally related to her February 27, 1990 employment injury.

In an August 13, 1999 letter, appellant challenged the proposed action but she did not submit any additional evidence.

In a decision dated August 30, 1999, the Office terminated appellant's compensation on the grounds that her work-related disability had ceased and she no longer suffered from residuals of her employment injury.

Appellant requested a hearing, which was held on March 1, 2000.

Subsequent to the hearing, appellant submitted diary entries she made from December 17, 1999 through February 29, 2000 with respect to her left leg symptoms. She submitted a March 6, 2000 report by Dr. Thomas H. Allen indicating that he was retiring and would no longer be able to treat appellant.

Appellant also submitted a January 5, 2000 report from Dr. Kamran, who advised that appellant had a "significant history of lower extremity DVT" but he did not discuss appellant's history of injury. He did not report physical findings but did offer an opinion as to appellant's continuing disability due to the condition of DVT.

In a decision dated May 23, 2000, an Office hearing representative affirmed the Office's August 30, 1999 decision.³

The Board finds that the Office properly terminated appellant's compensation effective August 30, 1999.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁴ 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.⁵

In this case, the Office accepted that appellant sustained a contusion to the left leg and temporary aggravation of thrombophlebitis when she fell from a chair at work on February 27, 1990. The Office contacted appellant's treating physician, Dr. Hankins, and requested that he provide a reasoned opinion as to appellant's continuing medical status and disability due to her work injury. On October 17, 1997, however, Dr. Hankins advised the Office that he had not treated appellant since October 8, 1996 and was unable to offer an opinion. The Office therefore sent appellant for a second opinion evaluation with Dr. Kingsley. In his report dated April 29, 1999, Dr. Kingsley discussed appellant's symptoms and medical history, the medical record, her physical findings and objective tests. He noted that prior to her work injury, appellant suffered a pulmonary emboli following a hysterectomy and developed thrombophlebitis of the iliac veins of her legs. At the time of her work injury on February 27, 1990, Dr. Kingsley opined that appellant sustained a temporary aggravation of the preexisting thrombophlebitis that required vein surgery and insertion of a graft. He noted that, by the time of his examination, the temporary aggravation of the preexisting thrombophlebitis had ceased since the April 22, 1999 venous ultrasound showed no evidence of deep vein thrombosis. Although Dr. Kingsley did note appellant's complaints of continuing pain, he felt this pain syndrome was not explained by the vascular findings and therefore had an origin unrelated to either arterial or venous disease. The only disability identified by Dr. Kingsley pertained to "venous insufficiency syndrome secondary to valvular incompetence of the deep veins" in both legs.⁶ He found minimal swelling on his examination and recommended that appellant wear compression stockings or panty hose to control that condition. Dr. Kingsley finally concluded that appellant should only perform sedentary work due to the diagnosis of venous insufficiency syndrome.

³ The Office hearing representative also remanded the case for development of the issue of whether appellant's unaccepted condition of venous insufficiency syndrome was causally related to her work injury. The Office denied compensation for that condition on August 25, 2000. The Office's August 25, 2000 decision is not before the Board as appellant's appeal in the instant case was filed on August 4, 2000.

⁴ *Harold S. McGough*, 36 ECAB 332 (1984).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

⁶ He noted that the work injury might have caused an exacerbation of this condition but was not the cause of her chronic venous insufficiency syndrome.

The Board finds Dr. Kingsley's report to be sufficiently reasoned to carry the Office's burden of proof in terminating appellant's compensation on the grounds that appellant's continuing disability is no longer due to her accepted work injury. Dr. Kingsley likewise provides adequate rationale for his finding that appellant no longer has any residuals requiring medical treatment related to the temporary aggravation of her thrombophlebitis. Dr. Kingsley's reports dated April 15 and 22 and June 22, 1999 are rationalized and based on a proper medical and factual background. Dr. Kingsley's opinion therefore carries the weight of the evidence in this case.⁷

The decision of the Office of Workers' Compensation Programs dated May 23, 2000 is hereby affirmed.

Dated, Washington, DC
April 12, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ The January 5, 2000 report by Dr. Kamran does not discuss whether appellant has any residuals or disability due to her work injury and is therefore not relevant to the issue of the case.