

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNETTA STEELE and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION OFFICE, Los Angeles, CA

*Docket No. 02-834; Submitted on the Record;
Issued August 2, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant had any continuing disability or medical condition after September 4, 1996 and February 11, 1998 related to her work injuries of May 31, 1996 and November 12, 1997.

This case was previously before the Board.¹ In its April 25, 2001 decision, the Board found that the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective September 4, 1996 and February 11, 1998 based on the reports of Drs. Stuart Baumgard and Frederick J. Lieb, both Board-certified orthopedists and Office referral physicians. The facts of this case are set forth in the Board's April 25, 2001 decision and are herein incorporated by reference. By order dated July 27, 2001, the Board denied appellant's petition for reconsideration.

By letter dated October 26, 2001, appellant requested reconsideration before the Office and submitted several arguments: the reports of Drs. Baumgard and Lieb were not based on a statement of accepted facts; the reports of Drs. Baumgard and Lieb were speculative and equivocal; Dr. Lieb's report was not entitled to greater weight than the report of appellant's treating physician because Dr. Lieb's report was not unequivocal and not based on a statement of accepted facts; she should have been referred to an impartial medical specialist because the conclusions in Dr. Lieb's report were inconsistent with the conclusions in Dr. Baumgard's report and their reports were equal in weight to the reports of appellant's physician; and she was not notified of the precise defects in her medical evidence and should have been granted at least 30 days to submit additional evidence.

By decision dated November 21, 2001, the Office denied modification of prior decisions.

¹ Docket No. 00-1769 (issued April 25, 2001).

The Board finds that appellant has failed to meet her burden of proof to establish that she had any continuing disability or medical condition after September 4, 1996 and February 11, 1998 for her work injuries of May 31, 1996 and November 12, 1997, respectively.

After termination or modification of compensation benefits, 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 he or she had an employment-related disability that continued after termination of compensation benefits.²

After the Board's April 25, 2001 decision affirming the Office's decision to terminate appellant's compensation, appellant requested reconsideration from the Office and submitted additional argument. Given that the Board has found that the Office properly terminated appellant's compensation effective September 4, 1996 and February 11, 1998 for her work injuries of May 31, 1996 and November 12, 1997, respectively, the burden shifts to appellant to establish that she is entitled to compensation after those dates. The Board has reviewed the additional arguments submitted by appellant and finds that they are not sufficient to establish that appellant had residuals of her May 31, 1996 and November 12, 1997 employment injuries after September 4, 1996 and February 11, 1998, respectively.

In her October 26, 2001 letter to the Office requesting reconsideration, appellant submitted several arguments.

Appellant argued that the reports of Drs. Baumgard and Lieb were not based on a statement of accepted facts. However, this argument was previously considered by the Board. In its July 27, 2001 order denying appellant's petition for reconsideration, the Board found no merit in her argument that Drs. Baumgard and Lieb were not provided with an accurate statement of accepted facts.

Appellant argued that the reports of Drs. Baumgard and Lieb were speculative and equivocal. However, she did not explain why the opinions were equivocal and speculative. The Board determined in its April 25, 2001 report that the opinions of Drs. Baumgard and Lieb were thorough, rationalized and based upon a proper factual background and therefore constituted the weight of the medical evidence. In its July 27, 2002 order denying appellant's request for reconsideration, the Board found no merit in appellant's argument that the reports of Drs. Baumgard and Lieb lacked credibility.

Appellant argued that Dr. Lieb's report was not entitled to greater weight than the report of appellant's treating physician because Dr. Lieb's report was not unequivocal and not based on a statement of accepted facts. However, in its April 25, 2001 decision, the Board found that Dr. Lieb's report was sufficiently probative, rationalized and based on a proper factual background. The Board found that the reports of appellant's physician, Dr. Pyne, a general practitioner, were insufficient to support continuing disability because they provided insufficient medical rationale and because he was not a specialist in the appropriate medical field.³

² *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

³ As noted above, Dr. Lieb is a Board-certified orthopedist.

Appellant argued that she should have been referred to an impartial medical specialist because the conclusions in Dr. Lieb's report were inconsistent with the conclusions in Dr. Baumgard's report and their reports were equal in weight to the reports of appellant's physician. However, the Board previously found in its April 25, 2001 decision that the opinions of Drs. Baumgard and Lieb were entitled to greater weight than the reports of appellant's physician. Therefore, no conflict existed which would necessitate referral to an impartial medical specialist. Additionally, in its July 27, 2001 order denying appellant's request for reconsideration, the Board found no merit in this argument.

Appellant argued that she was not notified of the precise defects in her medical evidence and should have been granted at least 30 days to submit additional evidence. However, the record shows that the Office issued its notice of proposed termination on March 2, 1998 and explained in the notice the reasons that Dr. Lieb's report was entitled to greater weight than Dr. Pyne's report. The Office's final termination decision was issued on May 6, 1998. Therefore, appellant was notified of the deficiencies in her medical evidence 60 days prior to the termination decision.

The decision of the Office of Workers' Compensation Programs dated November 21, 2001 is affirmed.

Dated, Washington, DC
August 2, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member