

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY L. DARBY and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Brecksville, OH

*Docket No. 01-1022; Submitted on the Record;  
Issued July 8, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issues are: (1) whether appellant was disabled after March 1, 1997; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

The case is on appeal to the Board for the second time. In the first appeal,<sup>1</sup> the Board affirmed the Office's February 20 and September 22, 1997 decisions terminating benefits. The Board found that the Office properly determined that the opinions of the referral physicians, Dr. Robert T. Segraves, a Board-certified psychiatrist and neurologist, and Dr. Sheldon Kaffen, a Board-certified orthopedist, established that appellant recovered from her March 21, 1992 employment injury and constituted the weight of the evidence. On February 23, 2000 appellant requested that the Board reconsider its decision. In an order denying petition for reconsideration dated July 13, 2000, the Board denied appellant's request.

In an undated letter date-stamped as received by the Office on December 18, 2000, appellant requested reconsideration of its decision. Appellant submitted a progress report from the Aurora Medical Center dated December 5, 2000 that appears to have been completed by appellant's treating physician, Dr. Robert C. Erwin, an osteopath, and a return to work form dated December 5, 2000 from Dr. Erwin. The December 5, 2000 progress report stated that appellant was injured in 1992 while at work in an employing establishment hospital when a patient with delirium tremens fell on top of her. The report stated that appellant had right-sided weakness and she complained of generalized fatigue. The report noted that appellant saw a psychiatrist one to two times a month for depression and post-traumatic stress and stated that appellant was unable to do her daily activities because of her physical limitations. The report stated that appellant had decreased strength and symmetry on the right side, +3/5 muscle strength of her biceps/triceps and quadriceps/hamstrings, and +1/5 trapezius. Further, the report

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<sup>1</sup> Docket No. 98-209 (issued January 24, 2000). The facts and history surrounding the prior appeal are set forth in the initial decision and are hereby incorporated by reference.

contained the diagnosis lumbar sprain with right radiculopathy and post-traumatic stress syndrome. The report stated that appellant was absolutely unable to return to work.

In the December 5, 2000 return to work form, Dr. Erwin diagnosed lumbar sprain and radiculopathy and stated that appellant was totally disabled from work from December 5, 2000 to January 5, 2001.

By decision dated January 18, 2001, the Office denied appellant's request for modification on the basis that the medical reports were insufficient to establish that the current conditions were causally related to the original injury.

By letter dated February 20, 2001, appellant again requested reconsideration of the Office's decision. Although appellant stated she had additional medical evidence to submit, she did not submit any additional evidence. She stated that she had "financial woes" with the loss of her income and increased physical and mental suffering due to the loss of her career and her inability to provide for her 22-year-old son who was trying to finish college.

By decision dated February 26, 2001, the Office denied appellant's request for reconsideration explaining to appellant that if she had further medical evidence, she could submit an additional request for reconsideration.

The Board finds that the weight of the medical evidence of record establishes that appellant had no residual disability or condition causally related to the March 21, 1992 employment injury after March 1, 1997, the date the Office terminated her compensation benefits. Once the Office has accepted a claim for compensation and has begun payment of compensation, it has the burden of establishing that the condition for which compensation is paid has ceased or is no longer causally related to the accepted employment injury. If the Office, however, meets its burden of proof and properly terminates compensation, it is not required to reinstate compensation merely because the claimant subsequently submits new evidence which is of such nature as to lead the Office to conclude that further inquiry is needed.<sup>2</sup> In its prior appeal, the Board held that the Office properly terminated appellant's compensation benefits based on the opinions of the referral physicians, Drs. Segraves and Kaffen, which established that appellant had recovered from her March 21, 1992 employment injury. Consequently, the burden shifted to appellant to provide evidence sufficient to overcome Drs. Segraves and Kaffen's well-rationalized reports.

In denying appellant's request for modification, the Office considered the December 5, 2000 report from the Aurora Medical Center which described appellant's history of injury and muscle weakness on physical examination, and contained the diagnosis lumbar sprain and post-traumatic stress syndrome. The report, however, did not provide a medical rationale explaining how appellant's physical condition resulted from the March 21, 1992 employment injury. The Board has held that a medical opinion not fortified by medical rationale is of little probative value. The Aurora Medical Center report therefore does not establish that appellant continued to be disabled due to her March 21, 1992 employment injury. Appellant also submitted Dr. Erwin's December 5, 2000 return to work form in which Dr. Erwin stated that appellant was unable to

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<sup>2</sup> *Virginia Davis-Banks*, 44 ECAB 389 (1993).

work through January 5, 2001. His form provides, however, no medical rationale relating appellant's inability to work to her employment injury and therefore it is also of diminished probative value. Thus, appellant did not submit medical evidence sufficient to overcome Drs. Segraves and Kaffen's opinions that she recovered from her March 21, 1992 employment injury.

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office. A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).

In her February 20, 2001 reconsideration request, appellant merely stated that she would like to submit additional medical evidence, and was experiencing financial hardship and mental and physical pain from the loss of income. She did not show that the Office erroneously applied or interpreted a specific point of law and she did not advance a relevant legal argument not previously considered by the Office or submit any evidence to support her request. The Office therefore properly denied her request for reconsideration.

The February 26 and January 18, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
July 8, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member