

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SANDRA B. CARR and DEPARTMENT OF AGRICULTURE,  
FEDERAL GRAIN INSPECTION SERVICE, Jonesboro, AR

*Docket No. 01-954; Submitted on the Record;  
Issued June 26, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits; and (2) whether the Office properly denied appellant's request for reconsideration.

On October 13, 1999 appellant, then a 38-year-old agricultural commodity aide, filed a traumatic injury claim alleging that she sustained a lumbar strain in the performance of duty. On October 15, 1999 appellant filed a claim for an injury to her lower back. On December 29, 1999 the Office accepted appellant's claim for brachial plexus lesions of the right arm. On January 4, 2000 the Office accepted appellant's claim for a lumbar strain.<sup>1</sup>

Effective November 30, 1999 appellant was placed on the periodic compensation rolls to receive compensation benefits for temporary total disability.

On January 3, 2000 appellant underwent right shoulder surgery.

The record contains a detailed functional capacity assessment report dated May 24, 2000. The test examiner noted that appellant failed 29 of the 40 validity criteria and did not show any effort.

In a report dated June 2, 2000, Dr. Bruce L. Safman, appellant's attending physician, stated that appellant had a functional capacity test but the results did not appear to be valid because her cooperation was inconsistent and therefore the test provided little additional information regarding her physical limitations based on her employment injury. He noted that

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<sup>1</sup> The Office later consolidated these cases.

appellant complained of pain but he stated his opinion that emotional factors were playing a big part in appellant's symptoms. Dr. Safman stated:

“Insofar as there has been no objective pathology and insofar as the functional capacity test was invalid, I have no basis for putting [appellant] on any permanent restrictions. I thus will release her to full duty.”

By letter dated June 22, 2000, the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that the medical evidence established that she had no remaining disability causally related to her employment injury.

In a letter dated July 6, 2000, appellant stated that she disagreed with the proposed termination of her compensation because she could not perform her job due to stress, pain in her right shoulder and back pain.

By decision dated July 25, 2000, the Office terminated appellant's compensation effective that date on the grounds that the weight of the medical evidence, as represented by the June 2, 2000 report of Dr. Safman, appellant's attending physician, established that she had no remaining disability causally related to her employment-related lumbar strain and brachial plexus lesions. The Office advised appellant that her claim would remain open for conservative medical care.

By letter dated July 31, 2000, appellant, through her representative, requested reconsideration but submitted no new evidence or argument.

By decision dated November 28, 2000, the Office denied appellant's request for reconsideration.<sup>2</sup>

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.<sup>3</sup>

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<sup>2</sup> This record contains additional evidence that was not before the Office at the time it issued its November 28 and July 25, 2000 decisions. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

<sup>3</sup> *See Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

In a report dated June 2, 2000, Dr. Safman stated that appellant's functional capacity test did not appear to be valid because her cooperation was inconsistent and therefore the test provided little additional information regarding her physical limitations based on her employment injury. He stated:

“Insofar as there has been no objective pathology and insofar as the functional capacity test was invalid, I have no basis for putting [appellant] on any permanent restrictions. I thus will release her to full duty.”

As Dr. Safman, appellant's attending physician, found that she was capable of working without restrictions and there is no medical evidence of record establishing that appellant had any remaining disability causally related to her employment-related lumbar strain and brachial plexus lesions of the right arm, the Office met its burden of proof in terminating appellant's compensation.

The Board further finds that the Office properly denied appellant's request for reconsideration.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.

By letter dated July 31, 2000, appellant requested reconsideration but submitted no new evidence or argument. As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied her request for reconsideration.

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<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

The decisions of the Office of Workers' Compensation Programs dated November 28 and July 25, 2000 are affirmed.

Dated, Washington, DC  
June 26, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member