

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELORES C. KELLY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Lake City, FL

*Docket No. 02-728; Submitted on the Record;
Issued May 21, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant had disability after February 28, 1998 due to her November 14, 1996 employment injury.

The Board finds that appellant had no disability after February 28, 1998 due to her November 14, 1996 employment injury.

Once the Office of Workers' Compensation Programs has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² 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 she had an employment-related disability, which continued after termination of compensation benefits.³

On November 21, 1996 appellant, then a 56-year-old nurse, filed a claim alleging that she sustained an emotional condition due to an incident at work on November 14, 1996.⁴ Appellant indicated that she witnessed the aftermath of the shooting of an employing establishment guard on that date and that she had to flee from the gunman.⁵ The Office initially accepted that

¹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

² *Id.*

³ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁴ Appellant stopped work on November 16, 1996.

⁵ Appellant noted that she heard the shots and saw blood on the guard's person when he was brought to her shortly after the shooting. She indicated that she initially was outside, but ran into a building followed by the gunman. Appellant indicated that the gunman was chasing either her or an emergency medical technician and that she hid from him in a room.

appellant sustained an acute anxiety reaction. It was later accepted that appellant sustained a post-traumatic stress disorder due to the November 14, 1996 employment incident.⁶ Appellant received compensation from the Office for periods of disability.

By decision dated February 23, 1998, the Office terminated appellant's compensation effective February 28, 1998 on the grounds that the medical evidence showed she had no disability after that date due to her November 14, 1996 employment injury. The Office primarily based its termination on the opinion of Dr. Richard Greer, a Board-certified psychiatrist, to whom it referred appellant. Appellant returned to her regular work as a nurse on March 17, 1998. She voluntarily retired from the employing establishment effective August 31, 1998 and claimed that she had sustained a recurrence of total disability due to her November 14, 1996 employment injury. By decision dated and finalized April 9, 1999, an Office hearing representative affirmed the Office's February 23, 1998 decision and further determined that appellant had not sustained a recurrence of disability on or after August 31, 1998 due to her November 14, 1996 employment injury.⁷

By decision dated June 28, 2000, the Office denied appellant's reconsideration request on the grounds that her request was untimely and failed to show clear evidence of error in the prior Office decisions. By decision dated September 15, 2000, the Office effectively set aside its June 28, 2000 decision to reflect its determination that appellant had in fact filed a timely reconsideration request. The Office conducted a merit review and affirmed its April 9, 1999 decision. The Office found that it had properly terminated appellant's compensation on and after February 28, 1998 and that appellant had not shown she sustained a recurrence of disability on or after August 31, 1998 due to her November 14, 1996 employment injury.

With respect to the termination of appellant's compensation, the Board finds that the weight of the medical evidence regarding appellant's employment-related emotional condition is represented by the thorough, well-rationalized opinion of Dr. Greer, an Office referral physician.⁸ The opinion of Dr. Greer establishes that appellant had no disability due to her November 14, 1996 employment injury after February 28, 1998.

In a report dated March 21, 1997, Dr. Greer provided a detailed description of appellant's factual and medical history and reported the findings on examination. He diagnosed history of post-traumatic stress disorder and history of depressive disorder and indicated that these diagnoses were based on appellant's "subjective reports of anxiety and depressive symptoms related to her employment." Dr. Greer further indicated that appellant's underlying personality caused her to focus on physical symptoms, react in an overly dramatic fashion and exaggerate her disability. He noted that appellant reported concentration, anxiety and memory problems,

⁶ It was also accepted that appellant sustained lumbar strain on November 14, 1996 which resolved by July 18, 1997.

⁷ The Office noted that appellant's medical benefits had not been terminated.

⁸ With respect to appellant's physical condition, the weight of the medical evidence is represented by the opinion of Dr. Michael J. Lord, an attending Board-certified orthopedic surgeon. In a report dated July 18, 1997, Dr. Lord noted that appellant had no permanent impairment due to her employment-related lumbosacral strain. He indicated that appellant reported there were times when her back was completely asymptomatic.

but that she did not exhibit such abnormalities on examination. Dr. Greer indicated that he approved of appellant gradually returning to work over the next several months. Dr. Greer noted that, if this did not occur, he feared appellant would “embroil herself in a more disabled role.”⁹ On October 15, 1997 the Office requested that Dr. Greer indicate whether appellant could return to her regular work as a nurse. He responded in the affirmative to the Office’s request.

The Board has carefully reviewed the opinion of Dr. Greer and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the termination of appellant’s compensation effective February 28, 1998. Dr. Greer’s opinion is based on a proper factual and medical history and is supported by sound reasoning.¹⁰ He provided medical rationale for his opinion by indicating that appellant’s problems could be explained by her nonwork-related personality traits and her tendency to view herself in a disabled role. Dr. Greer also noted that appellant displayed limited objective findings of employment-related disability.

In a report dated March 7, 1997, Dr. Ernest J. Bordini, a clinical psychologist, to whom the Office referred appellant, diagnosed post-traumatic stress disorder, single episode of major depression, cognitive disorder, pain disorder and mixed personality disorder with obsessive-compulsive, hysteroid and possible paranoid features. Dr. Bordini indicated that appellant’s “anxiety manifestations” might pose obstacles to her returning to work and performing her duties. However, he did not provide a clear opinion that appellant’s employment injury prevented her from returning to work.¹¹

In a report dated August 27, 1997, Dr. Rajani Ravindra, an attending Board-certified psychiatrist, indicated that appellant could begin working in a light-duty position on a trial period. In a note dated October 2, 1997, Dr. William M. Hunt, III, an attending Board-certified psychiatrist, noted that appellant could “not yet return to work.” In a report dated January 17, 1998, Dr. Hunt indicated that appellant could perform a job with “very minimal work expectations” which did not involve patient care. These reports, however, are of limited probative value on the relevant issue of the present case in that Drs. Ravindra and Hunt did not provide adequate medical rationale in support of their conclusions on causal relationship.¹² Nor did they base their opinions on complete and accurate factual and medical histories.¹³ For

⁹ He indicated that appellant should not be allowed to “dictate her recovery.”

¹⁰ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

¹¹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

¹² See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹³ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

example, neither physician provided a notable discussion of the circumstances of the November 14, 1996 employment injury or appellant's medical background.¹⁴

After the Office's February 23, 1998 decision, terminating appellant's compensation effective February 28, 1998, appellant submitted additional medical evidence which she felt showed that she was entitled to disability compensation after February 28, 1998 due to residuals of her November 14, 1996 employment injury.¹⁵ Given that the Board has found that the Office properly relied on the opinions of Drs. Greer and Lord in terminating appellant's compensation effective February 28, 1998, the burden shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had disability due to her November 14, 1996 employment injury after February 28, 1998.

In support of her claim, appellant submitted an April 7, 2000 affidavit of Dr. Hunt, an attending Board-certified psychiatrist. He noted that appellant returned to her regular work as a nurse in April 1998 and that she had reported being happy she took that course of action. Dr. Hunt indicated that, over the course of the next several months, appellant reported experiencing some stress at work but that her condition had generally improved. He noted that when he saw appellant on August 25, 1998 she showed him an August 24, 1998 document from a supervisor, which she believed contained an unfair evaluation of her performance at work. Dr. Hunt indicated that appellant felt "traumatized" and had a lessened "sense of security" as a result of receiving this document. He indicated that appellant's condition in late August "fit together diagnostically" and could be described as "feeding into the post-traumatic stress disorder." Dr. Hunt posited that appellant's stopping work in late August 1998 was a maneuver to minimize her emotional stress. He indicated that he did not believe any emotional impairment prevented appellant from returning to work on a limited basis in "more selected surroundings."

Dr. Hunt's April 7, 2000 affidavit would not support appellant's claim that she sustained a recurrence of disability on August 31, 1998 because it does not contain a clear opinion that appellant's emotional condition was related to her November 14, 1996 employment injury.¹⁶ Nor does it contain a clear opinion that appellant was disabled due to her emotional condition at that time. He suggested that there was a relationship between appellant's work stoppage in late August 1998 and the employment injury of November 14, 1996, but Dr. Hunt did not provide adequate medical rationale in support of such an ostensible opinion. For example, he did not adequately explain the nature of the original employment injury or describe how it could have caused disability after appellant had worked in her regular position for more than four months. Nor did Dr. Hunt explain why appellant's work stoppage was not solely due to a nonwork-related cause. With respect to the events at work in late August 1998, appellant did not file a

¹⁴ Dr. Hunt suggested that appellant's personality disorder was related to her work, but he did not adequately explain his view on this matter.

¹⁵ Appellant claimed that she sustained a recurrence of disability on August 31, 1998 due to her November 14, 1996 employment injury.

¹⁶ With respect to her emotional condition, the Office accepted that appellant sustained an acute anxiety reaction and post-traumatic stress disorder.

claim alleging that she sustained a new employment-related emotional condition at that time; nor has the Office accepted the existence of such a condition.

For these reasons, the Office properly found that appellant had no disability after February 28, 1998 due to her November 14, 1996 employment injury.

The September 15, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 21, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member