

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY L. FAISON and DEPARTMENT OF AGRICULTURE,
AGRICULTURAL EXTENSION SERVICE. Smithfield, NC

*Docket No. 02-951; Submitted on the Record;
Issued October 16, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant's disability related to her November 25, 1980 employment injury ended by February 13, 2001.

On December 15, 1980 appellant, then a 34-year-old part-time program aid, filed a claim for a traumatic injury to her low back sustained on November 25, 1980 when she fell off a porch. She stopped work on December 2, 1980 and received continuation of pay from that date through January 14, 1981, when the Office of Workers' Compensation Programs began paying compensation for temporary total disability.

On February 5, 1981 appellant underwent a partial hemilaminectomy and removal of the disc at L5-S1.

Appellant returned to work from June 15 to July 31, 1981.

On August 5, 1981 appellant underwent a hemilaminectomy at L4-5 and L5-S1 with excision of a recurrent disc at L5-S1.

The Office paid compensation for temporary total disability until she returned to work for four hours per day on May 23, 1983, after which it paid compensation for partial disability on the basis that appellant was working five hours per day at the time of her November 25, 1980 injury.

Appellant received compensation for partial disability until June 30, 1983 when she again stopped work and received compensation for temporary total disability until she returned to her regular part-time duties on September 19, 1983.

On October 5, 1983 appellant sustained an employment injury to her knee when she slipped and fell. She stopped work on October 5, 1983 and resigned her position on October 7, 1983. The Office accepted that she sustained a right knee sprain. In an October 19,

1983 report, appellant's attending physician, Dr. Tejpal S. Dhillon, a Board-certified orthopedic surgeon, stated that appellant had no further disability due to her knee injury.

On October 16, 1983 the Office began payment of compensation for temporary total disability based on residuals of her herniated disc with bilateral sciatica.

On January 10, 2001 the Office issued a notice of proposed termination of compensation on the basis that appellant no longer had residuals of her November 25, 1980 employment injury.

By decision dated February 13, 2001, the Office terminated appellant's compensation on that date on the basis that the medical evidence established that she had no continuing medical condition or disability as a result of her November 25, 1980 employment injury.

By letter dated March 9, 2001, appellant requested a hearing, which was held on October 24, 2001. At this hearing she submitted additional medical evidence.

By decision dated January 16, 2002, an Office hearing representative found that the weight of the medical evidence supported that appellant no longer was suffering from or disabled by effects of her November 25, 1980 employment injury.

The Board finds that appellant's disability related to her November 25, 1980 employment injury, ended by February 13, 2001.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹

The Office based its termination of appellant's compensation on the December 17, 2000 report of Dr. Andrew Bush, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation. In this report, he accurately described appellant's history, reviewed prior medical records and set forth appellant's findings on physical examination, noting that appellant was able to twist around easily and point to the area of her back pain, that she had no palpable muscle spasm and no atrophy of the lower extremities, that she could only reach with her fingertips to knee height but that her lower extremities could be extended with her hips flexed at 90 degrees, that her motor examination was within normal limits but that she never maintained active resistance and that the wear pattern on the soles of her shoes was bilaterally equal and indicated a normal heel strike and toe off. Dr. Bush noted that appellant had subjective complaints of back pain but that she "did not have any objective findings and there were many inconsistencies in the PE [physical examination] and observing [appellant] during the interview." He stated that it was "very common" to have persisting back pain after lumbar spine operations, but that it "was uncommon to have debilitating pain without other neurological findings or clinical symptoms." Dr. Bush diagnosed back pain with

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

psychological overlay and concluded that “it is more likely than not that [appellant] has recovered completely from the November 1980 injury,” that she had no residuals from this injury and that she did not require further orthopedic care.

The Board finds that Dr. Bush’s report is a sufficient basis to terminate appellant’s compensation. This report is consistent with a May 13, 1986 report from Dr. Thomas B. Dameron, a Board-certified orthopedic surgeon, who stated that appellant’s musculoskeletal system showed no evidence of any disabling pathology.

Appellant’s attending physician, Dr. Dhillon, continues to support disability causally related to appellant’s November 25, 1980 employment injury. In a report dated November 15, 2001, Dr. Dhillon stated that “her primary main condition for her disability was her lower back pain resulting from the original injury in 1980.” In an undated report in response to appellant’s attorney’s November 14, 2001 query, Dr. Hal B. Woodall, a Board-certified internist who first treated appellant in 1981, stated that by history appellant had been disabled since 1980 and that the primary cause of her disability had been chronic back pain that had not changed in 20 years.

The reports of Drs. Dhillon and Woodall are entitled to less probative value than the report of Dr. Bush because these physicians do not present any objective findings to support that appellant continues to be disabled. The Board has stated that “the absence of objective evidence of disability is more compatible with absence of disability than with its presence.”² Appellant’s disability since 1983 has been based on her complaints that she was unable to work, rather than on any objective evidence of disability and several physicians, including Dr. Woodall, have commented on the functional overlay and the uncertain etiology of her complaints.

Appellant’s complaints lack credibility. At the hearing held on October 24, 2001 she testified that she was paralyzed and unable to walk following her first surgery. Appellant was examined on a regular basis by several physicians between her first and second surgeries; none found her to be paralyzed.

Dr. Bush’s December 17, 2000 report constitutes the weight of the medical evidence and establishes that appellant’s disability related to her November 25, 1980 employment injury ended by February 13, 2001.

² *Anna Chrun*, 33 ECAB 829, 835 (1982).

The January 16, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 16, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member