

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLENE SMITH and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Perry Point, MD

*Docket No. 02-1383; Submitted on the Record;
Issued October 2, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective April 21, 2002.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 21, 2002.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

In this case, on June 2, 1979 appellant, then a 42-year-old licensed practical nurse, filed a claim for traumatic injury alleging that she sustained injuries to her right ankle, right thigh and back due to factors of her federal employment. The Office accepted her claim for right ankle sprain, right thigh muscle strain and lumbosacral strain on August 13, 1980. Appellant stopped work on May 27, 1979 and returned to part-time light-duty work as a library aide on

¹ *William T. Abernathy*, 48 ECAB 687 (1997); *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Beverly J. Duffey*, 48 ECAB 569 (1997); *Mohamed Yunis*, *supra* note 1.

³ *Beverly J. Duffey*, *supra* note 2; *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

November 2, 1981. She again stopped work on November 21, 1981 and did not return.⁵ In response to an Office request for a medical update, in a report dated May 12, 1999, Dr. Michael Levine, appellant's attending Board-certified orthopedic surgeon, diagnosed degenerative scoliosis, spinal stenosis and patellofemoral syndrome, right knee. Dr. Levine stated that appellant's back problems were related to her employment injury but her knee condition was unrelated and that appellant's back pain was confined to the low back, with no radicular symptoms. He concluded that appellant had been partially disabled since he began seeing her in March 1989, that she was definitely capable of sedentary work and some light-duty work, and was restricted from lifting more than 20 pounds and from repetitive bending, squatting, stooping, kneeling or climbing. By letter dated May 18, 2001, the Office again requested a medical update from Dr. Levine, but he declined to provide one without advance payment.

On December 13, 2001 the Office referred appellant, a statement of accepted facts and a list of specific questions to Dr. Stephen R. Bailey, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated January 9, 2002, Dr. Bailey stated that appellant had long recovered from her employment-related ankle, thigh and low back injuries, that she had no evidence of any spine or knee trauma causally related to her work and that she was capable of performing her date-of-injury position as a licensed practical nurse. In an accompanying work capacity evaluation form, Dr. Bailey indicated that appellant could work eight hours a day without restrictions. In a follow-up report dated January 14, 2002, Dr. Bailey clarified that appellant would have recovered from her soft tissue sprains and strains within about four to six weeks after injury.

Based on the medical evidence of record, the Office proposed to terminate appellant's compensation benefits on February 25, 2002. The Office allowed appellant 30 days to submit additional evidence or argument. By letter dated March 4, 2002, appellant responded and stated that, if the Office felt she was fit for work she would start as soon as she is informed of the location and time to report for duty. In a letter dated March 11, 2002, however, appellant stated that she believed she still suffered from employment-related chronic lumbosacral strain and felt that Dr. Bailey had not performed a thorough examination. Dr. Levine completed a narrative report on March 6, 2002, in which noted that he began seeing appellant on March 17, 1989 for low back pain following an employment injury and stated:

“She has had chronic lumbosacral pain since that time. She has been followed on a several time a year basis ever since then for a similar problem and has never gained full improvement. At this time, I feel that her back problems have remained related to that injury in 1978, for I have never seen 100 percent improvement following that.”

The Office terminated appellant's compensation, effective April 21, 2002, by decision dated April 2, 2002.

In this case, appellant's attending physician, Dr. Levine, indicated that appellant was partially disabled and still suffered from chronic lumbosacral pain causally related to her 1979

⁵ In a decision dated January 20, 1984, the Office reduced appellant's wage-loss compensation benefits effective November 2, 1981 based on her ability to perform the duties of a library aide.

employment injury. However, Dr. Levine's report is unrationalized, as he failed to explain how and why appellant's continued back pain was causally related to her accepted employment injury so many years after the event and did not provide any objective evidence to support his conclusions. Rationalized medical opinion evidence is medical evidence that includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶ The Office then properly referred appellant to Dr. Bailey for a second opinion evaluation. Dr. Bailey provided a detailed report, relying on the statement of accepted facts, appellant's personal history and medical records, and his own physical examination. He concluded that appellant's ankle, thigh and low back strains and sprains had fully resolved, with no residuals, and that appellant was fully capable of returning to her date-of-injury position. The medical evidence before the Office at the time of its April 2, 2002 decision establishes that appellant is no longer disabled due to her accepted employment-related condition. Furthermore, appellant herself indicated that she was willing to return to work. Therefore, the Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 21, 2002.

The decision of the Office of Workers' Compensation Programs dated April 2, 2002 is hereby affirmed.

Dated, Washington, DC
October 2, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁶ *Charles E. Evans*, 48 ECAB 692 (1997); *Earl D. Smith*, 48 ECAB 615 (1997).