

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHERINE KOUMOUTSEAS and ARCHITECT OF THE CAPITOL,
BOTANICAL GARDENS, Washington, DC

*Docket No. 02-523; Oral Argument Held April 2, 2003;
Issued December 12, 2003*

Appearances: *Katherine Koumoutseas, pro se; Thomas G. Giblin, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant had any continuing disability after October 11, 2000 causally related to her accepted May 15, 2000 low back injury.

The Office of Workers' Compensation Programs accepted that on May 15, 2000 appellant sustained low back strain, while lifting plants from a ledge into a deep cold frame.¹ Appellant received continuation of pay on May 16, 2000 and performed full-time limited duty from May 19 to 30, 2000. Appellant's attending physician, Dr. Ioana Razi, stated that appellant's May 15, 2000 injury was exacerbated on May 30, 2000 "during an acute laryngospasm at work,"² and appellant received continuation of pay during her absence from work from June 1 to 29, 2000.

Appellant returned to limited duty for four hours on July 3, 2000 then worked limited duty six hours per day from July 5 through 12, 2000. She stopped work on July 13, 2000, as the employing establishment indicated it was unable to accommodate Dr. Razi's June 30, 2000 work restrictions for appellant, which included avoiding exposure to chemicals, solvents, fumes and dust due to laryngospasms.

On July 16, 2000 the Office began payment of compensation for temporary total disability.

¹ Case No. 25-0560166.

² On May 25, 2000 appellant filed a claim for an occupational disease for occupational asthma, which was adjudicated as Case No. 25-0561267. On June 23, 2000 the Office accepted this claim for laryngeal spasm and on March 6, 2001 the Office accepted this claim for the additional condition of occupational asthma.

By letter dated September 26, 2000, the employing establishment advised appellant that it had “limited duty available for you which is within your physical limitations. ... available effective October 4, 2000.” The employing establishment noted that the job was sedentary and was in an office environment and that its duties consisted of answering the telephone, taking messages, xeroxing, putting together reports, filing reports, greeting customers and performing other clerical duties as needed.

A handwritten note dated October 2, 2000 from Dr. Razi, to the Office field nurse indicated that she saw appellant that date, that her sciatica had resolved and that when appellant’s respiratory restrictions were established, they would be forwarded to the employing establishment. Dr. Razi also completed a Form CA-17 on October 2, 2000 noting that appellant was released to perform her regular work on a full-time basis on that date and again noting that the left sciatica had resolved.³ In an October 3, 2000 memorandum to the file, an Office staff nurse indicated that appellant’s physician “did sign off on the job offer.”

Appellant reported for work on October 4, 2000, but the employing establishment would not allow appellant to work because she “did not have a copy of the release statement from [her] doctor...” The Office field nurse indicated in an October 5, 2000 memorandum that the position was offered to appellant effective October 4, 2000, but she refused it because of her respiratory illness. She noted that the position was modified and that it was “not associated with chemicals anyway.” In an October 10, 2000 letter to appellant, the employing establishment advised her that “the light[-]duty accommodation offered to you verbally and in writing is still available and within any physical limitation you may or may not have,” and that her “gardener job remains available to you in the Botanic Gardens along with a limited[-]work assignment working in this office performing minor clerical tasks.”

By decision dated October 10, 2000, the Office terminated appellant’s compensation for disability on the basis that “the weight of medical evidence in your case indicates that you have no continuing disability for work as a result of the injury of May 15, 2000.”

On October 11, 2000 Dr. Razi indicated that appellant could perform the position of office secretary/receptionist with the restriction that if she were to develop acute respiratory symptoms on the job, she should not return to work until the full occupational/environmental work-up was completed.

By letters dated October 18 and 25, 2000, appellant disagreed with the October 10, 2000 decision and requested an oral hearing on her back injury before an Office hearing representative.

A hearing was held on May 11, 2001, at which time appellant testified about her low back strain and her reactive airways disease and indicated that she had worked reduced hours even after her back injury, up until her respiratory claim was filed in June 2000. After that time appellant claims that she was told that the employing establishment could no longer accommodate her work restrictions and she was removed from employment. Appellant testified

³ Dr. Razi indicated on this form that appellant could be exposed to chemicals, solvents, fumes and dust zero hours per day. These were the only restrictions noted on the form.

that when she arrived at work on October 4, 2000 she did not know whether she was returning to her position as a gardener or was returning to a clerical position, so she wore her uniform to be prepared. Appellant claimed that she was told that she should have brought a release form from her treating physician returning her to work. Appellant stated that she did not have one and since there was no medical release form, appellant stated that she was told to go home. Appellant testified that at that time she had some concerns as to whether the clerical position was appropriate for her respiratory condition, but she could perform her regular job duties considering only her back condition. Appellant testified that she felt that there was a lot of confusion because of her two claims with many cross-references, including medical evidence and she argued that the claims should be combined to resolve any further confusion.

By decision dated July 18, 2001 and finalized on July 23, 2001, the hearing representative affirmed the October 10, 2000 decision of the Office, finding that the evidence of record was sufficient to meet the Office's burden of proof to establish that appellant's accepted low back strain had resolved as of October 2, 2000. The hearing representative found that appellant was released to full-time regular work by Dr. Razi, by reports dated October 2 and 11, 2000, that the limited-duty position offered to appellant took into account her accepted laryngospasm condition, which was noted as causing additional back problems, but that, as it was acknowledged by the employing establishment that they would not return appellant to work on October 4, 2000 because the medical documentation to release her was not available, appellant was entitled to compensation for wage loss through October 11, 2000, the date of release given by Dr. Razi.⁴

The Board finds that appellant had no continuing work-related disability after October 11, 2000 causally related to her May 15, 2000 back injury.

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.⁵

⁴ By check dated September 14, 2001, the Office paid compensation from October 3 to 11, 2000. The Office also issued further decisions with regard to appellant's claim for a respiratory condition: a March 6, 2001 decision finding that appellant had not established that she had multiple chemical sensitivity causally related to her employment, an April 26, 2001 decision finding that she was not entitled to compensation from October 4, 2000 to January 3, 2001, on the basis that she refused an offer of suitable work, an August 20, 2001 hearing representative decision vacating the April 26, 2001 decision and remanding the case for further development of the evidence on the offer of employment made to appellant and a December 4, 2001 decision, finding that she was not entitled to compensation from October 4, 2000 to January 3, 2001, on the basis that she refused an offer of suitable work. When appellant filed the current appeal with the Board, she also appealed the December 4, 2001 Office decision, under Case No. 25-0561267 and a separate appeal was filed as Docket No. 02-518. Appellant requested that this appeal be withdrawn to allow her to submit additional evidence to the Office in conjunction with a request for reconsideration. On February 28, 2002 the Board dismissed the appeal in Docket No. 02-518.

⁵ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

Appellant's treating physician, Dr. Razi, stated in a medical note dated October 2, 2000, that her low back strain had resolved. Dr. Razi also completed a Form CA-17 on October 2, 2000 indicating that appellant could return to work full time without activity restrictions, except for exposure to chemicals, solvents, fumes and dust. The Office paid appellant compensation through October 11, 2000, on the basis that the employing establishment would not allow her to return to work on October 4, 2000, because it did not have a release from her physician when she reported to work on that date.

The Board finds that the Office properly relied on the medical evidence from appellant's own treating physician, which established that her back condition had resolved by October 2, 2000. The Board notes that there is no other medical evidence in the case record indicating that appellant's back condition had not resolved as of that date. Although appellant contended that she had submitted medical evidence that was not properly associated with this case record, there is no indication in the record that additional medical evidence was submitted that showed her lower back condition had not resolved as of October 2, 2000. Further, appellant testified at the hearing that she could perform her regular job duties considering only her back condition. Consequently, the Board finds that appellant had no continuing disability for work after October 11, 2000, the date the Office terminated her compensation, or injury residuals requiring further treatment after October 2, 2000, causally related to her May 15, 2000 accepted low back strain injury.

The decision of the Office of Workers' Compensation Programs hearing representative dated July 18, 2001 and finalized July 23, 2001 is hereby affirmed.

Dated, Washington, DC
December 12, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member