

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA M. MARTIN and DEPARTMENT OF THE ARMY,
ARMY TRAINING CENTER, Fort Jackson, SC

*Docket No. 03-2152; Submitted on the Record;
Issued December 16, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation and medical benefits effective August 25, 2003.

This case has been before the Board previously. The Office accepted that appellant, then a 52-year-old clerk-typist, sustained a work-related injury on August 7, 1969 for an undisplaced fracture of the left radial head and contusion of the buttocks. The Office paid appropriate compensation. On June 5, 1970 the Office placed appellant on the periodic rolls. In a decision dated October 31, 1979, the Office found that the position of cashier, which appellant was qualified to perform, represented her wage-earning capacity and modified her compensation accordingly. On May 12, 1980 the Board set aside the Office's October 31, 1979 decision and remanded the case to the Office to determine the availability of a cashier position in her area.¹ On November 5, 1980 the Office modified appellant's compensation on the grounds that the availability of cashier positions in her commuting area was excellent. On April 1, 1981 the Office denied appellant's request for reconsideration of its November 5, 1980 decision.

The Office continued to develop the claim and on April 2, 2003 advised appellant to provide current medical evidence to support her continuing work-related disability. In a letter received on April 10, 2003, she advised the Office that she was 85 years old, had arthritis and soreness at times in her left elbow, but that she no longer was under a doctor's care for that condition. Appellant noted additional medical issues, but did not relate them to her federal employment or her accepted work-related injury.

Appellant submitted a medical report dated November 18, 1980, received by the Office on April 10, 2003 from Dr. Oscar R. Gunther, a Board-certified orthopedic surgeon, who stated that he treated appellant on that day for pain in the left elbow and along the left upper extremity. Upon examination he noted that she complained of localized pain mainly in the medial over the

¹ Docket No. 80-39 8 (issued May 12, 1980).

aspects of the left elbow. Dr. Gunther noted good range of motion with pain, but noted no muscle spasm or deformity. He noted also that x-rays taken that day revealed mild degenerative changes at the radial humeral joint. Dr. Gunther diagnosed post-traumatic arthritis of the left radial humeral joint and advised appellant that the head of the radius should be removed if the pain was too severe; otherwise no special treatment was authorized.

On May 9, 2003 the Office referred appellant, her medical records, a statement of accepted facts and a list of specific questions to Dr. Steven Lancaster, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated June 2, 2003, Dr. Lancaster reviewed the history of injury and medical treatment. On physical examination he found that appellant had full range of motion of the left elbow, good strength in her left arm with no crepitus or instability noted. He advised that appellant's left radial head fracture and buttocks contusion had completely healed and she exhibited normal functioning of the left elbow and buttocks. She reached maximum medical improvement "reasonably in the early 1970s" and was able to work an eight-hour day.

On July 22, 2003 the Office issued a notice of proposed termination of compensation for wage loss and medical benefits. It found that the weight of the medical evidence established that appellant no longer had a medical condition or a need for further treatment causally related to the August 7, 1969 work-related injury.

By decision dated August 25, 2003, the Office terminated appellant's compensation and medical benefits effective that day.

The Board finds that the Office met its burden of proof to terminate appellant's compensation on August 23, 2003.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

In a report dated June 2, 2003, Dr. Lancaster, a Board-certified orthopedic surgeon and a second opinion physician, stated that he examined appellant for residuals of a fracture sustained to the left radial head and a contusion of her buttocks on August 7, 1969.⁵ Upon examination, he found full range of motion of the left elbow on flexion, extension, pronation and supination in

² *Jorge E. Sotomayor*, 52 ECAB 105 (2000).

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁵ In the history of injury section of his report, Dr. Lancaster noted that appellant initially related a right elbow injury.

comparison to the contralateral arm, noting pain. Dr. Lancaster also reported a normal neurovascular examination and further noted good strength and no crepitus or instability in the forearm. He advised that appellant's work-related injuries had healed; that appellant had reached maximum medical improvement "reasonably in the early 1970s;" and that she was able to work an eight-hour day.

The Board finds that Dr. Lancaster's second opinion report that appellant's work-related injuries were fully resolved is based upon an accurate history of her 1969 work-related injury and is supported by his findings on examination, which revealed full range of motion of her left elbow, good strength in her arm from forearm to shoulder; and a normal neurovascular examination. Further, appellant noted in her narrative statement that she no longer sought medical care for her left arm.

The Board notes that appellant did not submit medical evidence to establish that she had any residual medical conditions as a result of her work-related injury. The record includes a March 28, 1995 report, in which Dr. Scott Gordon, a Board-certified orthopedic surgeon, noted x-ray findings of a healed radial fracture. Physical examination findings included full range of motion and mild tenderness about the lateral aspect of the left elbow. Dr. Gordon's assessment was status post left radial head fracture in good position and no signs of significant arthritis.

The August 25, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 16, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member