

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARMING DATTS and DEPARTMENT OF THE NAVY,
NAVAL SEA SYSTEMS COMMAND, NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 96-2654; Submitted on the Record;
Issued July 24, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective February 2, 1996.

The Board has duly reviewed the case on appeal and finds that the Office met its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.¹

In this case, the Office accepted that on March 4, 1988 appellant sustained an avulsion fracture of her left elbow for which she received appropriate compensation. As there was no contemporaneous medical evidence in the record,² on April 28, 1994 the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Dr. Martin Blaker, a Board-certified orthopedic surgeon, for a second opinion evaluation. Based on his reports, by letter dated August 1, 1995, the Office proposed to terminate appellant's compensation benefits. Appellant submitted nothing in response to the proposed termination, and by decision dated February 2, 1996, the Office terminated her medical and compensation benefits, effective that day.

The contemporaneous medical evidence establishes that appellant had no employment-related disability or residuals on or after February 2, 1996. In his comprehensive reports dated

¹ See *Patricia A. Keller*, 45 ECAB 278 (1993).

² The most recent evidence was a February 18, 1992 report in which Dr. Marc S. Zimmerman, a Board-certified orthopedic surgeon, stated that he last saw appellant on June 7, 1989 when he felt that she could return to light duty.

May 28, 1994, Dr. Blaker noted appellant's history of injury and medical history and diagnosed history of chip avulsion fracture of the tip of the left olecranon and history of chip avulsion fracture of the tip of the left coronoid process of the left ulna, diabetes mellitus and functional overlay. He concluded:

"The objective examination is completely negative at the present time. I have correlated with the review of data submitted, and apparently what has been diagnosed as a fracture was actually only a very minor chip avulsion of the tip of the olecranon which might well have been old and preexistent, and the same applies to the tip of the coronoid process of the ulna. There is no tenderness over these points at the present time, and her subjective complaints involving the entire left upper extremity and the left side of the neck and the left hand are not associated with any objective findings whatsoever to indicate any involvement. I have reviewed with her the nature of her work duties which were apparently fairly light, and most of her work was done seated. I bear in mind also that she is a diabetic who may well be not under good metabolic control now, particularly in view of the fact that she is very grossly overweight. In addition, she does not check her urine for glycosuria. She admits that her diet is not appropriate, and I am referring [her] to a diabetic diet. In my opinion, no residual disability is present here as a result of the accident of February 9, 1988. I am of the opinion that she is fully capable of doing her normal work duties."

In a work capacity evaluation dated June 7, 1994, Dr. Blaker advised that appellant could work eight hours per day with no limitations except for age and marked obesity. He indicated that the date of maximum medical improvement was 60 days post injury.

As there is no probative medical evidence supporting continuing disability due to appellant's accepted avulsion fracture, and as Dr. Blaker submitted a well-rationalized report finding that appellant's condition at the time of his examination was not due to her employment injury, the Office met its burden of proof to terminate appellant's compensation benefits, effective February 2, 1996.

The decision of the Office of Workers' Compensation Programs dated February 2, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 24, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member