

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROYLEENE BRADLEY and U.S. DEPARTMENT OF HEALTH & HUMAN  
SERVICES, BUREAU OF INDIAN AFFAIRS, Billings, MT

*Docket No. 00-2621; Submitted on the Record;  
Issued December 20, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective April 26, 1998; and (2) whether appellant established work-related disability after that date.

On February 25, 1983 appellant, then a 26-year-old office assistant, was lifting boxes and injured her lower back and left leg. She stopped work on March 7, 1983.<sup>1</sup> The Office accepted the claim for aggravation of a preexisting back condition. Appellant was paid appropriate compensation.

Appellant's treating physician, Dr. John Dorr, a Board-certified orthopedic surgeon, indicated that he first treated appellant in 1977 for back and leg pain. Dr. Dorr performed a laminectomy, which was successful but in February 1983 appellant reinjured her back at work.

Notes from Dr. Dorr indicated that appellant remained disabled and under treatment for aggravation of her preexisting back condition. He stated that appellant had not worked for 10 years and it was highly improbable that she would ever return to work.

In February 1998, the Office referred appellant for a second opinion to Dr. Stephen Dinenberg, a Board-certified orthopedic surgeon. The Office provided Dr. Dinenberg with appellant's medical records, a statement of accepted facts and a detailed description of appellant's employment duties.

In a medical report dated February 20, 1998, Dr. Dinenberg reviewed the records provided and concluded that appellant did not have any objective evidence of disabling residuals from the aggravation of her preexisting low back condition which was caused by the lifting incident on February 25, 1983. He indicated that appellant had unrelated medical problems,

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<sup>1</sup> Appellant was removed from her position on November 14, 1983 after the fitness-for-duty physician indicated that she could return to work on light duty and appellant failed to do so.

which contributed to her condition, including rheumatoid arthritis, which had systematic and wide-spread joint involvement. Dr. Dinenberg added that appellant could return to her preinjury position at this time.

On March 12, 1998 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Dinenberg's report established no continuing disability as a result of the February 25, 1983 employment injury.

Subsequently, appellant submitted a March 31, 1998 treatment note from Dr. Dorr that appellant had experienced persistent back pain since her 1983 injury. Physical examination of appellant showed limitation of back motion. An x-ray of appellant's back revealed a healed laminectomy with no evidence of disc space collapse or instability.

By decision dated April 15, 1998, the Office terminated appellant's benefits effective April 26, 1998 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her February 25, 1983 employment injury.

By letter dated May 12, 1998, appellant requested review of the written record and submitted a May 8, 1998 report from Dr. Dorr who noted that x-rays were obtained of appellant's knees, hips and wrists, which revealed no evidence of arthritis. He indicated that appellant's current symptoms related back to her accident of 1983 and that it was unlikely she would ever be able to return to gainful employment.

In a decision dated September 10, 1998, the hearing representative affirmed the termination of compensation on the grounds that appellant had no continuing disability resulting from her work-related condition. However, the hearing representative remanded the case to resolve a conflict in medical opinion between appellant's treating physician, Dr. Dorr and the Office referral physician, Dr. Dinenberg, regarding appellant's continued disability after April 26, 1998.

On October 9, 1998 the Office referred appellant to an impartial medical examiner, Dr. Morris H. Susman, a Board-certified orthopedic surgeon.

In a report dated October 30, 1998, Dr. Susman indicated that he reviewed the medical records, examined appellant and looked at x-rays from 1976 through 1998. Dr. Susman noted persistent lumbar pain with left lumbar radiculopathy and a strong emotional component to appellant's continuing low back and radicular pain. He noted that his examination of the cervical spine revealed good extension, hyperextension without pain, rotation of 80 degrees to the right and left without discomfort, full range of motion of both shoulders and tenderness in the thoracic region and lumbar region. Dr. Susman determined that most, if not all, of appellant's symptoms predated the 1983 work incident because the onset of her symptoms occurred six months prior to her work-related injury. He found no definite objective medical evidence of disabling residuals from the work-related injury of February 25, 1983.

Dr. Susman recommended that appellant be given the "benefit of the doubt" and undergo a neurologic consultation, a repeat magnetic resonance imaging scan, chronic pain evaluation and a work hardening program. He further indicated that appellant would be able to return to work eight hours a day but subject to a lifting restriction of five pounds. On the work restriction

form Dr. Susman noted restrictions but did not indicate whether they were due to her work-related injury or preexisting conditions.

In a decision dated November 10, 1998, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her continuing disability was causally related to the 1983 work injury.

By letter dated November 30, 1998, appellant requested a hearing, which was held on June 24, 1999. Appellant submitted a report from Dr. Dorr, who noted that appellant's back condition improved until her reinjury in the work-related incident of 1983. He indicated that appellant had experienced persistent severe back pain since then and had not worked since 1987. Dr. Dorr added that he believed appellant's current symptoms were related to the 1983 incident.

In a decision dated August 23, 1999, the hearing representative found that the weight of the medical evidence established that appellant had no continuing disability resulting from her work-related injury.

The Board finds that the Office met its burden of proof to terminate benefits effective April 26, 1998.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>2</sup> 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.<sup>3</sup>

In this case, the Office accepted appellant's claim for an aggravation of a preexisting back condition and referred appellant for a second opinion to Dr. Dinenberg. In his report dated February 20, 1998, he indicated that appellant did not have any objective evidence of disabling residuals from the aggravation of her preexisting low back condition which was caused by the lifting incident of February 25, 1983. Dr. Dinenberg indicated that appellant had unrelated medical problems, which contributed to her condition. He indicated that appellant could return to her preinjury position at this time. Dr. Dinenberg found no basis on which to attribute any continuing disability to appellant's accepted employment injury.

After issuance of the predetermination notice, appellant submitted a March 31, 1998 letter from her treating physician, Dr. Dorr, who indicated that appellant had been having problems with her back since 1976 and had had surgery in 1977, reinjured her back in 1983 and had experienced persistent back pain since that time. He opined that she had some limitation in her back and indicated it was causally related to the 1983 work incident but provided no medical

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<sup>2</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>3</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

reasoning or rationale to support such a statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>4</sup> Without any explanation or rationale for the conclusion reached, such report is of diminished probative value.<sup>5</sup> Therefore, Dr. Dorr's report is insufficient to overcome that of Dr. Dininberg or to create a new medical conflict.<sup>6</sup>

The Board finds that, under the circumstances of this case, the opinion of Dr. Dininberg is sufficiently well rationalized and based on a proper factual background. Therefore, his opinion that appellant did not suffer residuals from the accepted condition of aggravation of preexisting back condition constitutes the weight of the evidence and established that appellant's work-related condition has ceased.

After the Office properly terminated appellant's benefits, the burden of proof shifted to appellant.<sup>7</sup> She submitted a report from Dr. Dorr dated May 8, 1998. He noted findings on physical examination of limitation of back motion. Dr. Dorr noted that x-rays were obtained of her knees, hips and wrists, which revealed no evidence of arthritis. He indicated that appellant's current symptoms related back to the 1983 incident and that it was unlikely she would ever be able to return to gainful employment.

Based on the additional findings and the rationale provided by Dr. Dorr, the Office determined that a conflict existed in the medical evidence because appellant's attending physician, Dr. Dorr, disagreed with Dr. Dininberg concerning whether appellant had any continuing work-related condition causally related to the injury of February 25, 1983. Consequently, the Office referred appellant to Dr. Susman to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>8</sup>

The Board finds that, under the circumstances of this case, the opinion of Dr. Susman is sufficiently well rationalized and based on a proper factual background and, as such, is entitled to special weight and establishes that appellant's work-related condition has ceased.

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<sup>4</sup> See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

<sup>5</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

<sup>6</sup> See *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>7</sup> After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits; see *Howard Y. Miyashiro*, 51 ECAB \_\_ (Docket No. 97-1002, issued December 23, 1999).

<sup>8</sup> *Aubrey Belnavis*, 37 ECAB 206 (1985).

Dr. Susman reviewed appellant's history, reported findings and noted that appellant sustained a low back strain and sciatic nerve injury on January 17, 1979. He diagnosed status post lumbar laminectomy in 1977, persistent lumbar pain with left lumbar radiculopathy and a strong emotional component to appellant's continuing low back and radicular pain. Dr. Susman determined that most, if not all, of appellant's symptoms predated her accident of 1983; the onset of her symptoms occurred six months prior to her work-related injury. He noted that he found no definite objective medical evidence of disabling residuals from the work-related injury of February 25, 1983. Dr. Susman further indicated that due to appellant's continuing pain she would be able to return to work eight hours a day but subject to a lifting restriction of five-pounds.

Appellant submitted a July 13, 1999 report from Dr. Dorr who indicated that appellant remained disabled and was unemployable. However, Dr. Dorr's report is similar to his prior reports and is thus insufficient to overcome that of Dr. Susman or to create a new medical conflict as Dr. Dorr was on one side of the conflict that Dr. Susman resolved.<sup>9</sup>

The Board finds that the opinion of Dr. Susman is sufficiently well rationalized to be accorded the special weight due to a impartial medical examiner and establishes that appellant's work-related condition has ceased.

The August 23, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
December 20, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>9</sup> *Supra* note 6.