

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TANYA S. BYRD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA

*Docket No. 01-1316; Submitted on the Record;
Issued December 28, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective January 28, 2001 on the grounds that she had no disability after that date due to her October 12, 1971 employment injury.

The Board finds that the Office properly terminated appellant's compensation effective January 28, 2001 on the grounds that she had no disability after that date due to her October 12, 1971 employment injury.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation 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 includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

On October 12, 1971 appellant, then a 23-year-old nurse, sustained a lumbosacral strain and a herniated nucleus pulposus at L5-S1 while she was helping to move a patient at work.⁵ The Office paid compensation for periods of disability and authorized a discectomy and laminectomy at L5-S1 which was performed in August 1972. By decision dated January 26, 2001, the Office terminated appellant's compensation effective January 28, 2001 on the grounds

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ Appellant stopped work in October 1971 and did not return to the employing establishment.

that she had no disability after that date due to her October 12, 1971 employment injury. The Office based its termination on the opinion of Dr. Stephen Bailey, a Board-certified orthopedic surgeon who served as an Office referral physician.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Bailey, the Office referral physician. The November 27, 2000 report of Dr. Bailey establishes that appellant had no disability due to her October 12, 1971 employment injury after January 28, 2001.

In his November 27, 2000 report, Dr. Bailey detailed appellant's factual and medical history and reported the findings of his examination. He noted that diagnostic testing revealed minimal bulging at L5-S1 but no herniated disc. Dr. Bailey indicated that appellant walked normally, exhibited normal results upon manual motor testing of the legs and had excellent heel and toe gait. He stated that straight leg raising was negative bilaterally for back or leg complaints. Dr. Bailey diagnosed "herniated disc, L5-S1, status post L5-S1 laminectomy and discectomy, recovered" and indicated that appellant had no work restrictions and could perform her regular work as a nurse. He stated:

"Based on my physical examination of November 27, 2000, I find no objective evidence of impairment to substantiate [appellant's] continued pain complaints or to support her continued disability.

"Based on my physical examination of November 27, 2000, I conclude that [appellant] has recovered completely from successful lumbar disc surgery and requires no further treatment."

The Board has carefully reviewed the opinion of Dr. Bailey and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Bailey's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.⁶ He provided medical rationale for his opinion by explaining that the findings on examination and diagnostic testing did not show any disabling residuals of the accepted employment injury, lumbosacral strain and a herniated nucleus pulposus at L5-S1. Dr. Bailey noted that appellant had a successful recovery from lumbar surgery in 1972.⁷

For these reasons, the Office properly terminated appellant's compensation effective January 28, 2001 on the grounds that she had no disability after that date due to her October 12, 1971 employment injury.

⁶ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁷ The record does not contain any evidence from around the time of the January 2001 termination of compensation which shows that appellant continued to have disability due to her October 12, 1971 employment injury.

The January 26, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 28, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member