

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**JANET A. ZOLTOWSKI, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Coatesville, PA, Employer**

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**Docket No. 04-1504  
Issued: December 15, 2004**

*Appearances:*  
*Jeffrey P. Zeelander, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On May 20, 2004 appellant filed a timely appeal of the April 5, 2004 merit decision of the Office of Workers' Compensation Programs, which affirmed a December 9, 2003 decision terminating her benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether the Office met its burden of proof in terminating appellant's compensation and medical benefits on the basis that she no longer suffered from residuals of her January 6, 2002 employment injury.

**FACTUAL HISTORY**

Appellant, a 55-year-old nurse, sustained a traumatic back injury on January 6, 2002, which the Office accepted for lumbago and lumbar radiculitis.<sup>1</sup> Appellant stopped working on

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<sup>1</sup> Appellant reported that she injured her back while changing and turning patients.

January 7, 2002 and the Office paid appropriate wage-loss compensation through October 24, 2002. She returned to full-time, limited duty on December 23, 2002. However, based on the advice of her treating physician, appellant reduced work to four hours a day beginning January 13, 2003. The employing establishment terminated her employment effective April 11, 2003 because she was physically unable to perform her duties as a staff nurse.

In a decision dated May 8, 2003, the Office found that the medical evidence established that appellant had recovered from her January 6, 2002 work injury. Consequently, the Office terminated appellant's medical benefits and wage-loss compensation. The Office based its determination on the January 17, 2003 opinion of Dr. John F. Perry, a Board-certified orthopedic surgeon and impartial medical examiner.<sup>2</sup>

Appellant requested an examination of the written record. By decision dated August 6, 2003, the Office hearing representative reversed the May 8, 2003 decision and remanded the case for further development of the record. The hearing representative found that the Office did not meet its burden in terminating benefits based on Dr. Perry's January 17, 2003 report. Specifically, she noted that Dr. Perry had not addressed whether appellant's accepted conditions of lumbago and lumbar radiculitis had resolved, but focused on whether appellant had sustained a sprain on the date of injury. The hearing representative instructed the Office to obtain a supplemental report from Dr. Perry addressing whether the accepted conditions had resolved and whether the January 6, 2002 employment incident aggravated appellant's underlying degenerative disc disease and arthritis.

Dr. Perry reexamined appellant on October 10, 2003. He diagnosed lumbar disc degeneration and arthritis and probable spinal stenosis. Dr. Perry explained that appellant presented with an arthritic process and he could not find any elements of a postinjury state. He noted that subjectively appellant reported an onset of symptoms at the time of the work injury; however, objectively no injury or injury-related structural change could be found. Dr. Perry stated that he saw no reason to limit appellant with regard to the work injury and that she could return to work immediately without any physical restrictions. He also noted that she had some arthritis, and if heavy lifting was required, it would be prudent to protect her from that.

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<sup>2</sup> Dr. Perry was selected to resolve a conflict of medical opinion between appellant's treating physician, Dr. Stanton A. Bree, D.O., a Board-certified physiatrist, and Dr. Michael F. Busch, a Board-certified orthopedic surgeon and Office referral physician. While Dr. Busch found in his June 18, 2002 report that appellant was able to perform eight hours of sedentary work, Dr. Bree stated that appellant was totally disabled at that time. In his January 17, 2003 report, Dr. Perry diagnosed degenerative arthritis of the lumbar spine and nonphysiologic symptom enhancement. He further indicated that appellant may or may not have had a sprain of her back, but she had evidence of chronic instability in her lumbar spine with retrolisthesis at more than one level. Dr. Perry explained that this type of slippage was associated with facet arthritis and disc degeneration. The doctor commented about a number of nonphysiologic signs on physical examination, including appellant's unexplained use of a cane. Dr. Perry indicated that the only objective finding was that of arthritis. He did not believe that appellant sustained a lumbar strain on January 6, 2002. Dr. Perry surmised that appellant merely noticed her arthritis when she moved backwards. But if appellant had sustained a soft tissue injury, Dr. Perry stated that it would not have been very severe. He also noted that there was no evidence of a disc herniation or any other structural abnormality due to her work incident. Due to the lack of evidence of ongoing impairment due to trauma, Dr. Perry found that appellant had fully recovered from any sprain or strain that she may have received. He further noted that because of her arthritis appellant should not do a lot of lifting. However, he noted that this work restriction was not the result of any work injury, but because of appellant's ongoing disc degeneration and obesity.

By decision dated December 9, 2003, the Office terminated appellant's compensation and medical benefits based on Dr. Perry's supplemental opinion.

Appellant requested a review of the written record. By decision dated April 5, 2004, an Office hearing representative affirmed the December 9, 2003 decision.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>3</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>5</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>6</sup>

### **ANALYSIS**

The Office determined that a conflict of medical opinion existed based on the opinions of Drs. Bree and Busch. Therefore, the Office properly referred appellant to an impartial medical examiner.<sup>7</sup> As noted, Dr. Perry, the impartial medical examiner, diagnosed lumbar disc degeneration and arthritis and probable spinal stenosis. He noted that subjectively appellant reported an onset of symptoms at the time of the work injury, but objectively no injury or injury-related structural change could be found. Dr. Perry saw no reason to limit appellant with regards to the work injury. He specifically found that she could return to work immediately without restrictions. The Board finds that the Office properly relied on the impartial medical examiner's opinion as a basis for terminating benefits.<sup>8</sup> Dr. Perry's opinion is sufficiently well rationalized and based upon a proper factual background. He examined appellant twice and reviewed her medical records. Dr. Perry also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to Dr. Perry's findings based on his supplemental medical report. As the weight of the medical evidence establishes that

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<sup>3</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>4</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>5</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>6</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>7</sup> The Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>8</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

appellant's January 6, 2002 employment injury has resolved, the Office properly terminated appellant's wage-loss compensation and medical benefits.

**CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member