

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of EVELYN BROWN and DEPARTMENT OF THE NAVY,  
MILITARY SEALIFT COMMAND PACIFIC, Oakland, Calif.

*Docket No. 96-1615; Submitted on the Record;  
Issued April 20, 1998*

---

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective April 27, 1996 on the grounds that any residuals of her accepted January 2, 1992 injuries had ceased on or before that date.

This is the second appeal before the Board in this case. By decision and order issued November 9, 1995,<sup>1</sup> the Board reversed the Office's February 16, 1995 decision, terminating appellant's compensation benefits effective February 24, 1995. The Board found a conflict of medical opinion between Dr. Borina Dramov, a neurologist, for appellant and Dr. Clarence A. Boyd, Jr., a Board-certified orthopedic surgeon and second opinion physician, for the government, as to whether the residuals of appellant's accepted January 2, 1992 injury had ceased. The Board therefore, found that the Office failed to meet its burden of proof in terminating appellant's compensation benefits.<sup>2</sup> The law and facts of the case as set forth in the decision and order are incorporated by reference.

In reports from February 24 1995 to January 23, 1996, Dr. Dramov found C5-7 tenderness on palpation, decreased reflexes of the left biceps and both triceps, and slight weakness of the left triceps muscle. Dr. Dramov diagnosed "[c]linical evidence of persistent C6-7 cervical root involvement" with radiculopathy, and lumbar radiculopathy. Dr. Dramov opined that appellant could "try to resume" light-duty, such as "light telephone work," for "four hours a day," with restrictions against over the shoulder lifting with either hand, lifting over five pounds, pulling, pushing, bending, heavy typing or strenuous filing.<sup>3</sup>

---

<sup>1</sup> Docket No. 95-1671.

<sup>2</sup> The record indicates that appellant was reinstated on the periodic rolls effective February 17, 1995.

<sup>3</sup> In a December 5, 1995 report, Dr. Dramov stated that appellant would require inpatient traction beginning December 11, 1995 and would be disabled for work for 90 days or longer.

On December 28, 1995 the Office referred appellant, a statement of accepted facts and the medical record to Dr. John Batcheller, a Board-certified orthopedic surgeon and Dr. Pierre Marc Dreyfus, a Board-certified psychiatrist and neurologist, for an impartial medical examination to resolve the conflict of medical opinion between Dr. Dramov and Dr. Boyd.

In a February 14, 1996 report, Dr. Batcheller reviewed the medical record and provided a history of injury and treatment. On examination, Dr. Batcheller found a one centimeter discrepancy between circumference of the right and left forearm, (30 cm right, 29 cm left) and a 9 centimeter discrepancy between the circumference of the right and left thighs (right 51 and left 42 cm) and calves (right 52 and left 43 cm). He diagnosed a “musculoligamentous sprain/strain cervical and lumbar spine, mild,” with “no objective physical findings to substantiate her complaints.” He concluded that appellant’s cervical findings were not due to the January 2, 1992 injury and that she was “essentially recovered from any musculoligamentous injury she may have sustained as a result of the fall of January 2, 1992.” He opined that appellant required no further treatment, but could require 12 sessions of physical therapy to instruct her in home exercise and pain avoidance techniques. Dr. Batcheller stated that appellant was “fully capable of returning to all work activities commensurate with her training.”

In a February 15, 1996 report, Dr. Dreyfus reviewed the medical record and noted findings on examination of tenderness to palpation at C3-6 on the left and a “complete loss of sensation to pinprick, vibratory and position sense in the entire left upper and lower extremities.” He diagnosed a musculoligamentous strain of the cervical spine superimposed on degenerative changes, musculoligamentous strain of the lumbosacral spine, “[n]o clinical evidence of cervical radiculopathy,” and symptom magnification. Dr. Dreyfus opined that there was “no genuine weakness of either the left upper or left lower extremity,” “no atrophy or fascicular twitching, which one might expect four years after a significant injury, such as a disc rupture,” nondermatomal sensory changes, and no clinical evidence of cervical radiculopathy. Dr. Dreyfus noted that a 1992 lumbar magnetic resonance imaging (MRI) scan report “was entirely normal, suggesting that the sensory changes in the left lower extremity are strictly fictitious.” He opined that appellant was able to perform clerical work, with avoidance of lifting over 40 pounds and recommended a weight loss and reconditioning program.

In a February 27, 1996 letter, the Office requested that Dr. Batcheller and Dr. Dreyfus discuss and consolidate their opinions, then submit a supplemental report, as appellant was referred for a multidisciplinary evaluation. The Office requested clarification as to whether appellant had recovered from the January 2, 1992 injury and whether a possible cervical disc protrusion was due to work factors. The Office authorized additional pertinent radiographic studies.

In a March 14, 1996 report, Dr. Dreyfus noted reviewing Dr. Batcheller’s February 15, 1996 report and after discussion with Dr. Batcheller, concurred “with his impression and recommendations.” Dr. Dreyfus explained that appellant appeared to “still be symptomatic, however, there [was] a great deal of symptom magnification.... [T]he MRI studies reveal disc bulging, which is not unusual in this age group and it is highly unlikely that the bulging was caused [by] the January 2, 1992 incident.”

In a March 14, 1996 report, Dr. Batcheller noted conferring with Dr. Dreyfus by telephone on March 7, 1996 and that their thoughts were “virtually identical on this case.” Dr. Batcheller opined that appellant had no objective clinical findings related to the January 2, 1992 injury and that “any soft tissue injury that [appellant] may have sustained, would have resolved within a year’s time.” He opined that the abnormalities demonstrated by 1992 radiographic studies, were “degenerative in nature and not caused by acute trauma,” as such changes took years to develop and thus the degenerative changes visible on x-rays and MRI taken a few weeks after the 1992 incident could not have developed in so short a period. He also opined that appellant did not sustain a permanent aggravation of a preexisting arthritic condition as “most arthritis conditions can be expected to eventually return to their preinjury state with ordinary conservative care” within a year. Dr. Batcheller concluded that appellant’s complaints were “somewhat exaggerated and d[id] not represent her true physiologic state.”

By notice dated March 19, 1996, the Office advised appellant that it proposed to terminate her wage-loss compensation as the weight of the medical evidence, represented by Drs. Batcheller and Dreyfus, demonstrated that she no longer had residuals of the January 2, 1992 injury. The Office further advised appellant that she had 30 days from the date of the letter to submit additional evidence indicating that she had continuing residuals of the January 2, 1992 injury. The record indicates that appellant did not submit additional evidence prior to the issuance of the April 22, 1996 decision.

By decision and order dated April 22, 1996, the Office terminated appellant’s wage-loss compensation and medical benefits effective April 27, 1996, on the grounds that the weight of the medical evidence, as represented by Drs. Batcheller and Dreyfus, established that appellant had no residuals of the January 2, 1992 injury and was medically able to resume her date-of-injury job.

The Board finds that the Office properly terminated appellant’s compensation benefits effective April 27, 1996, on the grounds that the weight of the medical evidence established that residuals of the accepted January 2, 1992 injury had ceased on or before that date.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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>4</sup>

In order to establish whether appellant had a continuing disability causally related to her accepted January 2, 1992 injuries or other factors of her federal employment, the Office referred appellant to Dr. Batcheller, a Board-certified orthopedic surgeon and Dr. Dreyfus, a Board-certified neurologist, for a multidisciplinary independent medical examination and evaluation.

In a February 14, 1996 report, Dr. Batcheller found “no objective physical findings to substantiate [appellant’s] complaints” and that she had “essentially recovered” from the effects

---

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

of the January 2, 1992 injury. Dr. Batcheller found no objective evidence of disability, commenting that appellant was fully capable of performing her usual and customary clerical duties. In a March 14, 1996 supplemental report, Dr. Batcheller added that degenerative changes in the cervical spine were not caused or aggravated by the accepted January 2, 1992 injury. Therefore, Dr. Batcheller did not find objective findings substantiating appellant's claimed disability for work on and after April 27, 1996, or that her claimed continuing disability was related to the accepted January 2, 1992 injuries or other factors of her federal employment.

In a February 15, 1996 report, Dr. Dreyfus found no objective evidence or cervical radiculopathy, and that appellant's symptoms were due either to nonoccupational degenerative changes or to symptom magnification. In a March 14, 1996 supplemental report, Dr. Dreyfus opined that it was "highly unlikely" that disc bulging demonstrated by 1992 radiographic studies was caused by the January 2, 1992 fall.

Consequently, the weight of the medical evidence establishes that appellant had no residuals of her accepted January 2, 1992 injuries effective April 27, 1996.

The decision of the Office of Workers' Compensation Programs dated April 22, 1996 is hereby affirmed.

Dated, Washington, D.C.  
April 20, 1998

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member