

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARLETHA A. CORBIN and DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF PRISONS, Los Angeles, Calif.

*Docket No. 96-1013; Submitted on the Record;  
Issued May 11, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective February 4, 1996 on the grounds that she had no condition or disability due to her April 30, 1991 employment injury after that date.

On May 3, 1991 appellant, then a 30-year-old correctional officer, filed a claim for compensation alleging that on April 30, 1991 she injured the right side of her back while in the performance of duty. On August 1, 1991 the Office accepted appellant's claim for back strain and back contusion.

On October 23, 1991 the Office placed appellant on the periodic rolls for total disability.

In a medical report dated February 27, 1992, Dr. Simpson stated that appellant completed a nerve conduction velocity study and an electromyography. He diagnosed appellant with right upper and mid-back trauma, lumbosacral strain with contusion, right side subscapularis strain and right ulnar nerve neuropathy. Dr. Simpson stated that appellant's symptoms did not appear to stem from the cervical spine.

In a medical report dated June 16, 1992, Dr. Robert B. Lufkin, Board-certified in radiology, stated that a magnetic resonance imaging (MRI) taken that day revealed a slight disc bulge at C5-6 "which barely indents the thecal sac."

In a medical report dated June 18, 1992, Dr. Simpson stated that appellant's June 16, 1992 MRI revealed a bulging disc at C5-6 and that if appellant's condition failed to respond to traction then he would consider her back pain to be permanent and stationery. He noted that the bulging disc "may, or may not, be the cause of her present symptoms."

In an August 19, 1993 medical report, Dr. Simpson stated that appellant had an acute onset of recurrent back symptoms. He diagnosed recurrent trapezious strain and recommended medication and physical therapy.

In a medical report dated February 2, 1995, Dr. Willious J. Lanier, Jr., appellant's treating chiropractor, stated that he had examined appellant and diagnosed thoracic myofascitis, strain, chronic, and prescribed physical and ultrasonic therapy, electronic stimulation and other modalities three to five times a week for four to six weeks.

On May 3, 1995 the Office referred appellant and the case record, including a statement of accepted facts and a copy of appellant's position description, to Dr. Ronald D. Levin, a Board-certified orthopedic surgeon, for examination and a second opinion on whether she continued to have a condition or disability due to her April 30, 1991 employment injury.

In a medical report dated June 8 and signed on June 26, 1995, Dr. Levin stated that he had conducted a physical examination, reviewed appellant's medical records and reported findings. He noted a negative Spurling's sign for foraminal compression and no motor or sensory loss in either upper extremity. Dr. Levin also stated that appellant's deep tendon reflexes were symmetrical and that she had a normal cervical lordotic curve. There was no wasting of the shoulder musculature or scapula winging. Appellant had free movement of her neck. Dr. Levin indicated that there was no tenderness along the cervical or thoracic spine or trapezius muscles. Appellant's range of motion findings for the neck and upper extremities, cervical spine, shoulder elbow, forearm and wrist were all normal as were all range of motion findings for both hands and thumbs. Dr. Levin concluded that appellant's upper back contusion had resolved, that there were no current findings of a back strain or contusion, and that there are no disabling residuals from the April 30, 1991 employment-related injury. He opined that appellant could return to full duty without restrictions as a correctional officer.

In a supplemental report dated August 5 and signed on August 28, 1995, Dr. Levin stated that he had reviewed medical records that the Office had sent subsequent to his June 8, 1995 report and noted that the reports contained no information which would warrant a modification of his earlier evaluation. He noted his review of the June 16, 1992 MRI report which he stated "can be considered an essentially negative study."

By letter dated December 4, 1995, the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that the weight of the medical evidence established that there was no residual disability or medical condition as a result of the April 30, 1991 work injury. Appellant was advised that if she disagreed with the proposed action that she should submit additional information or argument within 30 days.

In a medical report dated September 21, 1995 and received by the Office on December 19, 1995, Dr. Simpson stated that, upon examination, appellant had decreased upper back tenderness and increased neck and lower back range. He noted slight spasms in the upper back. Dr. Simpson indicated that appellant had chronic upper back musculoligamentous sprain, resolving, but that her fibrosis about the trapezius muscle protracted her rehabilitation. He stated that appellant should continue her therapeutic protocol until she reached a plateau that he had hoped would be in about four to six weeks but that she should remain on temporary total disability until further disposition. Dr. Simpson indicated that appellant's prognosis for complete recovery was poor considering the chronicity of her symptomatology.

By decision dated January 25, 1996, the Office terminated appellant's compensation on the grounds that the weight of the medical evidence established that appellant's work-related conditions had resolved and disability resulting from the injury of April 30, 1991 ceased by and no later than February 4, 1996.<sup>1</sup>

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective February 2, 1996 on the grounds that she had no condition or disability due to her April 30, 1991 employment injury after that date.

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 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.<sup>2</sup>

In his February 2, 1995 report, Dr. Lanier, a chiropractor, diagnosed appellant with chronic strain of the thoracic spine and myofascitis. Section 8102(2) of the Federal Employees' Compensation Act provides that the term "physician" includes chiropractors "only" to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as shown by x-ray to exist..."<sup>3</sup> As Dr. Lanier had not indicated that he was treating appellant by spinal manipulation for subluxation, which he diagnosed based on x-ray, Dr. Lanier is not a physician under the Act and his opinions regarding appellant's condition and causal relationship are of no probative medical value.<sup>4</sup> Further, Dr. Simpson, appellant's treating physician, stated in his September 21, 1995 report that appellant's fibrosis hampered her rehabilitative efforts and that she therefore remained totally disabled from work. However this report is of diminished probative value because Dr. Simpson failed to relate appellant's fibrosis to her accepted injury.<sup>5</sup>

The weight of the medical evidence in the present case rests with the opinion of Dr. Levin, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion, and the Office properly relied on Dr. Levin's opinion in terminating appellant's compensation effective February 2, 1996. In his June 8 and August 5, 1995 reports, Dr. Levin concluded that appellant no longer had residuals of her April 30, 1991 employment injury -- back strain and back contusion.

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<sup>1</sup> Appellant filed her application for review by the Board on February 5, 1996, but she also filed petitions for reconsideration to the Office on January 31 and February 22, 1996. The Board and the Office may not have concurrent jurisdiction over the same issue and, therefore, the February 12 and March 26, 1996 decisions of the Office are null and void; *see Douglas E. Billings*, 41 ECAB 880 (1990).

<sup>2</sup> 5 U.S.C. § 8101(2); *David Lee Dawley*, 30 ECAB 530 (1979).

<sup>3</sup> *Sheila A. Johnson*, 46 ECAB 323 (1994); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>4</sup> *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Kenneth J. Deerman*, 34 ECAB 641 (1983).

<sup>5</sup> *Ruby I. Fish*, 46 ECAB 276 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The Board has carefully reviewed the opinion of Dr. Levin 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. Levin'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. Moreover, Dr. Levin provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant's condition which comported with this analysis.<sup>6</sup> Dr. Levin provided medical rationale in support of his opinion by noting the normal results on diagnostic testing and the normal findings of his comprehensive examination of appellant's upper extremities and her lumbar, thoracic and cervical spine. Moreover, he explained that the nature of appellant's April 30, 1991 employment injury was such that she could have most likely performed her duties within three months following the injury. As discussed above, Dr. Levin's opinion represents the weight of the medical evidence, and, consequently, establishes that appellant had no residuals of her accepted April 30, 1991 employment injury, effective February 4, 1996.

The decision of the Office of Workers' Compensation Programs dated January 25, 1996 is affirmed.

Dated, Washington, D.C.  
May 11, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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