

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROLYN ZALOGA and DEPARTMENT OF THE AIR FORCE,  
OKLAHOMA AIR LOGISTICS CENTER, TINKER AIR FORCE BASE, Okla.

*Docket No. 96-1637; Submitted on the Record;  
Issued May 14, 1998*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on January 1, 1995.

The Office accepted appellant's claim for a contusion of left hip and back. Appellant underwent back surgery on September 1990 and April 1992. Appellant began receiving temporary total disability benefits following her payment of continuation of pay.

In a report dated October 11, 1993, Dr. Kristi G. Self, Board-certified in physical medicine and rehabilitation, performed a physical examination, reviewed normal nerve conduction studies and needle electrode results, and diagnosed no electrodiagnostic evidence of acute or chronic lumbar radiculopathy and found evidence of symptom overexaggeration.

In his report dated August 16, 1994, Dr. Neil W. Woodward, a Board-certified surgeon, stated that appellant was complaining of moderately severe back pain which was preventing her from working and that the etiology of the back pain had not been resolved.

In a report dated February 7, 1994, Dr. Self stated that the electromyogram was negative and confirmed the fact that appellant did not have ongoing radicular symptoms.

In a report dated September 7, 1994, Dr. Mickey Ozolins, a clinical neuropsychologist, considered appellant's history of injury, performed a mental examination, and concluded that appellant had serious psychopathology, probably a psychogenic pain disorder and that conscious exaggeration of pain symptoms, although less likely, could not be ruled out.

In a report dated December 8, 1994, Dr. Siavash Nael, a Board-certified psychiatrist and neurologist, considered appellant's history of injury, performed a physical and mental examination, and diagnosed, *inter alia*, chronic pain disorder associated with psychological factors and a general medical condition, major depressive disorder and personality disorder.

In a report dated September 27, 1994, Dr. John Patrick Evans, a Board-certified orthopedist and a second opinion physician, considered appellant's history of injury, performed a physical examination, and considered the results of a September 14, 1993 magnetic resonance imaging (MRI) scan which showed residual scarring around the left S1 nerve root and tiny disc protrusion in the central or right paracentral region. He diagnosed history of contusion and strain of the lumbar spine and inappropriate illness behavior with exaggerated pain response. Dr. Evans stated that appellant had recovered from the effects of her July 28, 1993 employment injury. He stated that appellant perceived herself as severely disabled and in constant pain, and that this was an emotional illness unrelated to her employment.

Appellant submitted several reports by her treating physician, Dr. William N. Harsha, a Board-certified orthopedic surgeon. In his report dated August 31, 1994, Dr. Harsha considered appellant's history of injury, performed a physical examination and considered x-rays showing a degree of degenerative disc disease involving the L4-5 and L5-S1 and evidence of hemilaminectomy at both levels. He diagnosed chronic pain syndrome with chronic myofascial pain.

By decision dated December 1, 1994, the Office terminated appellant's benefits effective December 11, 1994, stating that the weight of the medical evidence of record established that appellant was no longer disabled from the July 28, 1993 employment injury.

On December 8, 1994 appellant requested an oral hearing before an Office hearing representative which was held on October 18, 1995. At the hearing, appellant testified that the pain from the July 28, 1993 employment injury was worsening, that standing and walking upstairs was difficult for her and that she was unable to sit for a prolonged period of time. She stated that she was limited in being able to cook, wash dishes and drive.

Appellant also submitted additional medical evidence. In his December 7, 1994 report, Dr. Harsha stated that appellant was highly stressed and markedly depressed due to her chronic pain syndrome in her back and lower extremities related to her July 28, 1993 employment injury. In his October 10, 1995 report, Dr. Harsha considered appellant's history of injury, performed a physical examination and stated that appellant was significantly depressed. He also stated that she was totally permanently disabled. In his November 28, 1995 report, Dr. Harsha stated that appellant continued to be totally disabled and that accepting her history she gave him, her condition of recurring pain was directly related to the July 28, 1993 employment injury.

By decision dated January 30, 1996, the Office hearing representative affirmed the Office's December 1, 1994 decision.

The Board finds that the Office has not met its burden of proof to terminate compensation benefits.

Once the Office has accepted 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>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.<sup>2</sup>

In his September 27, 1994 report, Dr. Evans diagnosed history of contusion and strain of the lumbar spine and inappropriate illness behavior with exaggerated pain response. He stated that appellant had recovered from the effects of her July 28, 1993 employment injury and that appellant's perception of herself as severely disabled and in constant pain was an emotional condition unrelated to her employment. Based on his physical examination and review of diagnostic testing, which showed residual scarring at the S1 nerve root and a tiny disc protusion, he concluded that appellant's responses were exaggerated and that she had recovered from the accepted employment injury.

In contrast, in his August 31, 1994 report, Dr. Harsha considered appellant's history of injury, performed a physical examination, and considered x-rays showing a degree of degenerative disc disease involving the L4-5 and L5-S1 and evidence of hemilaminectomy at both levels. He diagnosed chronic pain syndrome with chronic myofascial pain. In his December 7, 1994 report, Dr. Harsha stated that appellant was highly stressed and markedly depressed due to her chronic pain syndrome in her back and lower extremities related to her July 28, 1993 employment injury. In his report dated October 10, 1995, Dr. Harsha considered appellant's history of injury, performed a physical examination, and stated that appellant was significantly depressed. He concluded that she was totally permanently disabled. In his report dated November 28, 1995, Dr. Harsha stated that appellant continued to be totally disabled and that accepting her history she gave him, her condition of recurring pain was directly related to the July 28, 1993 employment injury.

The Board finds that a conflict of medical opinion exists between Drs. Evans and Harsha, both Board-certified specialists.<sup>3</sup> The Board will reverse the October 18, 1995 decision of the Office as the conflict in medical opinion remains unresolved.

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<sup>1</sup> *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

<sup>2</sup> *Larry Warner*, 43 ECAB 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>3</sup> *See* 5 U.S.C. § 8123(a).

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 18, 1995 is hereby reversed.

Dated, Washington, D.C.  
May 14, 1998

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member