

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SABRINA MOFFITT and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, Tex.

*Docket No. 96-1948; Submitted on the Record;  
Issued May 14, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits as of February 4, 1996.

The Board has duly reviewed the evidence of record in this appeal and finds that the Office met its burden of proof in terminating appellant's compensation benefits as of February 4, 1996.

On July 5, 1995 appellant, then a nursing assistant, filed a traumatic injury claim, Form CA-1, assigned number A16-263801, alleging that on that date she sustained lower back pain, and right and left side spasms. Appellant stated that when a patient got up from his chair, he started to fall and grabbed her left arm. She then stated that when she managed to get the patient back into his chair, she fell onto the patient.<sup>1</sup> Appellant stopped work on July 6, 1995.

On September 28, 1995 the Office accepted appellant's claim for a lumbar strain.

By letter dated November 1, 1995, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. William Blair, a Board-certified orthopedic surgeon, for a second opinion examination. By letter of the same date, the Office advised Dr. Blair of the referral.

Dr. Blair submitted a November 30, 1995 medical report accompanied by a work capacity evaluation for musculoskeletal conditions and test results.

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<sup>1</sup> Previously, appellant filed a claim assigned number A16-0249306 for a right foot and back injury sustained on October 3, 1994. The Office accepted appellant's claim for a contusion of the right foot and lumbar strain. Appellant rejected an offer of a light-duty position by the employing establishment and the Office terminated appellant's compensation benefits on June 26, 1995. Appellant returned to work on July 5, 1995.

In a notice of proposed termination of compensation dated December 20, 1995, the Office advised appellant that it proposed to terminate her compensation benefits because Dr. Blair's November 30, 1995 medical report indicated that appellant had no continued disability. The Office also advised appellant to submit additional medical evidence supportive of her continued disability within 30 days.

By decision dated January 22, 1996, the Office terminated appellant's compensation benefits effective February 4, 1996 on the grounds that the medical evidence of record failed to establish that appellant had any continuing disability causally related to the July 5, 1995 employment injury. In an accompanying memorandum, the Office found that Dr. Blair provided a thorough and well-rationalized medical report based on his findings on examination, test results and review of the medical records.

In a letter postmarked February 26, 1996 and received by the Office on February 29, 1996, appellant requested a review of the written record by an Office hearing representative accompanied by medical evidence.<sup>2</sup>

By decision dated April 10, 1996, the Office found that appellant's request for review of the written record was untimely filed. The Office stated that it had exercised its discretion in considering appellant's request and found that the issue in the case could equally be addressed by requesting reconsideration from the Office and submitting additional evidence not previously considered to establish that appellant had sustained continuing disability beyond February 4, 1996 causally related to the employment injury.

In a May 5, 1996 letter, appellant requested reconsideration of the Office's January 22, 1996 decision accompanied by additional medical evidence and correspondence regarding reimbursement for travel expenses. By decision dated May 22, 1996, the Office denied appellant's request for modification based on a merit review of the claim. In an accompanying memorandum, the Office found that the weight of the medical evidence rested with Dr. Blair's November 30, 1995 medical report.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.<sup>3</sup> 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>

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<sup>2</sup> The record reveals that in a January 25, 1996 telephone conversation with an Office representative, appellant inquired about the status of her case. The representative informed appellant that her case had been closed by the Office. In response to appellant's question asking why her case had been closed, the Office representative stated that a decision would be issued to her explaining the Office's decision.

<sup>3</sup> *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163 (1987).

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

In the present case, the Office accepted that appellant sustained a lumbar strain due to factors of her federal employment. In its proposed notice of termination, the Office advised appellant to submit additional medical evidence supportive of her continued disability. The Office terminated appellant's compensation benefits based on Dr. Blair's November 30, 1995 medical report. In this report, Dr. Blair noted a history of appellant's October 3, 1994 and July 5, 1995 employment injuries, his findings on physical examination and testing, and a review of appellant's medical records.<sup>5</sup> He stated that it was obvious from appellant's performance data that she did not give maximum performance and that her clinical evaluation showed extreme variability with performances and criteria not possible within the medical physiological response. Dr. Blair opined that appellant was presenting herself in a fashion which was far below her true capacities. He further opined that there was no reason why appellant could not travel to and from work, be present at work, and perform appropriate activities, if she so desired. Dr. Blair also opined that appellant had a zero percent impairment and no physical restrictions as indicated in his work capacities evaluation. Additionally, he opined that based on the clinical findings, there was no reason why appellant could not perform the duties of a psychiatric nursing assistant. Dr. Blair then opined that there were no objective findings to establish that appellant had any residuals resulting from the July 5, 1995 employment injury. He concluded that appellant would return to work when she so desired, noting that mild back sprains are usually resolved within two to three weeks and at a maximum within six weeks. Dr. Blair further concluded that appellant had reached maximum medical improvement on November 30, 1995.

The Board finds that the weight of the medical evidence rests with the November 30, 1995 medical report of Dr. Blair who determined that appellant ceased to have residuals of the July 5, 1995 employment injury and that appellant can return to a full-time duty status as a psychiatric nursing assistant. The report of Dr. Blair is well rationalized and based on a complete and accurate factual and medical history. The Board finds that the Office properly relied on this report when it terminated appellant's compensation benefits effective February 4, 1996.

In support of her allegation that she sustained continued disability, appellant submitted a December 20, 1995 medical report of Dr. Ronald R. Anderson, an osteopath. In his report, Dr. Anderson stated that contrary to Dr. Blair's finding that appellant could return to work as of December 20, 1995 as relayed to him by appellant, she was not physically capable of returning to her present employment at that time. Dr. Anderson further stated that a November 29, 1995 magnetic resonance imaging (MRI) test revealed multiple disc herniation at L4-5 and L5-S1 and an August 21, 1995 neurological evaluation indicated a left lumbar radiculopathy which concurred with appellant's subjective complaints. He then stated that if Dr. Blair had the benefit of reviewing the findings of the MRI scan, then he would not have released appellant to return to work. Dr. Anderson also stated that although appellant had made significant improvement, further treatment was definitely necessary. He noted that appellant had been placed in an aggressive physical rehabilitation program to strengthen the weak and injured muscles and concluded that pending any unforeseen circumstances, appellant should be able to return to work

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<sup>5</sup> In an accompanying medical report, Dr. Blair indicated the same factual and medical background as provided in his November 30, 1995 medical report, as well as, a diagnosis of non-specific low back pain and symptom magnification syndrome.

in the near future. The Board finds that Dr. Anderson's report is insufficient to establish that appellant sustained continued disability inasmuch as he failed to address whether appellant's herniated disc condition was causally related to the July 5, 1995 employment injury.

Appellant further submitted a December 4, 1995 report of Dr. Mary H. Caffrey, a radiologist, revealing her review of a December 13, 1994 MRI scan of the lumbar spine. Dr. Caffrey indicated that at L4-5, the bulging portion of the disc projected approximately three millimeters beyond the margin of the endplates. Dr. Caffrey further indicated that at L5-S1, disc material extended approximately five millimeters beyond the endplates. Appellant also submitted test results indicating that she had a left lower lumbar radiculopathy, that she had a right-sided lumbosacral radiculitis primarily at L5 and that she had a very high risk rating regarding her ability to perform physical work. In addition, appellant submitted medical treatment notes regarding her back condition. The Board finds that Dr. Caffrey's report, the test results and treatment notes are insufficient to establish that appellant sustained continued disability because they failed to address a causal relationship between appellant's back condition and the July 5, 1995 employment injury.

Appellant submitted a July 7, 1995 authorization for examination and/or treatment (Form CA-16) from Dr. Daniel Metzger, an osteopath, indicating a history of the July 5, 1995 employment injury and a diagnosis of lumbar with radiculitis and lumbar disc. Dr. Metzger indicated that appellant's condition was caused by the employment activity by placing a checkmark in the box marked "yes." He further indicated that appellant was unable to return to work and that she was referred for medical treatment. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>6</sup> Because Dr. Metzger failed to provide any rationale for his conclusion that appellant's condition was caused or aggravated by factors of her employment, the Board finds that his opinion is insufficient to establish that appellant sustained continued disability causally related to the July 5, 1995 employment injury.

Additionally, appellant submitted Dr. Anderson's May 3, 1996 disability certificate revealing that appellant was under his care due to injuries sustained on July 5, 1995. Dr. Anderson's certificate further revealed that appellant was disabled due to a five millimeter disc herniation at L5-S1 and that surgical intervention was highly suggested. The Board finds that Dr. Anderson's disability certificate is insufficient to establish that appellant sustained continued

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<sup>6</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

disability because he failed to address how appellant's back condition was caused by the July 5, 1995 employment injury.<sup>7</sup>

The May 22 and January 22, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.<sup>8</sup>

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

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> The Board notes that appellant submitted new medical evidence on appeal. However, the Board is precluded from considering evidence not before the Office at the time of its final decision; *see Henry W.B. Stanford*, 36 ECAB 160 (1984); *James C. Campbell*, 5 ECAB 35 (1952); *see also* 20 C.F.R. § 501.2(c).

<sup>8</sup> The Board notes that appellant has not appealed the Office's April 10, 1996 decision denying appellant's request for a review of the written record as untimely.