

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STEPHANIE M. AIRHART and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, Tex.

*Docket No. 97-1961; Submitted on the Record;  
Issued April 2, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on March 10, 1997.

On May 1, 1985 appellant, then a nurse, filed an occupational disease claim for a back injury. The Office accepted appellant's claim for a lumbar strain and paid appropriate compensation benefits.

An x-ray film dated May 8, 1985 showed narrow L5 disc space posteriorly and degenerative changes in the apophyseal joints but showed no significant change since 1972.

In a report dated August 1, 1994, Dr. Donald MacKenzie, a Board-certified orthopedic surgeon and appellant's treating physician, considered part of appellant's history of injury, performed a physical examination and reviewed x-rays which showed "[G]rade 1 approximately 15 to 20 spondylolisthesis of L4-5, remaining levels are normally aligned." He stated that appellant had moderate facet sclerosis compatible with mild degenerative arthritis and there was considerable calcification of the lower abdominal aorta. Dr. MacKenize thought a magnetic resonance imaging (MRI) scan would be helpful.

In a follow-up report dated August 16, 1994, Dr. MacKenzie stated that the MRI scan showed Grade I spondylolisthesis.

In a report dated January 8, 1996, Dr. MacKenzie performed a physical examination and stated that the effects of appellant's work injury "have most likely ceased and that her current medical condition is on the basis of degenerative spinal disease, most significantly the L4-5 spondylolisthesis." He stated that appellant was totally disabled.

By decision dated March 10, 1997, the Office terminated appellant's compensation effective March 10, 1997 stating that the evidence of record established that appellant had recovered from her accepted work-related condition.

By letter dated April 10, 1997, appellant requested reconsideration of the decision and submitted a report from Dr. Craig C. Callewart, an orthopedic surgeon, dated April 8, 1997 in support of her request. In his report, Dr. Callewart noted that appellant had her back symptoms for over 10 years, performed a physical examination and reviewed an x-ray showing "Grade 1 listhesis at 4 on 5," and diagnosed "Grade 1 listhesis 4 on 5." He prescribed treatment and stated that the question had arisen of whether the source of pain was between appellant's 4<sup>th</sup> and 5<sup>th</sup> vertebrae given her symptoms and the pattern of pain over the last decade and stated that based on reasonable medical probability, it was likely that the 4<sup>th</sup> and 5<sup>th</sup> vertebrae were the source of her pain.

By decision dated April 18, 1997, the Office denied appellant's reconsideration request.

The Board finds that the Office 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 opinion evidence based on a proper factual and medical background.<sup>2</sup>

In the present case, the January 8, 1996 medical report of Dr. MacKenzie supports the Office's termination of benefits. Although his report is somewhat speculative in that he stated that the effects of appellant's work injury had "most likely" ceased, he also stated that appellant's medical condition was based on degenerative spinal disease, particularly the L4-5 spondylolisthesis. He diagnosed appellant's condition based on physical examination and x-rays as "[G]rade 1 approximately 15 [to] 20 spondylolisthesis of L4-5, remaining levels are normally aligned." The MRI scan Dr. MacKenzie reviewed in his August 16, 1994 report also showed Grade I spondylolisthesis. Spondylolisthesis, however, was not an accepted condition. Further, the May 8, 1985 x-ray which showed no significant changes since 1972 showed degenerative changes in the apophyseal joints but did not show spondylolisthesis. Dr. Callewart's April 8, 1997 report is incomplete as he did not address appellant's history of injury other than noting that appellant had her symptoms for over 10 years and his opinion is not relevant as he did not address the etiology of appellant's pain. In other words, Dr. Callewart did not address whether appellant's back pain was causally related to her federal employment and therefore his report is not probative.

Dr. MacKenzie's January 8, 1996 report in which he diagnosed appellant's current condition as spondylolisthesis, a condition which was not accepted by the Office, justifies the Office's termination of benefits.

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<sup>1</sup> *Wallace B. Page*, 46 ECAB 227, 229 (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).

The decisions of the Office of Workers' Compensation Programs dated April 18 and March 10, 1997 are hereby affirmed.

Dated, Washington, D.C.  
April 2, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member