

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GWENDOLYN CARR and DEPARTMENT OF AGRICULTURE,  
COOPERATIVE EXTENSION SERVICE, Stillwater, OK

*Docket No. 97-2125; Submitted on the Record;  
Issued November 22, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's medical compensation benefits on May 22, 1995.

In the present case, the Office accepted appellant's claim for lumbosacral strain and appellant was placed on the periodic rolls on November 16, 1989. In a May 22, 1995 decision, the Office terminated appellant's compensation effective May 28, 1995 on the grounds that the weight of the medical evidence of record established that appellant did not have continuing residual disability as a result of the effects of the work injury of September 1, 1989. The decision was based on the February 5, 1993 medical report of Dr. Marilyn Lins, a neurosurgeon, who examined appellant for the Office. The Office found that the September 12, 1992 medical report and office revisit forms from Dr. Charles A. Borne, Jr., appellant's treating physician and a neurosurgeon, failed to provide any objective findings, medical opinion or rationale for continuing disability, despite two requests from the Office to do so.

By letter dated July 18, 1995, appellant, through her representative, requested reconsideration. Submitted with her request was a June 7, 1995 report from Dr. Borne. In his June 7, 1995 report, Dr. Borne recounted his involvement in appellant's treatment beginning on July 10, 1990. He discussed the early clinical and radiological findings, which reportedly included a ruptured disc at L4-5 level, which caused compression of the thecal sac and foraminal encroachment. Dr. Borne noted that a myelogram of April 1992 showed disc bulging at L4-5 and L5-S1 with stenosis at L4-5; a myelogram of March 1993 showed bilateral increased irritability in the lower lumbar muscles. He reported that appellant's symptoms were consistent with ruptured disc and radiculopathy and have continued from 1990 to the present. Dr. Borne noted that appellant now weighs close to 300 pounds and has difficulty getting out of her chair and walking long distances without severe back and leg pain. He considered appellant permanently and totally disabled. Dr. Borne stated that surgery would have helped appellant earlier, but that it was no longer indicated.

In a September 27, 1995 merit decision, the Office denied appellant's request for modification of its prior decision. The Office noted that Dr. Borne failed to explain why appellant's spinal defects should be considered the results of the 1989 event. The Office further noted that, in an April 30, 1991 report, Dr. R.S. Shaddock, a Board-certified neurosurgeon, who saw appellant on referral from the Office, found that the subjective components of appellant's examination were unsupported by objective evidence of neurological impairment. Dr. Shaddock noted that the computerized tomography scan "showed a broad based bulge of the L4-5 at intervertebral disc, impinging upon the anterior aspect of the dura at L4-5 but without compromise or displacement of any of the nerve roots and without any compromise of the intervertebral foramina or lateral recesses." He recommended against surgery. The Office additionally noted that, in her February 5, 1993 report, Dr. Lins also felt that intervention was not indicated. She felt that appellant had sustained a lumbar strain which should have resolved in less than a year. Dr. Lins also found a very high degree of functional overlay.

By letter dated September 16, 1996, appellant again requested reconsideration and submitted additional medical evidence. In a September 27, 1996 merit decision, the Office denied appellant's request for modification of its prior decision.

The Board finds that the Office improperly terminated appellant's compensation benefits on May 22, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</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>2</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>3</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>4</sup>

In terminating appellant's benefits for the accepted condition of lumbosacral strain, the Office relied on the February 5, 1993 report of Dr. Lins, a neurosurgeon and Office referral physician. In its January 12, 1993 letter, advising appellant of her appointment with Dr. Lins, the Office requested that appellant "must bring all of your current x-rays, scans, electromyogram results, myelograms, etc., to your appointment." They also noted that actual films were to be sent one week prior to appointment date. In its January 12, 1993 letter to her, the Office stated that Dr. Lins had been "provided with medical records only," but that she was "authorized to obtain

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<sup>1</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

those additional paraclinical studies, if any, which you may require for completion of your consultation.” In her February 5, 1993 report, Dr. Lins noted the history of appellant’s injury and her present complaints. Dr. Lins wrote:

“During the history interview, I inquired as to what tests had been done. She related that they were in the packet which she brought with her. This was an x-ray jacket which I had laid on my desk, but had not examined since the authorization statement indicated that medical records only would be provided. I, therefore, did not review the x-rays. As stated, the patient could not remember what tests were done and leaned forward in her chair to reach the x-ray jacket on my desk, lifting them and then sitting down in her chair to examine the films. I told her that I was authorized to review written records only and complete a history and clinical examination upon which to base my opinion.”

After performing an examination of appellant, Dr. Lins stated that appellant did sustain a lumbar strain injury, which by history and by reading other medical reports, she felt was of mild intensity. Dr. Lins noted that appellant had seen other physicians for second opinions, who also did not feel the patient was significantly injured. Based on her examination of appellant, Dr. Lins stated that she did not find any evidence of continued spasm suggesting chronic lumbar strain. Dr. Lins opined that appellant’s examination had a very high degree of functional overlay. “It is my opinion that she did most likely sustain a strain injury as a result of the accident, but that should have resolved in less than one year at a maximum. It is my opinion that the patient could have returned to work of some type long before now. It is further my opinion that the patient could return to her previous position as a nutrition assistant; however, the patient did not give me any indication that she was interested in returning to work.... In my opinion, there is no indication of a neurosurgical basis to consider operative intervention.”

As Dr. Lins’ February 5, 1993 report, is not based on all the diagnostic tests available (*i.e.*, the x-rays which appellant brought to the examination), the Board finds that Dr. Lins’ opinion that appellant had no continuing disability causally related to her work injury does not constitute the weight of the medical evidence. Without attempting to review the diagnostic studies, appellant made available or to utilize the authority the Office vested in her to obtain any “additional paraclinical studies,” Dr. Lins’ opinion is of limited probative value for the reason that it is not based on a complete and accurate factual and medical history.<sup>5</sup> The Office, therefore, has failed to justify the termination of benefits for the accepted condition. The Board will reverse the Office’s May 22, 1995 decision, terminating benefits for the accepted condition and will remand the case for reinstatement of appropriate benefits.

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<sup>5</sup> See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

The decision of the Office of Workers' Compensation Programs dated September 27, 1996 is hereby reversed.

Dated, Washington, D.C.  
November 22, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member