

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARVIS H. PITTS and DEPARTMENT OF DEFENSE,
DSA -- DEFENSE DEPOT MEMPHIS, Memphis, TN

*Docket No. 97-2785; Submitted on the Record;
Issued November 24, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability resulting from her accepted work injury; and (2) whether appellant has any neck or back conditions causally related to her accepted condition.

On August 11, 1995 appellant, then a 45-year-old material handler, filed a notice of traumatic injury, claiming that she sustained injuries to her shoulders, back, tail bone, legs, right foot and right fore finger when she was carrying a bag and fell down five stairs. The Office accepted the claim for the condition of a contusion to the right buttock and paid appropriate compensation for all relevant periods. The record reflects that appellant was on light duty before the claim in question and that she has two other claims with the Office which concerned a lower back condition and a right shoulder strain.¹

In an August 25, 1995 medical report, Dr. Harvey A. Jones, a Board-certified surgeon and appellant's treating physician, noted that appellant had evidence of cervical spondylosis, degenerative disc disease, and spondylosis of the cervical spine. There was also evidence of degenerative disc disease in the lumbosacral spine and moderately severe congenital lumbar spinal stenosis which Dr. Jones opined "most likely had been aggravated by repeated injuries to the lower back." He stated that there had been no improvement in appellant's neck and back and that she has symptoms of nerve root compression with numbness and pain in the lower extremities. Dr. Jones opined that appellant was totally disabled and may require surgical intervention.

¹ Claim No. A6-629342 is an occupational disease claim for a lower back condition which was denied in a March 12, 1996 decision. Claim No. A6-608905 concerns the condition of a right shoulder strain from a September 15, 1987 work injury which was had since resolved.

In a September 11, 1995 report, Dr. Jones noted a 1987 work injury in which appellant hurt her back and stated that appellant had been treated for pain in the back radiating into both hips and legs prior to her August 11, 1995 work injury. He noted that appellant always had problems with her neck and shoulders and that she was having pain in those regions.

In a September 11, 1995 report, Dr. George S. Stefanis, a Board-certified neurosurgeon, noted a history of appellant's 1987 work injury and her current slip and fall injury of August 11, 1995. He stated that Dr. Jones had been treating appellant for right leg pain and swelling since April 1995 and that after the August 11, 1995 injury, appellant's back pain radiating into her right hip and right leg has gotten severe. Dr. Stefanis also noted that appellant was experiencing a stiffness with her neck and shoulders, but she has always had problems in those areas. He performed an examination and set forth the results of the objective testing. Dr. Stefanis noted that the computerized tomography scan was negative of the lumbar spine. The magnetic resonance imaging (MRI) scan showed moderately severe stenosis at L4-5 and L5-S1, but no frank disc herniation. Degenerative changes were noted at C6-7 with a previous fusion at C5-6. A cervical myelogram revealed significant nerve root cut-off at C6 bilaterally below the fusion. The lumbar myelogram revealed mild degenerative changes.

An October 9, 1995 report from Dr. Sean Francis McCue, a Board-certified orthopedic surgeon, noted appellant's preexisting conditions of neck, shoulder and arm pain and low back and lower extremity pain and that appellant has been unable to work since her August 11, 1995 injury. A cervical and lumbar radiculopathies with radiographic changes in both cervical and lumbar spines were diagnosed. The recommended surgery was scheduled for October 27, 1995.

In an undated Form CA-20 from Dr. Jones which showed treatment dates of August 12, 16 and 25, 1995, he diagnosed lumbar spinal stenosis, degenerative disc disease, and cervical spondylosis. Dr. Jones opined that appellant was totally disabled and that her conditions were aggravated when she fell on the stairs.

In an October 24, 1995 letter, the Office requested Dr. Stefanis to provide a current diagnosis for appellant's cervical condition and whether her current condition, for which surgery was being recommended, was causally related to appellant's August 11, 1995 fall. In an October 30, 1995 report, Dr. Stefanis wrote that appellant has a degenerative disc with obliteration of the disc space and encroachment on the spinal cord and nerve roots. He opined that appellant's current condition was not the result of the August 11, 1995 work injury, but that the fall aggravated a preexisting condition. He stated that surgery needed to be considered as appellant did extremely well for almost 11 years until her recent fall.

In an October 30, 1995 report, an Office medical adviser opined that appellant's neck abnormality was not caused, aggravated or accelerated by her fall of August 11, 1995. He noted that the request for neck surgery appeared to have arisen from the myelogram first showing of a "significant nerve root cut-off at C6, bilaterally" as neither appellant's CA-1 form nor Dr. Jones' CA-20 mentioned a neck injury and Dr. Stefanis only mentioned that appellant always had some problems with her neck and shoulders. After reviewing Dr. Stefanis' October 30, 1995 response, the Office medical adviser stated that neither Dr. Stefanis' September 11, 1995 report nor any medical report of record provided any objective physical findings of radiculopathy related to the "nerve root cut-off at C6 bilaterally."

In letters dated December 12 and 19, 1995, the Office requested Dr. Jones to clarify his opinion as to whether the accepted condition of contusion to right buttock had resolved and whether appellant's current disability was related to the accepted right buttock contusion or to preexisting conditions. Dr. Jones was also requested to clarify whether this was a work-related aggravation or a continuation of her preexisting problems.

In a January 6, 1996 report, Dr. Jones opined that the contusion of appellant's buttocks had resolved. Dr. Jones stated that "at this point, just as many of these problems are related to preexisting things as were perhaps related to her contusion. In fact, after reviewing these notes, my assessment was this was a lumbar spinal stenosis at L4-5, L5-S1, degenerative disc disease and spondylosis of the cervical spine. In regards to the patient's current disability, I feel that her current disability goes back to her preexisting problems. Dr. Jones referred to his August 9, 1995 report and stated that he felt appellant's ongoing problems were mainly related to injuries sustained in the 1980's and preexisting problems, and the accident which occurred in August 1995 was just part of a long string of events that have occurred to this patient, and that particular incident played a very little role in her current disability and physical status.² The Office received copies of objective tests from August to September 1995 and Dr. Jones' August 9, 1995 report, which was rendered two dates prior to the August 11, 1995 work injury, wherein he indicated that appellant's current disability was related to her ongoing back condition.

In a January 13, 1996 report, Dr. Jones stated that appellant's most recent x-rays, computerized axial tomography scans, MRI scans and myelogram showed significant changes since the fall of August 1995 and opined that this was a contributing factor in appellant's disability.

In a May 21, 1996 letter, the Office requested an Office medical adviser to determine whether there were any changes in appellant's diagnostic tests from 1994 (prior to injury) and those of August 18, 1995, five days postinjury and to offer an opinion as to the causal relation with appellant's August 11, 1995 slip and fall. In a report of the same date, the Office medical adviser stated that there were no changes from 1994 to 1995 in appellant's diagnostic test results, except for one unexplained change in 1995 which was evidence of an anterior fusion of C5-6.

By decision dated July 9, 1996, the Office terminated appellant's compensation effective the same date on the grounds that her work-related disability due to the August 11, 1995 injury had ceased. The Office also found that appellant did not have any neck or back conditions causally related to her accepted condition.

In an August 29, 1996 letter, appellant requested reconsideration. In a July 9, 1996 report, Dr. Jones stated that appellant had been doing well with her neck and back problems until her August 11, 1995 work injury. He again related that her objective tests showed significant

² In an August 9, 1995 medical report, two days prior to appellant's work injury, Dr. Jones noted that appellant had problems with degenerative disc disease and degenerative joint disease of the spine. It was noted that a motor vehicle accident in 1983 resulted in an anterior cervical discectomy and fusion and that appellant had a work injury to her back in 1987 in which chronic neck and back problems resulted. Dr. Jones opined that appellant's current problems with chronic neck and lower back pains with degenerative disc disease may be related to her job injury of 1987.

changes since the fall of August 11, 1995 and was a contributing factor in appellant's disability. He opined that appellant is totally disabled and should be given a medical discharge from duty.

In a July 23, 1996 report, Dr. Howard J. Williams, III, a Board-certified pediatric physician, noted that although appellant had been treated since March 1995 for significant low back pain and neck pain, after the August 11, 1995 work accident, appellant reported that her low back pain and neck pain were far more evident and that she could not function and work like she could prior to the accident. Dr. Williams stated that epidural steroids have given appellant some relief from her symptoms.

In a September 4, 1996 merit decision, the Office denied appellant's request for modification of its prior decision.³

In an April 4, 1997 letter, appellant, through her union representative, requested reconsideration. In a March 15, 1997 report, Dr. Jones stated that appellant's present physical status and current medical disability was due to injuries sustained as a result of the August 11, 1995 work injury. Dr. Jones stated that although appellant was on limited duty, she was working on a daily basis and was able to attend to her usual everyday needs. Dr. Jones stated that after this injury, appellant was no longer able to work and is completely disabled. He noted that prior to this injury, appellant did not have any evidence of nerve root cut off in the cervical spine. Dr. Jones opined that the August 11, 1995 injury caused significant injury resulting in the nerve root cut off which now is a surgical problem which requires surgical intervention.

Copies of treatment notes from Dr. McCue from October 1996 to January 9, 1997 documented appellant's pain in her neck, shoulders and arms, as well as her low back and lower extremities.

In a June 2, 1997 merit decision, the Office denied appellant's request for modification of its prior decision.

The Board finds that the Office met its burden of proof in this case.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which

³ Appellant subsequently filed a recurrence claim on September 5, 1996 listing the date of her recurrence as June 7, 1996 and submitted copies of Dr. Jones' July 9, 1996 report. In a September 13, 1996 letter, the Office advised appellant that as her claim was formally denied on July 9, 1996, her date of claimed recurrence would have been included in that decision.

⁴ *Pedro Beltran*, 44 ECAB 222 (1992).

require further medical treatment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶ In terminating appellant's benefits, the Office stated that the weight of the medical evidence rests with Dr. Jones' January 6, 1996 report because it was "the only report of record which described an accurate history of appellant's underlying conditions, a knowledge of appellant's current condition and treatment, and medical rationale which indicates that appellant's current conditions were related to her preexisting, underlying conditions."

In the present case, the Office accepted appellant's claim for the condition of contusion to the right buttock. Dr. Jones' January 6, 1996 report, wherein he opined that the contusion of appellant's buttocks had resolved, is the only opinion of record discussing appellant's accepted condition. As there are no conflicting reports of record pertaining to the resolution of appellant's accepted condition other than Dr. Jones' January 6, 1996 report and the Office did not accept any other conditions as causally related to the August 11, 1995 employment injury, the Office could properly terminate appellant's compensation benefits for the accepted condition.

Regarding whether appellant has any neck or back conditions causally related to her accepted condition, the Office correctly found that appellant has failed to submit probative medical evidence explaining how such conditions were causally related to the August 11, 1995 work injury. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disabling condition for which compensation is sought is causally related to the accepted employment injury.⁷ As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,⁸ and supports that conclusion with sound medical reasoning.⁹

In his January 6, 1996 report, Dr. Jones attributed appellant's current disability to her preexisting problems and stated that the August 11, 1995 accident was just part of a long string of events which have occurred and that the accident played a very little role in appellant's current disability and physical status. In his January 13 and July 9, 1996 reports, Dr. Jones attributed appellant's current disability to the fall of August 11, 1995 based on the fact that the objective testing showed significant changes. In his subsequent report of March 17, 1997, Dr. Jones reiterated this opinion and explained that prior to the August 11, 1995 injury the diagnostic studies failed to demonstrate anything which would necessitate surgical intervention, but that appellant's nerve root cut off is now a surgical problem.

⁵ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

⁸ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁹ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

The record reflects that when appellant reported her August 11, 1995 injury, she did not report a neck injury. The nearest anatomical area she reported as injured was her shoulders. On October 30, 1995 an Office medical adviser reviewed the medical records and commented that the records did not contain any findings of injury to the neck. On November 1, 1995 the Office medical adviser stated that there was no objective physical findings of radiculopathy in the medical record related to the nerve cut off at C6 bilaterally which would attribute the fall of August 1995 to appellant's current disability. In his March 17, 1997 report, Dr. Jones does not account for or explain the lack of objective findings at the time of the initial medical examinations to support that appellant had a serious neck injury on August 11, 1995, as reflected in the Office medical adviser's review of the claim. Moreover, as this current report, is contrary to the January 6, 1996 report, in which he opined that appellant's conditions were related to her injuries sustained in the 1980's and preexisting problems, Dr. Jones' report is of little probative value as he fails to explain how evidence available to him at the time of his January 6, 1996 report is now found to support the claim of disability.

Although Dr. Stefanis opined in his October 30, 1995 report that the fall aggravated a preexisting condition, the record reveals that Dr. Stefanis' report is based on an inaccurate history of appellant's medical symptoms. In an earlier report of September 11, 1995, Dr. Stefanis stated that since appellant fell on August 11, 1995, the pain to her back has been quite severe. However, treatment notes provided by Dr. Jones indicates that appellant had been undergoing continual treatment for cervical spine pain as early as October 1990 and had "severe pains in lower back" as early as September 26, 1994. Appellant continued to receive treatment for chronic neck and back pain as late as August 9, 1995, two days prior to the August 11, 1995 injury. Inasmuch as Dr. Stefanis' report is based on an inaccurate history of appellant's medical symptoms, his rationale regarding causal relation of the injury to appellant's current condition is of little to no probative value.

Similarly, in his October 9, 1995 report, Dr. McCue reported that appellant was doing alright after her neck surgery in the 1980's until she was injured on August 11, 1995. However, no mention was made of appellant's motor vehicle accident or appellant's continuing complaints between 1984 and 1995 as reflected in Dr. Jones' treatment note of August 9, 1995, two days prior to the claimed traumatic injury. Thus, Dr. McCue's report is not based on a complete and accurate factual background. Although Dr. McCue noted objective findings of underlying conditions, he did not provide any medical rationale for any relation of these findings to the August 11, 1995 injury. Moreover, Dr. McCue failed to provide any opinion on the causal relation of the current condition to appellant's August 11, 1995 injury.

In his July 23, 1996 report, Dr. Williams reported that prior to the accident, appellant had improved significantly with treatment. Although Dr. Williams relates appellant's chronic low back pain and neck pain to the August 11, 1995 injury, his rationale relating the injury to appellant's current condition is of little to no probative value. In his August 9, 1995 report, Dr. Jones described evidence of significant degenerative disease and a chronic preexisting neck and lower back problem. Thus, contrary to Dr. Williams' assertion, the August 9, 1995 report of Dr. Jones is compelling evidence that appellant's condition had not improved significantly prior to the August 11, 1995 injury.

Accordingly, the Office properly found that appellant did not meet her burden of proof in establishing that her current conditions were causally related to the August 11, 1995 work injury.

The June 2, 1997 and September 4, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
November 24, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member