

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNA NASSER and DEPARTMENT OF VETERANS AFFAIRS,
DORN VETERANS ADMINISTRATION HOSPITAL, Columbia, SC

*Docket No. 97-2509; Submitted on the Record;
Issued October 8, 1999*

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 in terminating appellant's compensation benefits effective January 9, 1997 on the grounds that her disability causally related to her March 27, 1994 employment injury had ceased as of that date.

On March 27, 1994 appellant, then a 50-year-old registered nurse, sustained lumbosacral and cervical strains and a shoulder strain in the performance of duty.

By letter dated July 18, 1995, the Office referred appellant, along with a statement of accepted facts and copies of medical records, to Dr. C. Tucker Weston, an orthopedic surgeon and an Office referral physician, for an examination and an evaluation as to whether appellant had any remaining employment-related disability or medical condition.

In a report dated August 9, 1995, Dr. Weston provided a history of appellant's condition and detailed findings on examination. He stated that a magnetic resonance imaging scan and myelotomography performed on July 17, 1995 showed mild diffuse degenerative changes but no herniated nucleus pulposus or nerve root compression. Dr. Weston stated his opinion that appellant's subjective complaints outweighed the objective findings. He stated that appellant was unable to lift heavy patients but otherwise could perform her employment duties. Dr. Weston indicated that appellant would benefit from a structured exercise program.

In a supplemental report dated September 25, 1995, Dr. Weston stated his opinion that if appellant participated in a work hardening program and exerted full effort in improving her symptoms, he would expect that she could return to full duties on completion of that program.

In a report dated January 4, 1996,¹ Dr. George S. Warren, appellant's attending Board-certified orthopedic surgeon, stated his opinion that a generic work hardening program would not be beneficial and might cause an increased amount of pain. Dr. Warren stated:

"It is noted that [appellant] has worked in the past at a modified work status eliminating heavy lifting. As I have stated in the past, she is eligible to return to this. I consider nursing tasks to be almost the equivalent of heavy lifting and I do not usually send laboring workers back to heavy lifting after such a sustained period of time of symptomatic problem."

By letter dated April 25, 1996, due to the conflict in medical opinion between Dr. Weston and Dr. Warren, the Office referred appellant, along with a statement of accepted facts and copies of medical records, to Dr. John Savage, a Board-certified orthopedic surgeon and the impartial medical specialist, for an examination and evaluation as to whether appellant had any remaining disability or medical condition causally related to her March 27, 1994 employment injury.

In a report dated May 30, 1996, Dr. Savage provided a history of appellant's condition and findings on examination, as well as the result of x-rays of the lumbar spine. He diagnosed degenerative lumbar disc disease based on objective findings and x-rays. Dr. Savage stated his opinion that appellant's subjective complaints outweighed the objective findings and that he did not believe that her current condition was related to her 1994 employment injury. He stated that her condition was one of chronic development of mild degenerative disc disease. Dr. Savage stated his opinion that appellant's cervical and shoulder strain had essentially resolved and that she had normal range of motion of the neck and shoulder. He stated:

"I believe [appellant] is capable of performing her job as a registered nurse however I have serious doubts about her being capable of returning to work after such an extended period of being out of work. I think she would be a good candidate for back school as there may be a great deal of magnification of symptoms. I do not agree that attending a back school would worsen her condition. To maximize medical recovery I would place her in a back school.

"To reiterate she has a mild degenerative disc disease of the lumbar spine which in no way incapacitates her from even moderate to heavy duty labor. With proper body mechanics and back school training she should be able to do the job requirements of a registered nurse."

By letter dated September 21, 1996, the Office advised appellant that it proposed to terminate her compensation benefits.

By decision dated January 10, 1997, the Office terminated appellant's compensation benefits effective January 9, 1997 on the grounds that the weight of the medical evidence, as

¹ Although Dr. Warren dated his report January 4, 1995, it is clear from the substance of the letter that he meant January 4, 1996.

represented by the report of Dr. Savage, established that appellant had no remaining residual disability or medical condition causally related to her 1994 employment injury.

By letter dated February 7, 1997, appellant requested reconsideration of the termination of her compensation benefits and submitted additional evidence.

By letter dated January 17, 1997, Dr. Warren stated that from his first examination of appellant she related that her back pain was related to her employment injury. He stated that her symptoms had remained at the same location and therefore he would say that there was a causal relationship between her employment injury and her continuing complaints.

By decision dated April 25, 1997, the Office denied modification of its January 10, 1997.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective January 9, 1997 on the grounds that her disability causally related to her March 27, 1994 employment injury had ceased.

It is well established that 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 her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.²

In this case, appellant sustained cervical and lumbosacral strains and a shoulder strain in the performance of duty on March 27, 1994.

In reports dated August 9 and September 25, 1995, Dr. Weston opined that appellant could perform her duties with some restrictions and that she should be able to return to full duties upon completion of a work hardening program.

In a report dated January 4, 1996,³ Dr. Warren stated his opinion that appellant would not benefit from a work hardening program and could not perform her nursing duties.

Due to the conflict in medical opinion between Drs. Weston and Warren, the Office referred appellant to an impartial medical specialist. Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁴

² See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

³ Although Dr. Warren dated his report January 4, 1995, it is clear from the substance of the letter that he meant January 4, 1996.

⁴ 5 U.S.C. § 8123(a).

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such a specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁵

In a report dated May 30, 1996, Dr. Savage, selected to resolve the conflict in medical opinion, provided a history of appellant's condition and findings on examination, as well as the result of x-rays of the lumbar spine. He diagnosed degenerative lumbar disc disease based on objective findings and x-rays. Dr. Savage stated his opinion that appellant's subjective complaints outweighed the objective findings and that he did not believe that her current condition was related to her 1994 employment injury. He stated that her condition was one of chronic development of mild degenerative disc disease. Dr. Savage stated his opinion that appellant's cervical and shoulder strain had essentially resolved and that she was capable of performing her duties following a work hardening program. He stated:

“To reiterate she has a mild degenerative disc disease of the lumbar spine which in no way incapacitates her from even moderate to heavy duty labor. With proper body mechanics and back school training she should be able to do the job requirements of a registered nurse.”

The Board finds that the thorough and well-rationalized report of Dr. Savage is entitled to special weight and therefore the Office properly terminated appellant's compensation benefits based upon his opinion that appellant's work-related condition had resolved.

The decisions of the Office of Workers' Compensation Programs dated April 25 and January 10, 1997 are affirmed.

Dated, Washington, D.C.
October 8, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁵ *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

A. Peter Kanjorski
Alternate Member