

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY L. FEARS and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, Cincinnati, OH

*Docket No. 99-53; Submitted on the Record;  
Issued September 17, 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 in terminating appellant's compensation benefits as of January 26, 1998 on the basis that appellant had recovered from her June 24, 1995 employment injury.

On July 17, 1995 appellant, then a 59-year-old registered nurse, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she injured her left shoulder and left hip due to a fall she sustained in the performance of duty on June 24, 1995. Dr. Richard A. Jolson, a Board-certified orthopedic surgeon, examined appellant on July 25, 1995 and diagnosed a contusion of the left hip, cervical spine sprain and acromioclavicular sprain of the left shoulder. Following the incident of June 24, 1995, appellant continued to work on an intermittent basis, which included periods of part-time light-duty work. On December 11, 1995 the Office accepted appellant's claim for left shoulder sprain, cervical sprain and left hip contusion and subsequently awarded medical benefits and compensation for intermittent wage loss. Appellant returned to work in a full-time light-duty status on January 16, 1996.

On July 9, 1996 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of disability on or about May 29, 1996, causally related to her June 24, 1995 injury. She explained that since her initial injury she continued to experience varying degrees of pain and that her condition worsened after she assisted a patient in returning to bed on May 28, 1996. Appellant ceased working on May 29, 1996.

In a report dated May 30, 1996, appellant's treating physician, Dr. Michael L. Swank, an orthopedic surgeon,<sup>1</sup> advised appellant to cease work until she obtained an evaluation from

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<sup>1</sup> The record indicates that Dr. Swank, a colleague of Dr. Jolson's, began treating appellant on August 24, 1995. He reported an initial impression of degenerative disc disease of the cervical spine, cervical strain and "rule out herniated cervical disc." Dr. Swank's subsequent diagnoses included cervical spondylosis, cervical sprain, herniated cervical disc, cervical spondylolisthesis and degenerative disc disease of the lumbar spine.

Dr. C. Duane Bellamy, a Board-certified anesthesiologist specializing in pain management. Dr. Bellamy began treating appellant on June 12, 1996 for pain associated with her back, neck, shoulder and left hip. He recommended that appellant participate in a pain and stress treatment program as well as physical therapy and further advised that she refrain from working until completion of the recommended program.

On December 18, 1996 the Office accepted appellant's claim for recurrence of disability and also authorized physical therapy treatment and appellant's participation in the pain and stress treatment program. Additionally, the Office accepted lumbosacral sprain as another condition resulting from appellant's initial injury of June 24, 1995.

Upon appellant's completion of the pain and stress treatment program, Dr. Bellamy issued a report dated January 31, 1997 in which he noted a diagnosis of shoulder sprain/strain, cervical strain and pain disorder associated with psychological factors and general medical condition.<sup>2</sup> He indicated that appellant had successfully completed the four-week pain management program, which included, among other things, counseling in vocational and occupational therapy, stress management and relaxation training, psychotherapy and physical therapy. Dr. Bellamy further noted that appellant had met the program goals with respect to increased strength and endurance, improved range of motion, increased tolerance for standing and sitting and decreased depressive symptoms as well as decreased use of addicting analgesics. Additionally, he noted that appellant was progressing toward her goal of increasing her activity level. However, appellant did not meet the program goals with respect to increased flexibility and improved body mechanics and posture. Dr. Bellamy also indicated that appellant had reached maximum medical improvement and that she could return to light-duty status as of February 3, 1997.<sup>3</sup> However, he explained that appellant "continues to feel that even 'light duty' options with the [employing establishment] would be too demanding for her." Dr. Bellamy concluded that appellant should be reevaluated in six months in order to assess her abilities to perform greater work tasks.

On February 6, 1997 appellant accepted a temporary light-duty assignment as a telephone triage nurse and she returned to work on February 10, 1997. The Office subsequently awarded appellant appropriate compensation for the period May 29, 1996 through February 8, 1997.

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<sup>2</sup> Dr. Bellamy noted a general history of "an on-[the]-job injury in June 1995, while performing ... duties as an registered nurse at the [employing establishment]." He further noted that appellant attempted to return to light-duty status on several occasions, but was unable to maintain required tolerances. Additionally, Dr. Bellamy noted the reason for appellant's referral was an inability to cope with chronic pain and he identified appellant's "Rehabilitation Problems" as verbal and nonverbal complaints of pain, decreased strength and endurance, decreased self-esteem and impaired coping and stress management.

<sup>3</sup> Dr. Bellamy indicated that during the course of an eight-hour workday, appellant was capable of sitting for 1 hour, standing for 20 minutes and walking for 30 minutes, all without interruption. He also indicated that appellant could continually (greater than 66 percent of workday) lift and carry up to 5 pounds, frequently (34 to 66 percent of workday) lift and carry up to 10 pounds and occasionally (0 to 34 percent of workday) lift and carry up to 20 pounds, but that she was incapable of lifting or carrying in excess of 20 pounds. Dr. Bellamy further noted that appellant should not crawl or climb a ladder. Finally, he indicated that appellant could occasionally bend, reach, kneel, squat and climb stairs and ramps.

On April 21, 1997 the Office referred appellant for examination by Dr. Bernard B. Bacevich, a Board-certified orthopedic surgeon.<sup>4</sup> In a report dated May 13, 1997, Dr. Bacevich indicated that he examined appellant the previous day and that she presented him with symptoms of constant pain in the neck, the left upper shoulder and upper arm area. He also reported symptoms of constant pain in the left hip which worsened after prolonged periods of sitting or standing or when appellant walked too fast. Upon physical examination, the only objective finding Dr. Bacevich reported was “enlargement due to bone hypertrophy of the acromioclavicular joint of the left shoulder,” which he related purely to arthritic changes and not to any injury. He specifically indicated that there were no objective findings with respect to appellant’s neck, low back or hip area and particularly, no objective findings indicative of a chronic cervical strain. Additionally, Dr. Bacevich stated that he found no evidence of any residuals from appellant’s hip contusion, lumbar strain or cervical strain. However, he noted that appellant has underlying cervical spondylosis due to degenerative disc disease with disc space narrowing and foraminal narrowing.<sup>5</sup> Dr. Bacevich identified appellant’s cervical spondylosis as the cause of her persistent residual pain radiating from her neck to her shoulder and upper arm area. Although he found that appellant’s accepted work-related injuries of June 24, 1995 posed no physical limitations to the performance of her normal duties as a nurse, he did find that appellant’s degenerative cervical spondylosis and degenerative arthritis of the left shoulder acromioclavicular joint presented certain physical limitations that may be permanent. In conclusion, Dr. Bacevich stated that appellant’s accepted injuries had resolved and did not require any active treatment and that her current physical limitations were due to preexisting and nonwork-related conditions.

In a notice of proposed termination of compensation dated May 30, 1997, the Office advised appellant that it proposed to terminate her compensation benefits because the weight of the medical evidence, as represented by Dr. Bacevich’s opinion, supported that all injuries related to the June 24, 1995 work incident had resolved. Additionally, the Office provided appellant with a copy of Dr. Bacevich’s May 13, 1997 report, as well as other medical evidence of record and advised appellant that if she disagreed with the proposed action she should submit additional medical evidence or argument within 30 days. By letter dated June 27, 1997, appellant challenged the Office’s proposed decision to terminate compensation, however, she did not submit any new medical evidence regarding her current condition.

By decision dated January 26, 1998, the Office terminated appellant’s compensation on the grounds that the medical evidence of record established that appellant had recovered from her work-related injuries of June 24, 1995. In an accompanying memorandum, the Office noted that Dr. Bacevich’s May 13, 1997 report represented the weight of the medical evidence and that while appellant took issue with his findings, she did not provide any additional medical evidence in support of her position. The Office, therefore, concluded that appellant was no longer entitled

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<sup>4</sup> The Office provided Dr. Bacevich with a copy of appellant’s available medical records and a statement of accepted facts dated April 21, 1997.

<sup>5</sup> Dr. Bacevich based this finding on a March 7, 1996 magnetic resonance imaging scan of appellant’s cervical spine.

to medical benefits and continuing compensation for wage loss as a result of her June 24, 1995 work-related injuries.

By letter dated February 2, 1998, appellant's counsel filed a request for a hearing. However, on May 5, 1998 appellant requested reconsideration and she subsequently advised the Office's Branch of Hearings and Review that she wished to cancel her scheduled hearing. Additionally, appellant submitted an April 28, 1998 report from Dr. Herbert G. Magenheim, a Board-certified internist,<sup>6</sup> who he indicated that he recently referred appellant to a neurologist and that the neurological evaluation revealed that appellant suffers from significant cervical radiculopathy, which renders her unable to work.

In a merit decision dated August 18, 1998, the Office denied modification of its January 26, 1998 decision terminating benefits. In an accompanying memorandum, the Office explained that Dr. Magenheim's brief report of April 28, 1998 failed to provide any explanation of how appellant's current condition was related to her accepted injuries of June 24, 1995. Moreover, the Office found this evidence insufficient to outweigh Dr. Bacevich's May 13, 1997 report.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits as of January 26, 1998.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>7</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>8</sup>

As previously noted, the Office based its decision to terminate benefits on Dr. Bacevich's May 13, 1997 report. He clearly attributed appellant's current physical limitations to degenerative cervical spondylosis and degenerative arthritis of the left shoulder acromioclavicular joint. And he found that neither condition was related to appellant's June 24, 1995 employment injury. The Board finds that Dr. Bacevich's opinion is sufficiently well rationalized and based upon a proper factual background. Dr. Bacevich not only examined appellant, but also reviewed appellant's medical records. He also reported accurate medical and employment histories. In contrast, Dr. Bellamy's various treatment notes did not specifically address how appellant's June 24, 1995 employment injury may have caused or contributed to her current condition. Moreover, his most recent report, dated January 31, 1997, did not offer any

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<sup>6</sup> The record also includes an earlier report from Dr. Magenheim dated December 4, 1995 in which he noted, among other things, "Known cervical spondylolisthesis with pain in the upper thoracic spine and neck, pain in low back, pain in left hip secondary to a fall." In a statement dated August 8, 1996, appellant indicated that she initially saw Dr. Magenheim on August 10, 1995, however, the record does not include any additional information regarding Dr. Magenheim's initial treatment of appellant.

<sup>7</sup> *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163 (1987).

<sup>8</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

insight regarding the issue of causal relationship. Finally, although Dr. Magenheim's April 28, 1998 report indicated that appellant is currently disabled due to significant cervical radiculopathy, he did not explain how appellant's injury of June 24, 1995 was related to her current condition.

Because the opinions of Drs. Bellamy and Magenheim do not include a reasoned explanation regarding the relationship between appellant's current condition and her accepted employment injury of June 24, 1995, this evidence does not rise to the level of rationalized medical opinion evidence.<sup>9</sup> Inasmuch as Dr. Bacevich concluded that appellant was not currently disabled as a result of her June 24, 1995 employment injury, the Office properly relied on his opinion as a basis for terminating appellant's compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated August 18 and January 26, 1998 are, hereby, affirmed.

Dated, Washington, D.C.  
September 17, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).