

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BEATRICE KUHN and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, Northport, NY

*Docket No. 98-2499; Submitted on the Record;  
Issued April 7, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's benefits effective October 29, 1996.

On June 6, 1995 appellant, a nurse, filed a notice of traumatic injury alleging that she was injured on that same date when she was punched in the right jaw by a patient in the course of her federal employment. On August 11, 1995 the Office accepted the claim for a cervical sprain and a jaw sprain. Appellant subsequently received compensation for total temporary disability on the periodic rolls.

On February 29, 1996 Dr. Wittaya Payackapan, appellant's treating physician and Board-certified orthopedic surgeon, diagnosed a herniated disc at C5-6 and a bulging disc at C6-7 on an attending physician's supplemental report, Form CA-20a. He checked "yes" to indicate that appellant's present condition was due to her June 6, 1995 injury and that she was disabled from her usual work. Dr. Payackapan previously checked "yes" to indicate that appellant's diagnosed conditions were due to her June 6, 1995 injury and that she was disabled from her usual work, on forms submitted on September 12 and 18, November 11, December 4 and September 18, 1995 and January 2, 1996.

On May 1, 1996 the Office referred appellant, along with a statement of accepted facts, to Dr. Martin A. Lehman, a Board-certified orthopedic surgeon, for a second opinion examination.

On May 15, 1996 Dr. Lehman reviewed appellant's history of injury and the treatment she received. He also conducted a complete physical examination and interpreted appellant's June 12, 1995 magnetic resonance imaging (MRI). Dr. Lehman concluded that appellant had no objective findings of injury. In this regard, he stated that on examination he found no spasm and a full range of motion of the cervical spine. Dr. Lehman also found no sensory, motor or reflex loss and no loss of circulation. He indicated that appellant's complaints were subjective because she demonstrated voluntary guarding to any movement attempted in the cervical spine.

Dr. Lehman stated that a diagnosis of a herniated degenerative disc was essentially based on her age and that although the MRI showed a mild degree of cord compression, there were no clinical findings of any nerve involvement. He stated that appellant's injury did not cause her herniated disc or degenerative disc changes. Dr. Lehman concluded that appellant had recovered from her alleged injury sustained on June 6, 1995.

On June 24, 1996 Dr. Lehman indicated that appellant was no longer disabled from her usual work.

On July 15, 1998 the Office issued a notice of proposed termination of compensation. The Office indicated that the weight of the medical evidence, as represented by the opinion of Dr. Lehman, demonstrated that appellant's work injury had resolved. Appellant was given 30 days to submit additional evidence or argument.

By decision dated October 29, 1996, the Office finalized its proposed termination of benefits. In an accompanying memorandum, the Office indicated that Dr. Lehman's opinion remained the weight of the medical evidence.

On October 21, December 2 and 16, 1996, Dr. Payackapan indicated that he treated appellant for pain in her neck, shoulder and arm. Following physical examinations, he reported that appellant's condition was unchanged.

On November 1, 1996 Dr. K.R. Shetty, a neurologist, reviewed appellant's complaints and history. On examination, he noted spasms of the paraspinal muscles of the neck with limitation of movement, possible Tinel's sign on the right side and a slight decrease in biceps jerk. Dr. Shetty diagnosed cervical radiculitis and a possible herniated disc. He stated that carpal tunnel syndrome needed to be ruled out. Dr. Shetty also stated that there could be a recurrence of the root compression.

On March 11, 1997 Dr. Payackapan reviewed the history of appellant's injury and performed a physical examination. He found moderate tenderness along the cervical spine and paravertebral muscles. Dr. Payackapan also noted a moderate and pain limitation of range of motion of the cervical spine. He indicated that an MRI revealed degenerative disc disease, a herniated disc disease at C5-6 and a bulging disc at C6-7. Dr. Payackapan diagnosed degenerative discs, herniated discs and cervical radiculopathy. He stated that appellant sustained an injury on June 6, 1995 which caused persistent and severe neck pain and precluded her from any kind of work or activity. Dr. Payackapan stated that this condition was permanent and substantiated by the MRI.

On October 16, 1997 Dr. Payackapan repeated the findings and diagnoses presented in his March 11, 1997 report. He stated, however, that appellant's degenerative disc and bulging disc probably preexisted the injury on June 6, 1996. Dr. Payackapan indicated that appellant's June 6, 1995 employment injury, "probably affected her conditions to become symptomatic and probably will be progressive."

On October 22, 1997 appellant's representative requested reconsideration.

By decision dated June 6, 1998, the Office reviewed the case on its merits and found that the evidence submitted in support of the request for reconsideration was not sufficient to warrant modification of the prior decision.

The Board finds that the Office met its burden in terminating appellant's compensation effective October 29, 1996.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to her federal employment. Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.<sup>2</sup> To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.<sup>3</sup>

In the present case, Dr. Payackapan, appellant's treating physician and a Board-certified orthopedic surgeon, indicated in his reports dated March 11 and October 16, 1997 that appellant remained disabled from work due to degenerative disc disease, herniated discs and cervical radiculopathy.<sup>4</sup> The Office, however, only accepted appellant's claim for a cervical strain and jaw sprain. Consequently, Dr. Payackapan's opinion does not support appellant's contention that she continues to suffer residuals from her June 6, 1995 employment injury. Moreover, Dr. Payackapan offered an equivocal opinion concerning whether his diagnosed conditions were even related to appellant's accepted injuries. On October 16, 1997 Dr. Payackapan indicated that his diagnosed conditions preexisted appellant's June 6, 1995 injury and that the injury "probably" affected her conditions. Accordingly, Dr. Payackapan's equivocal opinion is entitled to little weight<sup>5</sup> and is not relevant to whether appellant continues to suffer residuals from her June 6, 1995 accepted injuries for a cervical strain and a jaw strain.

In contrast to the opinion of Drs. Payackapan and Lehman, the second opinion physician and a Board-certified orthopedic surgeon, provided a well-rationalized medical opinion establishing that appellant no longer had any residuals from her June 6, 1995 employment injury. In reaching this conclusion, he relied on the absence of objective evidence of injury. Dr. Lehman noted that on examination he found no spasm and that appellant demonstrated a full range of motion of the cervical spine. He also indicated that appellant demonstrated no sensory, motor or reflex loss and that there was no loss of circulation. Dr. Lehman found that appellant's complaints were subjective because she demonstrated voluntary guarding to any movement of

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<sup>1</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>2</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

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

<sup>4</sup> Dr. Payackapan consistently offered this conclusion in the previous attending physicians reports he filed from September 12, 1995 through February 29, 1996.

<sup>5</sup> *Roger Dingress*, 47 ECAB 123 (1995).

the cervical spine. He explained that appellant's herniated degenerative disc stemmed from normal aging and that the mild degree of cord compression found by MRI was not supported by clinical findings of nerve involvement. Because Dr. Lehman provided the only rationalized medical opinion of record addressing whether appellant continued to suffer residuals from her accepted employment injuries, his opinion constitutes the weight of the medical evidence.<sup>6</sup> Accordingly, the Office met its burden in terminating compensation.

The decision of the Office of Workers' Compensation Programs dated June 6, 1998 is affirmed.

Dated, Washington, D.C.

April 7, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>6</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).