

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of JOAN T. WALTON and DEPARTMENT OF VETERANS AFFAIRS,  
PROVIDENCE VETERANS HOSPITAL, Providence, RI

*Docket No. 99-2530; Submitted on the Record;  
Issued June 14, 2000*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective October 12, 1997, regarding the accepted condition of lumbar strain; and (2) whether appellant met her burden of proof in establishing that her cervical condition was work related.

In the present case, the Office accepted that appellant, then a 33-year-old registered nurse, sustained a lumbosacral strain while in the performance of duty on December 12, 1985. Appellant stopped work on December 13, 1985 and returned to part-time work on February 1, 1993 as a part-time nursing instructor with a community college. Appellant's compensation was reduced based on her capacity to earn wages; however, a formal loss in wage-earning capacity decision was never issued. Appellant stopped work again on December 1, 1995 and has not returned. The Office paid appropriate compensation for all relevant periods.

The record reflects that the Office had previously accepted an October 6, 1984 work injury for mild low back tenderness and back strain. Appellant has been continually treated by Dr. Geret DuBois, a Board-certified orthopedic surgeon, for her back condition. On December 20, 1985 Dr. DuBois noted the history of the December 12, 1985 injury and diagnosed a lumbar strain. He found no neurological signs or findings, no change in the x-rays, but found some evidence of spasm in her back.

In a February 18, 1986 report, Dr. Michael S. Olin, a neurosurgeon, stated that, although appellant's electromyogram (EMG) was negative, there was a L3-4 disc with slight sloping to the left. He stated that it was feasible that during lifting, bending or doing other stressful activity that appellant may suffer discomfort radiating into the distribution of the area she complains of.

In a note of July 14, 1986, Dr. DuBois first reported appellant's complaints of her neck, left side, shoulder and arm pain. The examination did not show any evidence of neurologic deficit, but appellant had some limitation in motion in her neck and there was complaint of pain

radiating along the arm based on certain positions of her head and neck. Cervical spine films were noted as showing evidence of degenerative narrowing and reversal of cervical lordosis at the L4-5 and L5-6 level.

Appellant continued to receive periodic conservative medical treatment from Dr. DuBois for her lumbar and cervical conditions. She additionally was periodically examined by physicians acting as second opinion specialists for the Office, who continued to support that she had residuals of the work injury and could not return to work.

A January 23, 1990 lumbar magnetic resonance imaging (MRI) scan revealed mild degenerative changes at L4-5 and L5-S1 with no herniation or stenosis. An MRI of the cervical spine on the same date showed a large left posterior herniation of the C5-6 disc with displacement of the C5 nerve root.

In a June 11, 1990 progress report, Dr. DuBois stated that appellant's neck, shoulder and arm problems are all associated with difficulties of work-related incidents as previously noted. Otherwise, appellant's history and record was clean.

In an April 19, 1991 progress report, Dr. DuBois stated that, appellant complained of increased problems with regard to her neck and back while serving as a volunteer at a computer terminal. He noted that appellant did not relate any neurologic radiating symptoms, but that there was minimal limitation of motion in the neck. Good strength was noted in the upper and lower extremities and reflexes appeared to be equal and symmetrical. Dr. DuBois opined that, based on appellant's old studies and records, appellant had cervical and lumbar disc disease, which was manifesting themselves as myofascial symptoms.

In a June 15, 1992 report, Dr. William J. Golini, a Board-certified neurologist, stated that EMG/nerve condition studies of the left upper and lower extremities revealed a mild sensory deficit in the left arm and left leg with mildly diminished left ankle jerk. No significant focal neurological deficits were demonstrated and EMG testing showed no significant denervation abnormalities in either the upper or lower extremity. He opined that, in spite of the ruptured cervical disc, appellant was not a surgical candidate as she did not have any significant neurological deficits.

In 1993 appellant returned to work part time as a teacher. She continued to receive conservative treatment. In a December 13, 1993 report, Dr. DuBois related appellant's treatment and findings. Based upon her history and her evaluations, both clinically and by her physicians, Dr. DuBois opined that appellant's cervical disc disease and lumbar spondylosis and its problems were all work related. He stated that appellant's history, evaluations and findings have all been consistent.

In an October 12, 1995 report, Dr. Golini reported that he had seen appellant in September 1995 for evaluation of her lumbar radiculopathy. He noted that appellant continued to experience cervical pain, with radiation to mainly the left arm and occasionally the right. There was numbness and paresthesias involving the fourth and fifth digits of the left hand. An MRI of her lumbar spine demonstrated a disc bulge at L5-S1 and an EMG demonstrated a bilateral S1 radiculopathy. Appellant's neurological examination did not demonstrate any

significant focal neurological deficits, although there was a mild sensory deficit distally in the left upper extremity. EMG studies revealed a mild bilateral C6 radiculopathy. An MRI of the cervical and lumbar areas revealed an unchanged disc herniation at C5-6 and degenerative abnormalities at L5-S1.

In a May 6, 1996 report, Dr. F. Desmond Hussey, a Board certified neurologist, noted appellant's history of injury and complaints concerning chronic neck and back pain. He noted his findings on examination and diagnosed chronic pain syndrome, cervical myofascial pain and multifactorial lumbar pain. Dr. Hussey opined that, appellant had fallen into a chronic pain disorder. He reviewed her recent MRI reports of the lumbar and cervical spine and recommended a multidisciplinary approach to her chronic pain symptoms. No opinion was provided as to the cause of appellant's current condition or its relationship to the 1985 work incident. Dr. Hussey continued to follow appellant and provide progress reports.

The Office referred appellant to Dr. Patrick Cullen, a Board-certified orthopedic specialist, for a second opinion evaluation. He was provided with a statement of accepted facts, copies of all the medical evidence of record and a series of questions to be resolved. In his August 29, 1996 report, Dr. Cullen reviewed the entire medical record, examined appellant and, thereafter, opined that appellant's lumbosacral spine had resolved; appellant's degenerative disc disease was not related to the work injury; and appellant's cervical condition was the result of degenerative disc disease and unrelated to the initial injury. Dr. Cullen indicated that appellant was "able to flip around and move rapidly and painlessly without any problems" and further observe[d] that the cervical spine motion was within normal range." He stated that "the chest and abdomen were normal, other than being obese ... lumbar spine motion slightly diminished because of the huge amount of abdominal obesity." Bilateral straight leg raising was also normal. Dr. Cullen indicated that appellant's subjective complaints of pain were not in line with the clinical findings and opined her chronic low back pain was due to degenerative osteoarthritis.

By decision dated September 30, 1997, the Office terminated appellant's compensation benefits effective October 12, 1997 on the grounds that the weight of the evidence rested with Dr. Cullen who acted as an Office second opinion physician. In an accompanying memorandum to the Director, the Office claims examiner further noted that the Office never accepted appellant's cervical problem as being related to the work injury and the evidence submitted pertaining to such condition was insufficient to establish such a relation. The claims examiner had noted that Dr. Cullen stated, "at this time, I see no serious problem with her neck other than some minimal osteoarthritis," "I, therefore, do not believe her cervical condition is in no way related to or caused by the work-related injury of 1985."

In a decision dated February 5, 1998, the Office hearing representative affirmed the prior decision. The hearing representative noted that appellant submitted physical therapy notes, diagnostic test results, as well as reports from Dr. DuBois and Dr. Hussey, which were previously of record.

Appellant requested reconsideration of her case on April 11, 1998. In support of her reconsideration request, appellant set forth her opinion on the medical evidence of file regarding how her lumbar and cervical areas of her back were related to her work injury of December 12, 1985. Appellant also submitted new evidence. In an October 20, 1997 report,

Dr. DuBois stated that his office records and appellant's work-ups have continued to document that appellant has persisted with symptoms referable to a work-related injury and he opined that continuing compensation was warranted.

In a November 19, 1997 medical report, Dr. Hussey provided the results of his examination and opined that appellant suffers from chronic cervical myofascial pain and a chronic mechanical lumbar pain. He stated that while he did think appellant could do some type of employment, she could not return to any type of nursing duty given the extent of her pain problems. In a March 9, 1998 report, Dr. Hussey provided a medical review of appellant's file and noted that appellant was examined in his office on May 6, 1996 for continued treatment of a work-related injury. On the basis of the job description, medical records of Dr. DuBois, patient history, results of diagnostic studies and physical findings, Dr. Hussey opined that appellant continues to suffer from the December 12, 1985 work-related injury. He found appellant's complaints in the lumbosacral spine and cervical spine areas to be consistent with the findings of the numerous diagnostic studies and physical examinations. Dr. Hussey opined that a causal relationship existed between the injury and her job based on appellant's description of the job and the description of the circumstances of the injury.

By decision dated May 4, 1998, the Office denied modification of its prior decision, after merit review, on the grounds that the evidence submitted in support of the reconsideration request was insufficient to warrant modification of appellant's claims.

By letter dated May 25, 1998, appellant requested that the Office reconsider her claim. Appellant again provided her opinion regarding the weight of the medical evidence and submitted additional evidence. In a March 1, 1998 report, Dr. DuBois provided a history of appellant's medical treatment and care received prior to and following her work-related incident of December 12, 1985. Dr. DuBois stated:

"It is my opinion, based on the patients history, no prior injury to the area and the numerous physical exam[ination]s, that [appellant] continues to suffer from the work-related injury of December 12, 1985. The low back sprain appellant suffered did not resolve itself within the accepted time limit of four to six months, therefore, the diagnosis must be adjusted to reflect the findings of all diagnostic studies and physical findings. [Appellant] suffers from a slight sloping to the left of the L3-4 disc. There is a causal relationship between the physical findings and the diagnostic studies. [Appellant] has persisted with symptoms referable to a work-related injury. Her injury has facilitated a degenerative disc disease that is much more advanced than a person of her age. At the age of 34, [appellant] was already showing signs of wear and tear of the spinal column. Based on her clean history and her job description, there is a causal relationship between her injury and her job as a [s]taff nurse. [Appellant's] history of the injury and the physical findings support the theory that this is a work-related injury.

"[Appellant's] significant weight gain (180 pounds [to] 270 pounds ) can also be connected to the work[-]related injury due to the inactivity forced upon her by her injury. ... This weight gain places an additional strain on the lower back due to gravity, therefore, placing strain on the muscles and the intervertebral discs. The

weight gain has a causal relationship to the injury due to the inability to exercise and limited mobility....

“[Appellant’s] cervical injury is also related to the work injury of December 12, 1985. There is a causal relationship between the cervical lordosis at the 4-5 and 5-6 level and her job as a staff nurse. Based on the description of her job and the history of the injury, she suffered a permanent injury to her neck. [Appellant] complained of headaches following the injury but her multiple problems and complaints were prioritized in order to treat the most significant problems first. The lumbosacral injury was more significant than the cervical injury, therefore, requiring immediate evaluation.”

In a May 20, 1998 report, Dr. Hussey opined:

“[Appellant] continues to suffer from the effects of the work-related injury in 1985. I have reviewed all the medical documentation from Dr. DuBois and other physicians related to this patient. I have reviewed all the diagnostics due related to this injury. I have examined [appellant] and have documented the physical findings related to her. It is my opinion that [appellant] continues to suffer from [her] work-related injury and requires ongoing observation, examination, therapy and medical to maintain a quality of life.”

Dr. DuBois stated that, he based his opinion on the medical reason referenced in items number 2, 3, 4, 5 and 7, which is “the medical rationale needed [to] support” his opinion. The medical research Dr. Hussey referred to was not included with his report.

By decision dated October 16, 1998 and finalized October 20, 1998, the Office denied modification of its prior decision, after merit review on the grounds that the evidence submitted in support of the reconsideration request was insufficient to establish that appellant’s present condition was caused by the December 12, 1985 work injury.

By letter dated April 7, 1999, appellant again requested that the Office reconsider her claim. She presented her arguments in support of her contention that her current disability is due to the December 12, 1985 work injury. New evidence, in addition to previously submitted and already reviewed evidence, was submitted.

In a December 15, 1998 report, Dr. Hussey noted that appellant was working on a part-time basis (about 5 to 6 hours a day) as an assistant to a physician and that this has exacerbated the problem with her back. Results of appellant’s physical examination were provided with a comment that appellant has had an exacerbation of her myofascial and mechanical pain. An MRI was requested. The December 29, 1998 MRI of the lumbar spine revealed degenerative changes at L5-S1. In an April 1999 report of medical evaluation (permanent medical impairment) form, Dr. Hussey noted that appellant had been under his care since 1996 and listed appellant’s diagnoses as L4-5 disc left paracentra; degenerative changes at L4-5 and L5-S1; bilateral S1 chronic radiculopathies; and degenerative disc disease. He also stated that appellant was unable to return to the activities required for her profession. Previous employment had exacerbated her work-related injury and resulted in progression of her back injury. In a

March 16, 1999 report, Dr. Hussey stated that appellant suffers from chronic neck and back pain as a result of the work-related injury in 1985. After reviewing appellant's medical history and objective studies, Dr. Hussey stated that when he first examined appellant in May 1996 her disabling lower back pain appeared consistent with mechanical pain from the facet joints and muscles. He opined that appellant suffered a traumatic injury to her back as a result of the activities described in the summary of her work-related injury, which were consistent with diagnostic and objective clinical findings. He stated that appellant's impairment was unlikely to change and was permanent.

In an April 1999 report, Dr. DuBois stated that appellant suffered a traumatic injury to her back as a result of the activities described in the summary of her work-related injury. He stated that the injury caused a loss of spinal structure integrity resulting in an L3-4 disc with sloping to the left, degenerative disc disease and chronic pain. The premise for this finding is the diagnostic studies and objective clinical findings. Dr. DuBois opined that the impairment was permanent and that appellant will continue to suffer from the results of the 1985 work-related injury for the rest of her life.

By decision dated April 28, 1999, the Office denied modification of its prior decision, after merit review, on the grounds that the evidence submitted in support of the reconsideration request was insufficient to establish that appellant's present condition was caused by the December 12, 1985 work injury.

The Board finds that the Office has not met its burden of proof to terminate appellant's compensation benefits effective October 12, 1997 regarding the accepted condition of lumbar strain due to a conflict in medical opinion necessitating referral to an impartial medical examiner, pursuant to section 8123(a) of the Federal Employees' Compensation Act.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.<sup>1</sup>

In the present case, the Office only accepted the condition of lumbar strain. At the time the Office terminated appellant's compensation benefits, appellant's treating physicians, Drs. DuBois and Hussey continued to support that appellant had back and neck conditions. In his May 6, 1996 report and the various treatment records, Dr. Hussey did not provide an opinion as to the cause of appellant's back condition or its relationship to the December 12, 1985 work injury. Dr. DuBois, however, continued to opine that appellant suffered a work-related back condition and provided supporting explanations as to why appellant continued to have residuals of her work-related injury. In his April 19, 1991 progress report, Dr. DuBois opined that, based on appellant's old studies and records, appellant's cervical and lumbar disc disease was now manifesting itself as myofascial symptoms. He rationalized in later reports that appellant's history, evaluations and findings were all consistent as being work related. In his August 29,

---

<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

1996 medical report, Dr. Cullen, the Office referral physician, indicated that appellant's subjective complaints of pain were not in line with the clinical findings and opined her chronic low back pain was due to degenerative osteoarthritis. The Board finds that the reports of Drs. DuBois and Dr. Cullen provide conflicting medical opinions as to whether appellant continues to suffer from residuals of her accepted lumbar strain from her December 12, 1985 employment-related injury. In situations where there exist opposing medical reports the Office should refer the case to an impartial medical examiner for the purpose of resolving the conflict. Section 8123(a) provides in pertinent part, "[i]f there is a 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."<sup>2</sup>

To resolve the conflict in this case regarding appellant's back condition, the Office should refer appellant, the case record, a statement of accepted facts including the duties performed by appellant after stopping work with the employing establishment and a list of specific questions to an appropriate medical specialist for an impartial evaluation and a rationalized medical opinion regarding whether appellant has any residuals from her employment-related injury of December 12, 1985. After this and such further development as it deems necessary, the Office shall issue an appropriate merit decision.

The Board further finds that appellant has not met her burden of proof in establishing that her cervical condition is causally related to her December 12, 1985 employment injury.

In this case, the Office had not accepted a cervical condition. A person who claims benefits under the Act<sup>3</sup> has the burden of establishing the essential elements of his claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that his medical condition was causally related to a specific employment incident or to specific conditions of employment.<sup>4</sup> As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.<sup>5</sup> The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>6</sup> Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions, which are alleged to have caused or exacerbated a disability.<sup>7</sup>

Appellant's physicians all related appellant's history of injury to her neck but failed to provide a rationalized medical opinion on whether appellant's neck condition was related to her

---

<sup>2</sup> 5 U.S.C. § 8123(a).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

<sup>5</sup> *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

<sup>6</sup> *Juanita Rogers*, 34 ECAB 544, 546 (1983).

<sup>7</sup> *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

history of the December 12, 1985 employment injury. Although Dr. DuBois in several reports has opined that appellant's cervical condition is related to the initial injury in December 1985, his rationale for relating her cervical condition to the employment injury is not supported by the evidence of record. Dr. DuBois first relates appellant's neck, shoulder and arm conditions in his report of June 11, 1990 by noting that appellant's history and record is "clean." The Board has held that an opinion that a condition is causally related to employment because the employee was asymptomatic prior to the injury is insufficient to establish causal relationship.<sup>8</sup> Moreover, Dr. DuBois' rationale for relating her cervical condition to her employment injury is not supported by his medical records or appellant's initial history or complaints on examination. The record reflects that appellant first complained of neck pain and received treatment for a cervical condition July 1986, more than six months after the initial injury. A large herniated cervical disc was not identified until July 1990, more than five years after the work incident. Inasmuch as Dr. DuBois does not explain how appellant could be symptomatic for six months following the injury and develop a large herniated cervical disc almost five years later, his opinion is of diminished probative value as it is speculative and not supported by the evidence of record. In his March 1, 1998 report, Dr. DuBois indicated that appellant's neck condition was related to the work injury of December 12, 1985 and her job as a staff nurse. No medical reasoning was provided to support that the injury of December 12, 1985 caused the claimed condition. Moreover, the record does not contain any indication that appellant injured her neck at the time of the December 12, 1985 injury.<sup>9</sup>

Likewise, although Dr. Hussey has opined in several reports that appellant's neck condition is causally related to the December 12, 1985 incident, he failed to provide any medical rationale to support his statement. The reasons as to why Dr. Hussey's opinions are of diminished probative value are discussed above.

For the following reasons, appellant has not met her burden of proof to establish that her cervical condition is causally related to the December 12, 1985 work incident.

---

<sup>8</sup> *Thomas D. Petrylak*, 39 ECAB 276 (1987).

<sup>9</sup> If appellant's duties as a nurse caused an injury to her neck, appellant would need to file an occupational injury claim.



The April 28, 1999 decision and the decision dated October 16, 1998 and finalized on October 20, 1998 of the Office of Workers' Compensation Programs are hereby reversed regarding the termination of benefits, regarding the accepted lumbar condition and are affirmed in denying benefits for a cervical condition.

Dated, Washington, D.C.  
June 14, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member