

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBRA S. KOEPP and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, Sheridan, WY

*Docket No. 99-1216; Submitted on the Record;  
Issued November 6, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective December 5, 1998 on the grounds that she had no disability after that date due to her August 9, 1992 employment injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective December 5, 1998 on the grounds that she had no disability after that date due to her August 9, 1992 employment injury.

Under the Federal Employees' Compensation Act,<sup>1</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

On August 9, 1992 appellant, then a 34-year-old licensed practical nurse, sustained an employment-related thoracic strain and subluxation at L4.<sup>5</sup> Appellant stopped work on August 10, 1992 and returned to light-duty clerical work for the employing establishment in

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

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

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>5</sup> Appellant sustained an employment-related subluxation of her cervical and lumbar spine on June 24, 1991 but returned to work for the employing establishment shortly thereafter.

November 1992. In December 1993, she began working as a medical clerk for the employing establishment.

Subsequently, appellant received compensation for various periods of disability.<sup>6</sup> By decision dated November 9, 1998, the Office terminated appellant's compensation effective December 5, 1998 on the grounds that she had no disability after that date due to her August 9, 1992 employment injury.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Jeffrey M. Hrutkay, the Office referral physician.<sup>7</sup> The June 29, 1998 report of Dr. Hrutkay establishes that appellant had no disability due to her August 9, 1992 employment injury after December 5, 1998.

Dr. Hrutkay reported the findings of his examination on June 20, 1989. He noted that appellant did not have low back spasms on examination, but exhibited some limitation of motion. He stated that there were no current objective findings of a subluxation at L4 as defined by the Office.<sup>8</sup> Diagnostic testing showed that appellant's degenerative lumbar disc disease had progressively worsened. Dr. Hrutkay found that this condition probably was the cause of her symptoms. He stated that appellant's employment-related back strain had long since resolved. Dr. Hrutkay indicated that appellant required work restrictions but that these were due to her nonwork-related disc disease.

The Board finds that the opinion of Dr. Hrutkay has reliability, probative value and convincing quality with respect to its conclusions. Dr. Hrutkay's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, was provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Hrutkay provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant's condition which comported with this analysis.<sup>9</sup> He explained that appellant did not exhibit objective residuals of her employment-related injury, which would have already resolved itself. Dr. Hrutkay further noted that appellant's continuing problems were due to her nonwork-related disc disease.

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<sup>6</sup> By decision dated November 10, 1997, the Office determined that appellant's actual wages as a medical clerk fairly and reasonably represented her wage-earning capacity.

<sup>7</sup> The Office had previously referred appellant to Dr. David E. Curtis, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated February 6, 1998, Dr. Curtis indicated that appellant no longer had a subluxation at L4 but that her work restrictions were employment related. The Office requested that Dr. Curtis clarify his opinion, but in reports dated April 21 and May 11, 1998, he continued to provide equivocal opinions regarding the nature and cause of appellant's condition. Therefore, the Office properly referred appellant to Dr. Hrutkay for further evaluation.

<sup>8</sup> The Office's regulations at 20 C.F.R. § 10.400(e) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically, which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays. 20 C.F.R. § 10.400(e); *see also Bruce Chameroy*, 42 ECAB 121, 126 (1990).

<sup>9</sup> *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

Appellant was provided an opportunity to present evidence that she continued to have employment-related disability but failed to do so within the time allotted. Evidence from 1996 of Dr. Richard Nelson, an attending Board-certified orthopedic surgeon, indicated that appellant's underlying degenerative lumbar disc disease was worsening. However, his reports lack any medical rationale for his conclusion that appellant's disc condition was aggravated or exacerbated by her current work duties.

The record further reveals that an electromyography nerve conduction study in December 1995 yielded normal results. Appellant suggested that her bulging disc at L4-5 was employment related and caused disability. However, she did not submit rationalized medical evidence supporting this argument and the Office has not accepted that appellant's degenerative disc disease or bulging at L4-5 is employment related.

For these reasons, the Office met its burden of proof to terminate appellant's compensation effective December 5, 1998 on the grounds that she had no disability after that date due to her August 9, 1992 employment injury.

The decision of the Office of Workers' Compensation Programs dated November 9, 1998 is hereby affirmed.

Dated, Washington, DC  
November 6, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Priscilla Anne Schwab  
Alternate Member