

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BHAGWANTI KAPIL and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Chicago, IL

*Docket No. 00-1405; Submitted on the Record;  
Issued May 7, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's benefits effective January 30, 1999 on the grounds that her work-related disability had ceased; and (2) whether appellant has met her burden of proof to establish that she is entitled to continuing benefits after January 30, 1999.

On September 5, 1991 appellant, then a 42-year-old registered nurse, sustained a right shoulder and neck injury while transferring a dependent patient from a wheelchair. The claim was accepted for cervical strain with right-sided radiculopathy, C6 nerve root and herniated nucleus pulposus at C4-5, C5-6 and C6-7. Surgery was authorized. Appellant was off work from September 5, 1991 through January 12, 1992. She returned to light duty on September 13, 1992, but worked only eight hours due to an increase in pain in the cervical area. Appellant was placed on the periodic rolls and received compensation.

In an August 18, 1998 report, Dr. Ronald Prawl, a Board-certified neurosurgeon, stated that appellant's work injury had reached maximum medical improvement and that she no longer needed any work restrictions. He noted that although appellant was no longer totally or partially disabled due to her work injury, she was disabled due to unrelated degenerative changes in her cervical and lumbar spine.

In a letter dated December 30, 1998, the Office proposed to terminate appellant's compensation based on Dr. Prawl's opinion that appellant was no longer totally or partially disabled from work due to her work injury of September 5, 1991. By decision dated February 1, 1999, the Office terminated appellant's compensation effective January 30, 1999.

In a letter dated February 24, 1999, appellant requested reconsideration and submitted a January 19, 1999 report in which Dr. Prawl stated that appellant had been reevaluated subsequent to her surgical intervention and continued to have complaints of pain in her neck, upper extremities and chest area. Her complaints related to same area originally injured in

September 1991. Dr. Prawl recommended further evaluation to include a magnetic resonance imaging (MRI) scan.

In a report dated February 16, 1999, Dr. Prawl stated that upon review of a February 12, 1999 MRI scan, appellant's symptoms of neck and shoulder pain were consistent with a C5 radiculopathy. He added that the advanced degenerative changes occurring at the C4-5 level were still related to the 1991 injury.

By merit decision dated June 29, 1999, the Office denied appellant's request for reconsideration on the basis that the evidence submitted was insufficient to warrant modification of the prior decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective January 30, 1999 and that appellant failed to meet her burden of proof to establish that her work-related disability continued after that date.

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 employment.<sup>3</sup> After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.<sup>4</sup> In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.<sup>5</sup>

In this case, the Office accepted that appellant sustained a cervical strain with right-sided radiculopathy, C6 nerve root and herniated nucleus pulposus at C4-5, C5-6 and C6-7. The Board finds that at the time the Office terminated benefits, the weight of the medical evidence rested with Dr. Prawl's August 18, 1998 report in which he provided a rationalized medical opinion that appellant had no continuing disability from her accepted employment injury. Thus, the burden of proof shifted to appellant to establish that her disability subsequent to January 30, 1999 continued to be causally related to her employment injury.<sup>6</sup>

Subsequent to the termination of benefits, the Office, reviewed the reports by Dr. Prawl and found that they were of limited probative value and insufficient to warrant modification of the prior order. Dr. Prawl indicated in the February 16, 1999 report that the degenerative

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

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

<sup>4</sup> *Virginia Davis-Banks*, 44 ECAB 389 (1993).

<sup>5</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>6</sup> *See Talmadge Miller*, 47 ECAB 673 (1996).

changes occurring at the C4-5 level were still related to the 1991 injury. However, he provided no medical rationale to support his conclusion. Nor did he explain why this conclusion differed from that given on August 18, 1998, upon which termination of compensation was based. Dr. Prawl's contrary conclusion that appellant still had residuals of the work injury requires sound medical reasoning to be probative, especially given the fact that he had previously determined that the cervical pain that appellant continued to experience was caused by degenerative changes originally found to be unrelated to the work injury. Dr. Prawl did not explain how the 1991 injury caused or contributed to appellant's degenerative cervical condition or to any continuing residuals.

Therefore, appellant has failed to submit rationalized medical evidence to establish that she is entitled to continuing benefits on or after January 30, 1999.<sup>7</sup>

The decision of the Office of Workers' Compensation Programs dated June 29, 1999 is affirmed.

Dated, Washington, DC  
May 7, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>7</sup> On appeal, appellant submitted additional medical evidence. The Board cannot consider evidence on appeal that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); 20 C.F.R. § 501.2(c).