

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of OLLIE HOQUE and DEPARTMENT OF THE NAVY,  
REGIONAL MEDICAL CENTER, Long Beach, CA

*Docket No. 02-898; Submitted on the Record;  
Issued August 14, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation as of December 1, 2001.

The case was before the Board on a prior appeal. In a decision dated June 26, 2000, the Board determined that the Office had improperly reduced appellant's compensation based on her actual earnings in a part-time position.<sup>1</sup> The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

By letter dated October 12, 2001, the Office notified appellant that it proposed to terminate her compensation on the grounds that her employment-related condition had resolved. In a decision dated November 15, 2001, the Office terminated appellant's compensation for wage-loss and medical benefits effective December 1, 2001.

The Board finds that the Office met its burden of proof to terminate compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>2</sup>

The Office referred appellant, her medical records and a statement of accepted facts to Dr. Jack Akmakjian, an orthopedic surgeon. In a report dated August 23, 2001, Dr. Akmakjian provided a history, reviewed medical evidence and results on examination. He reported that physical examination revealed no objective findings to the lower back; he indicated that appellant had some problems related to nonemployment-related cerebrovascular accident, but not

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<sup>1</sup> Docket No. 98-1779.

<sup>2</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

to a back strain. He noted appellant's back strain had occurred 20 years earlier, and that she had receive minimal and intermittent care for her lower back since that time. Dr. Akmakjian concluded that appellant did not have disabling residuals of a 1977 employment injury.

In a letter to Dr. Akmakjian dated September 5, 2001, the Office noted that the statement of accepted facts did not specifically indicate that the accepted conditions were contusion to the left foot, lumbosacral sprain and a herniated nucleus pulposus. The Office requested a supplemental report on the issues presented. In a report dated October 5, 2001, Dr. Akmakjian stated that his opinions had not changed; he opined that there was no clinical objective evidence of a disc herniation or radiculopathy.

The Board finds that the reports of Dr. Akmakjian constitute probative medical evidence indicating that appellant's employment-related condition had resolved. He provided a reasoned medical opinion based on a complete background on the issues presented.

Prior to the termination decision appellant submitted additional medical evidence.<sup>3</sup> In a report dated October 31, 2001, Dr. Perry Haney, a physical medicine and rehabilitation specialist, provided a history and results on examination. He diagnosed probable acute phase of aggravation of lumbar IVD/internal disc disruption syndrome, probable disc protrusion creating left sciatic radiculopathy, probable chronic facet syndrome and S1 joint disorder, "by report dating back to an original injury while working as a nurse's aid in 1977." In a report dated November 7, 2001, Dr. Haney reported that a computerized tomography (CT) scan showed disc narrowing, a broad based disc bulge, and degenerative changes at L4-5, creating spinal stenosis with similar findings at L5-S1. He opined that the findings "with regard to the patient's CT scan and her physical examination, by history, are directly related to the original injury in 1977." Dr. Haney does not, however, provide any medical rationale or explanation in support of his opinion on causal relationship. He did not provide a complete history discussing medical treatment since the 1977 injury, or otherwise explain why he believed appellant continued to have an employment-related condition.

The Board accordingly finds that the weight of the evidence rests with Dr. Akmakjian in this case. It is the Office's burden of proof to terminate compensation, and the Board finds that the Office met its burden in this case.

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<sup>3</sup> There is also evidence submitted after the termination decision; the Board does not have jurisdiction to review such evidence on this appeal. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated November 15, 2001 is affirmed.

Dated, Washington, DC  
August 14, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member