

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGIE McCLELLAND and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Waco, TX

*Docket No. 01-1407; Submitted on the Record;
Issued December 20, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's disability compensation benefits effective March 17, 2000.

On June 17, 1992 appellant, then a 44-year-old employee healthcare nurse coordinator, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on May 15, 1992 she injured her left arm, shoulder and upper back when she reached to catch a two-hole punch falling off her desk.

In a June 17, 1992 report, Dr. Paul E. McMullen, a chiropractor, based on x-rays, diagnosed subluxation of both the cervical and upper thoracic spine, cervical alordosis, mild cervico thoracic and degenerative joint disease.

Appellant's medical history included injuries to her back, neck and shoulder in 1988 after lifting a heavy tool and a car accident in 1990.

In a July 9, 1992 decision, the Office accepted appellant's claim for subluxation of the cervical and thoracic spine.

Appellant returned to light-duty work, four hours per day and missed days intermittently due to exacerbations of pain.

In an August 16, 1993 report, Dr. Brett Bolte, a Board-certified physiatrist, diagnosed appellant with chronic low back pain with evidence of neurological deficit, myofascial pain syndrome in the cervical region, temporomandibular joint (TMJ) syndrome, obesity and deconditioning.

In a July 31, 1995 report, Dr. Micah B. Mordecai, a chiropractor, diagnosed appellant with a Grade 2 dislocation, subluxation of thoracic and cervical region and opined she would be on permanent light duty.

In a July 29, 1998 decision, the employing establishment reassigned appellant to the position of telephone healthcare nurse, effective May 12, 1998 and she worked eight hours per day.

In a July 23, 1999 decision, the Office found appellant's new position was consistent with her actual wage-earning capacity.

On August 8, 1999 appellant filed a notice of recurrence of total disability.

In a September 21, 1999 decision, the Office accepted appellant's recurrence claim. Appellant returned to work four hours per day.

In a December 27, 1999 letter, the Office referred appellant for a second opinion examination.

In a January 26, 2000 report, Dr. William Blair, Board-certified in orthopedic surgery, diagnosed nonspecific scapula thoracic pain -- possible postural, nonspecific cervical and thoracic pain, and nonspecific low back pain. He found her spine at the lumbar, thoracic and cervical regions to have tender points but no trigger points and to have normal range of motions. Her range of motion and strength of her shoulders were normal as well.

He concluded:

“[Following] a review of the current and past medical data, a consideration of the examinees' physical findings and consideration of the performances noted during the functional capacity testing, there does not appear to be any medical reason which would preclude the examinee from traveling to work, being at work and performing appropriate tasks and duties.... Based on clinical findings that are essentially within normal limits, I see no reason to impart any work restrictions and/or limitations.

“[Appellant] did demonstrate lift capacities within the DOT category of light. However, it is obvious from her testing sequences and validity profiles that she was not performing maximally.

“Based on the structural tests, which are essentially within normal limits and are actually better than normal for her chronological age and normal physical exam[ination], I see no medical reason to impart any restrictions and limitations. I see no reason why she cannot work eight hours per day, five days per week. I see no reason why she cannot participate in her previous duties as an RN [register nurse] if she wished to do so.”

The clinical diagnosis of the multiple thoracic and cervical subluxations as opposed (sic) by her chiropractor are erroneous. Cervical magnetic resonance imaging (MRI) scan was noted to be within normal limits and her thoracic MRI did not demonstrate any evidence of “subluxation.”

In a February 16, 2000 letter, the Office proposed terminating appellant's compensation based on Dr. Blair's report.

In a March 7, 2000 report, Dr. John Riggs, a chiropractor, wrote that appellant continued to have subluxations as demonstrated by x-rays on January 12, 2000. Dr. Riggs opined that the possible reason Dr. Blair did not see them was because he interpreted an MRI that was taken while appellant was lying down and as such did not reveal the spine's response to weight. He added that appellant's history of injuries in this area increased the likelihood of future injuries and contributes to the chronicity due to scar tissue formation and pathological changes in the tissue. Further contributing to her chronic pain is a severely degenerated lumbar disc at L5-S1 and her lack of rehabilitation; noting she had never attended a work hardening program or rehabilitation program. Dr. Blair indicated that appellant's May 15, 1992 injury had healed pathologically, but that she had chronic conditions related to the injury that may last for years even without the stressors of work. He opined that the chronic myofascial pain and inflammatory responses are likely to never resolve without a pain management program.

Dr. Riggs indicated that he did not know if appellant could return to her date-of-injury job because he had never seen a job description. And finally, he indicated that, although appellant's accepted conditions likely healed, she still had pain from them.

In a March 17, 2000 decision, the Office terminated appellant's compensation.

Appellant requested a review of the written record.

In a December 7, 2000 decision, the hearing representative affirmed the termination of appellant's disability compensation while finding a conflict on the issue of continuing medical benefits and remanded the case for a referee examination.

The Board finds that the Office properly terminated appellant's disability compensation.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.²

The Office met its burden of proof to terminate appellant's disability compensation through the report of Dr. Blair, whose report was based on an accurate medical history, a physical examination of appellant and objective tests results. He found her spine at the lumbar, thoracic and cervical regions to have tender points but no trigger points and to have normal range of motions. Appellant's range of motion and strength of the shoulders were normal as well. He could find no objective medical reason why appellant could not return to her date-of-injury job.

Dr. Riggs, appellant's treating physician, also found appellant's May 15, 1992 injury had resolved. Though he indicated that she continued to have subjective pain he does not say she could not work. Furthermore, according to Dr. Riggs, the source of the pain is myofascial pain

¹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

² *Id.*

syndrome; a condition that was not accepted. Finally, the probative value of Dr. Riggs' opinion on disability from work is diminished by the fact he had never seen appellant's job description.

The Office properly relied on Dr. Blair in terminating appellant's compensation.

The December 7 and March 17, 2000 decisions by the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 20, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member