

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN VEGA-MARTINEZ and DEPARTMENT OF VETERANS AFFAIRS,  
JAMES A. HALEY VETERANS ADMINISTRATION HOSPITAL, Tampa, FL

*Docket No. 01-7; Submitted on the Record;  
Issued January 17, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective March 21, 2000 on the grounds that appellant no longer had any residuals of her June 6, 1992 employment injury.

The Board has duly reviewed the case record and finds that the Office properly terminated appellant's compensation benefits.

This is the second time this case has been before the Board on appeal. On the previous appeal, the Board, in a decision dated October 17, 1997, reversed the Office's decision to terminate appellant's compensation on the grounds that she no longer had any disability causally related to her June 6, 1992 employment injury. The facts of the case are set out in that decision.<sup>1</sup>

By letter dated March 12, 1999, the Office referred appellant, along with a statement of accepted facts, a list of specific questions and medical records to Dr. Howard W. Sharf, a Board-certified orthopedic surgeon, for a second opinion examination.

Dr. Sharf submitted a March 26, 1999 report finding that appellant's employment-related cervical and lumbosacral strains had resolved.

In a notice of proposed termination of compensation dated February 16, 2000, the Office advised appellant that it proposed to terminate her compensation based on Dr. Sharf's opinion. The Office also advised appellant that if she disagreed with the proposed action, she could submit additional medical evidence supportive of her continued disability within 30 days.

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<sup>1</sup> Docket No. 95-2561 (issued October 8, 1997).

By decision dated March 20, 2000, the Office terminated appellant's compensation effective March 21, 2000 on the grounds that appellant no longer had any residuals of her June 6, 1992 employment injury.<sup>2</sup>

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 her 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>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> If the Office, however, meets its burden of proof and properly terminates compensation, the burden for reinstating compensation benefits properly shifts to appellant.<sup>5</sup>

In terminating appellant's compensation benefits, the Office relied on the opinion of Dr. Sharf. In his March 26, 1999 report, Dr. Sharf provided a history of appellant's back injuries, including her June 6, 1992 employment injury and medical treatment, and a review of medical records. Further, Dr. Sharf noted his findings on physical examination and on review of objective medical records. In response to the Office's questions, Dr. Sharf opined that appellant did not appear to have any objective disability of the cervical or lumbar spine attributable to the June 6, 1992 employment injury. Dr. Sharf diagnosed degenerative disc disease in the lumbar spine and chronic pain. He opined that appellant's subjective complaints appeared to outweigh the objective findings. He further opined that appellant had no current disabling residuals causally related to the June 6, 1992 employment injury and that appellant's employment-related lumbar and cervical strains had resolved. Dr. Sharf stated that appellant was unable to perform the required duties of her position, and noted appellant's work restrictions and further medical treatment.

The Board has carefully reviewed Dr. Sharf's opinion and finds that it is sufficient to carry the weight of the medical evidence on the relevant issue of the present case inasmuch as it contains medical rationale in support of his conclusion that appellant has no residuals causally related to her June 6, 1992 employment injury. Because the Office provided an adequate basis for its determination that appellant ceased to have residuals of her June 6, 1992 employment injury effective March 21, 2000, the Office met its burden of proof to terminate appellant's compensation.

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<sup>2</sup> The Office further found, in its March 20, 2000 decision, that appellant continued to be entitled to medical compensation for her accepted depressive disorder. Subsequent to the Office's decision, appellant, through her representative, requested an oral hearing regarding a February 9, 1998 decision by letter dated February 29, 2000. On June 19, 2000 the Office advised appellant's representative that no such decision had been issued. Appellant's representative then requested a hearing on the last decision in this case, which was March 20, 2000. The Board, however, notes that appellant appealed the Office's decision to the Board on August 1, 2000 before any hearing was held and the decision was issued by an Office hearing representative.

<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

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

<sup>5</sup> *See Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

The medical evidence submitted by appellant fails to provide a rationalized medical opinion establishing that her current back condition is causally related to her June 6, 1992 employment injury. The July 15, 1999 progress note of Dr. Edward N. Feldman, an orthopedic surgeon and appellant's treating physician, indicated appellant's complaints and his findings on physical examination of appellant's lumbar and cervical spines. Dr. Feldman diagnosed chronic cervical sprain, chronic thoracic sprain, chronic lumbosacral sprain, greater occipital neuralgia, bulging lumbar disc at L4-5 and L5-S1, depression secondary to chronic pain and chronic pain syndrome. He opined that the objective findings and subjective complaints were causally related to the June 6, 1992 employment injury and were permanent. In his August 17 and September 28, 1999 progress notes, Dr. Feldman indicated that there were no changes from the previous examination. He reiterated his previous diagnoses and opinion regarding the causal relation between appellant's conditions and her June 6, 1992 employment injury. Dr. Feldman's progress notes are insufficient to satisfy appellant's burden because they failed to provide any medical rationale explaining how or why appellant's current back conditions were caused by her June 6, 1992 employment injury.

Dr. Feldman's January 13, 2000 progress note revealing a diagnosis of central herniation of the disc L4-5 and bulging disc at L5-S1 is insufficient to establish appellant's burden because he did not address a causal relationship between the diagnosed conditions and appellant's June 6, 1992 employment injury.

Magnetic resonance imaging (MRI) testing of appellant's cervical spine by Dr. Francisco Menendez, a Board-certified radiologist, on October 14, 1999 revealed right lateral herniation of the disc at C4-5. MRI testing of appellant's lumbar spine by Dr. Menendez on the same date revealed central bulging of the disc at L4-5 and desiccation of the discs at L3-4 and L4-5. Dr. Menendez's reports are insufficient to satisfy appellant's burden because they failed to address a causal relationship between the diagnosed conditions and appellant's June 6, 1992 employment injury.

The March 20, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
January 17, 2002

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member