

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON A. MARSHALL and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Richmond, VA

*Docket No. 02-308; Submitted on the Record;
Issued June 21, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective July 16, 2000.

The Office accepted appellant's claim for a neck and back strain and a herniated disc at C4-5 and C5-6 with nerve root impingement resulting from her March 6, 1986 employment injury. Appellant has not worked since March 6, 1986.

In an attempt to determine whether appellant's injury had resolved, medical reports were requested by the Office.

Appellant's treating physician, Dr. Robert F. Wayner, a Board-certified neurological surgeon, submitted several progress notes, the more recent ones dated from January 22 through August 28, 1997. In a progress note dated March 12, 1997, Dr. Wayner indicated that appellant's condition had worsened and that the magnetic resonance imaging (MRI) scan showed an increase in the L4-5 disc on the right. He diagnosed herniated nucleus pulposus on the right and stated that appellant was totally disabled. In his progress note dated August 28, 1997, he stated that he treated appellant for a herniated nucleus pulposus at L4-5 and that appellant needed a laminectomy at L4-5 and possibly a right L5-S1 discectomy. An MRI scan dated February 26, 1997 showed a right disc protrusion at L4-5.

In a report dated January 17, 2000, a referral physician, Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed MRI scans, electrodiagnostic studies, an electromyogram and computerized axial tomography (CAT) scans. He diagnosed cervical musculoligamentous sprain/strain resulting from the March 6, 1986 employment injury, which had resolved. Dr. Dorsey also diagnosed moderate osteoarthritis at L3-S1 with multi-level disc space narrowing, right carpal tunnel syndrome, left lower extremity meralgia paresthetica and obesity. He stated that appellant's current condition reflected the natural degenerative process and preexisting cervical spondylitic ridging in her spine. Dr. Dorsey stated that appellant's right

carpal tunnel syndrome and meralgia paresthetica were not related to the March 6, 1986 employment injury. He opined that appellant had long-term obesity, which resulted in degeneration of her lumbar spine resulting in a disc protrusion and this condition progressed independently of her March 6, 1986 injury. Dr. Dorsey stated that regarding appellant's cervical spine, she had a preexisting cervical spondylitic ridge and that could not be caused by acute trauma. He stated that appellant had no medical residuals from the March 6, 1986 employment injury and no restriction of motion due to her back.

By decision dated July 10, 2000, the Office terminated appellant's compensation benefits effective July 16, 2000, stating that the evidence of record established that she recovered from the accepted industrial neck and back conditions.

By letter dated July 6, 2001 and a follow-up telephone conversation with the Office on July 19, 2001, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of a medical report from Dr. Richard I. Woods, a Board-certified orthopedic surgeon, dated November 10 and 11, 1987 the second page of a report from Dr. Woods dated September 17, 1987, a letter from Nanette Mitchell with Memorial Prompt Care & Family Medicine dated July 5, 2001, an MRI scan dated May 31, 2001 and progress notes dated May 9 and June 13, 2001. In his report dated November 10 and 11, 1987, Dr. Woods diagnosed degenerative disc disease with osteophytic ridging at C4-5 and C5-6 with radiculitis and mild lumbar spondylosis. He stated that appellant's bulging disc completely resulted from the March 6, 1986 employment injury and appellant continued to suffer from the residuals of that injury based on her complaints of radicular pain in the upper extremities and an abnormal EMG and cervical CAT scan. On the second page of his September 17, 1987 report, Dr. Woods stated that he agreed with appellant's neurosurgeon that cervical fusion would help her radiculitis and her degenerative disc disease.

The MRI scan dated May 31, 2001 stated that appellant had disc degeneration at C4-5 and C5-6 with disc protrusion/osteophyte ridges, central stenosis and mild cord compression. The progress notes dated May 9 and June 13, 2001 stated that appellant's problems in her neck, back and shoulder worsened since 1986 and described some of her physical symptoms.

In the July 5, 2001 report, Ms. Mitchell stated that appellant had been her patient for many years and that recently, appellant had bouts of depression from neck and lower back pain. She stated that appellant was very stressed and anxious about her social security/disability benefits being discontinued, especially with her inability to work with pain limitations. Ms. Mitchell stated that she was concerned about appellant's overall health status and the affect the stresses have had on her hypertension and disabilities.

By decision dated August 13, 2001, the Office denied appellant's request for modification.

The Board finds that the Office properly terminated appellant's compensation benefits effective July 16, 2000.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability

causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

In this case, the medical evidence appellant submitted to show that she continued to suffer from residuals of the March 6, 1986 employment injury lacked medical rationale or did not address causation and, therefore, was of diminished probative value.³ In his progress notes dated January 22 through August 29, 1997, in which he diagnosed a herniated disc and opined that appellant's condition had worsened and she could not work, her treating physician, Dr. Wayner, did not provide any medical rationale for his conclusion. The February 26, 1997 MRI scan does not provide any opinion on causation and is not relevant. Similarly, the May 31, 2001 MRI scan and the progress notes dated May 9 and June 13, 2001, which do not provide any opinion on the cause of appellant's condition are not relevant. Dr. Woods' November 10 and 11, 1987 report in which he opined that appellant's bulging disc completely resulted from the March 6, 1986 employment injury and she continued to suffer residuals from that injury and the second page of his September 17, 1987 report in which he recommended cervical fusion, are not relevant because they are dated more than 10 years prior to the termination. Moreover, Dr. Woods did not provide any medical rationale for his opinion that appellant's bulging disc resulted from the March 6, 1986 employment injury and, therefore, his opinion is of diminished probative value.⁴

Ms. Mitchell's July 5, 2001 report in which she stated that appellant suffered from bouts of depression from her neck and low back pain is not probative because Ms. Mitchell did not list her professional qualifications, *i.e.*, whether or not she is a doctor and, therefore, does not qualify as a physician within the meaning of the Federal Employees' Compensation Act.⁵

In his January 17, 2000 report, the referral physician, Dr. Dorsey considered appellant's history of injury, performed a physical examination, reviewed MRI scans, electrodiagnostic studies and, EMG and CAT scans. He opined that appellant's cervical musculoligamentous sprain/strain from the March 6, 1986 employment injury had resolved. Dr. Dorsey stated that appellant's current condition of moderate osteoarthritis at L3-S1 reflected the natural degenerative process and preexisting cervical spondylitic ridging in her spine. He stated that a cervical spondylitic ridge could not be caused by an acute trauma. Further, Dr. Dorsey opined that appellant's long-term obesity resulted in degeneration of her lumbar spine resulting in a disc protrusion. He opined that appellant's other conditions of right carpal tunnel syndrome, left lower extremity meralgia paresthetica and obesity were not related to the March 6, 1986

¹ *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

² *Larry Warner*, 43 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

³ *See Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999); *Annie L. Billingsley*, 50 ECAB 210, 213n. 20 (1998).

⁴ *See William C. Thomas*, 45 ECAB 591, 594 (1994).

⁵ *See* 5 U.S.C. § 8101(2); *Sheila G. Peckenschneider*, 49 ECAB 430, 432 (1998); *Arnold A. Alley*, 44 ECAB 920-21 (1993).

employment injury. Dr. Dorsey's opinion is complete and well rationalized. His opinion that appellant recovered from her March 6, 1986 employment injury justifies the Office's termination of benefits.

The August 13, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 21, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member