

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREA D. PATTERSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Lyons, NJ

*Docket No. 02-1520; Submitted on the Record;
Issued November 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has any continuing disability as a result of a May 3, 2000 employment injury.

The Office of Workers' Compensation Programs accepted that appellant, a nursing assistant born January 23, 1963, slipped and fell while in the performance of duty on May 3, 2000 and sustained a contusion of the left hip. Appellant received compensation and medical treatment as a result of the injury.

Drs. Dean Carlson and Paul Manner, Board-certified orthopedic surgeons, treated appellant for her hip injury resulting from the May 3, 2000 work injury. In a treatment note dated June 12, 2000, Dr. Carlson reported that appellant's left hip history dated back to age 13 when appellant had a dislocation, which required 3 pins in her hip.¹ He noted that since the earlier injury appellant experienced pain, shortening in external rotation and difficulty putting on shoes and socks. Dr. Carlson noted that appellant's preexisting hip condition was aggravated by the slip and fall at work on May 3, 2000, when she contused the hip and made the preexisting pain much worse such that she could barely walk. He noted that x-ray revealed that appellant had end-stage osteoarthritis associated with an old slipped capital femoral epiphysis. Dr. Carlson opined that appellant's condition required a total hip arthroplasty. In a CA-20 report dated June 22, 2000, Dr. Carlson noted that appellant was disabled from work from June 12 through August 12, 2000. In a treatment note dated August 29, 2000, Dr. Manner reiterated the findings noted in Dr. Carlson's report and opined that the surgery in this case was a medical necessity.

The Office referred appellant to Dr. David Rubinfeld, a Board-certified orthopedic surgeon, for a second opinion, who reviewed appellant's medical record and examined her on September 22, 2000. In a report dated September 25, 2000, Dr. Rubinfeld diagnosed severe degenerative arthritis of the left hip with a good prognosis. He concluded that appellant's

¹ The record reflects that, at age 13, appellant had surgery for a slipped capital femoral epiphysis of her left hip.

preexisting end-stage osteoarthritis of the left hip was not aggravated by the May 3, 2000 accident. Dr. Rubinfeld noted his belief that appellant should undergo a total hip replacement, however, that such surgery was unrelated to the May 3, 2000 accident, opining that her condition would have required surgery at the same time without the fall of May 3, 2000. He concluded that appellant's disability was not caused by the injury in question, however, dated back to the injury and surgery, which occurred years ago. Dr. Rubinfeld indicated that appellant was limited to sedentary work.

The Office determined that a conflict existed between Dr. Carlson and the second opinion specialist, Dr. Rubinfeld regarding appellant's diagnosis, her current condition and need for surgery causally related to the accepted work injury. The Office thereafter referred appellant for an independent medical examination on January 15, 2001.

In a January 15, 2001 report, Dr. Robert Dennis, a Board-certified orthopedic surgeon, reviewed the statement of accepted facts, appellant's history of injury, medical records and diagnostic findings and conducted a thorough physical examination. Dr. Dennis opined that appellant suffered a soft tissue injury during the May 3, 2000 fall, however, she had fully recovered and could return to work. He related that, although in October 2000, appellant continued to have left hip pain and needed a crutch to ambulate, she was able to walk across the room without use of her crutch during his examination. Dr. Dennis diagnosed appellant with ankylosed hip with a severe deformity and leg length discrepancy related to her adolescence. He found that appellant's muscle appearance, measurements, range of motion, compensation for her deformity and the way she walked were unchanged from what they would have been expected to be prior to the injury. Dr. Dennis noted that both Drs. Carlson and Rubinfeld indicated that appellant required a total hip replacement and he also agreed that the need for the surgery was not urgent. Dr. Dennis reported that appellant's body had accommodated quite well to the deformity over the many years that she had been working. He indicated that the determination as to when such surgery should be carried out was up to appellant as it was an elective procedure and he saw no orthopedic urgency to proceed. Dr. Dennis noted that there was no evidence of osteoporosis indicating that appellant had been weight bearing on the left leg continuously since childhood and during the examination he saw no change in that fact. He stated that appellant could return to full normal activities and work full activities as a nurse's assistant without surgery; that the fall at work did not produce the need for surgery and that appellant would have required a total hip replacement even had the fall at work never occurred. Dr. Dennis concluded that appellant had reached maximum benefit from treatment regarding her work condition and had returned to preinjury status.

The Office issued a notice of proposed termination of compensation on March 15, 2001. Appellant was given 30 days to submit additional relevant evidence if she disagreed with the proposed action; however, no further evidence was received.

By decision dated April 19, 2001, the Office terminated appellant's compensation benefits based on the opinion of Dr. Dennis who found that appellant had no disabling residuals of her May 3, 2000 work injury.

In a letter dated April 23, 2001, appellant through counsel requested an oral hearing. The Office later received treatment reports from Drs. Carlson and Manner from June 12, 2000

through March 24, 2001, an admission report which indicated that appellant underwent a left total hip arthroplasty on May 25, 2001 and follow-up reports from June 21 through August 30, 2001.

In a March 15, 2001 report, Dr. Manner indicated that a total hip replacement was the only feasible treatment for appellant's pain. In a follow-up report dated August 16, 2001, he indicated that appellant was doing well three months after her left total hip arthroplasty and that appellant was cleared for work on September 4, 2001.

Subsequently, the Office received a September 14, 2001 report from Dr. Carlson who discussed appellant's work history and preexisting injury and restated that, despite her moderate impairment, appellant was relatively pain free and worked as a nursing assistant until her slip and fall on May 3, 2000. He indicated that, following the work injury, appellant had chronic left hip pain and an inability to function without the use of crutches. Dr. Carlson noted that the surgery performed gave appellant the only possibility of regaining left lower extremity function and that following the arthroplasty, she still required the use of crutches and had a serious lurch to her gait due to years of disuse atrophy of the left hip gluteal muscles. He stated that with time and therapy appellant could hopefully regain strength in the muscles and stop using crutches. Dr. Carlson concluded that the slip and fall injury of May 3, 2000, caused a very serious aggravation to a preexisting functional osteoarthritis of her left hip.

In the addendum report dated October 31, 2001, Dr. Carlson stated that, despite her preexisting injury, appellant was able to work full time as a nursing assistant until the May 3, 2000 injury, which caused a severe aggravation of her functional hip osteoarthritis and left her totally incapacitated. He noted that appellant's preexisting injury was likely aggravated by a loosening of a painless fibrous ankylosis of her left hip joint, which resulted in a painful limp with any weight bearing and an inability to function without crutches. Dr. Carlson concluded that appellant was able to function until she had the on-the-job slip and fall and that, thereafter, she was totally incapacitated.

The hearing was held on October 31, 2001. Appellant testified that she had been unable to work since her May 3, 2000 work injury. Appellant also testified that she had surgery in May 2001, which had helped, however, she still needed a cane in order to walk; that she had significant limitations and required medical care.

By decision dated January 24, 2002, the Office hearing representative affirmed the prior decision. The Office found that the weight of the medical evidence rested with the opinion of Dr. Dennis, the impartial medical specialist who the Office found provided a well-reasoned detailed medical report supporting no residual disability related to the employment injury.

The Board finds that the Office properly terminated appellant's compensation benefits effective April 19, 2001.

Under the Federal Employees' Compensation Act,² once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to employment.⁴ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.⁵ In order to prevail, he 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.⁶

The Office found a conflict of medical opinion between appellant's treating physicians, Drs. Carlson and Manner who stated that appellant's disabling hip condition and need for surgery was related to the accepted employment injury, particularly since appellant had a preexisting hip condition. The second opinion physician, Dr. Rubinfeld, determined that appellant had no disabling residuals of the May 3, 2000 work injury.

In terminating wage-loss benefits, the Office relied on the report of Dr. Dennis, the impartial medical examiner, who opined that appellant's current condition was not causally related to the May 3, 2000 work injury. In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an independent medical examiner for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁷

On appeal, appellant's counsel argued that Drs. Carlson and Manner provided detailed narrative reports establishing that appellant's left hip condition and subsequent left hip surgery performed May 25, 2001, was related to her injury of May 3, 2000. Appellant's counsel asserted that Dr. Dennis failed to compare appellant's physical limitations and objective findings following the work injury to those prior to the incident and failed to adequately discuss the issue of aggravation and when such aggravation ceased.

The Board, however, finds that Dr. Dennis' opinion is complete and well rationalized in establishing that appellant's current condition and related disability are not causally related to her May 3, 2000 employment injury and that the reports of appellant's physicians are insufficient to overcome its weight. Dr. Dennis reviewed appellant's medical history and records at length, giving due consideration to her preexisting hip condition, which he noted developed during her adolescence and further reviewed diagnostic tests and performed a physical examination. Dr. Dennis concluded that on May 3, 2000 appellant suffered a soft tissue injury during a fall, from which she had fully recovered. He found that she could walk without assistance and could

² 5 U.S.C. §§ 8101-8193.

³ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

⁴ *Id.*

⁵ *Virginia Davis-Banks*, 44 ECAB 389 (1993).

⁶ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁷ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

return to her nurse's assistant position without surgery. He indicated that the fall at work did not produce the need for surgery and that appellant would have required a total hip replacement even had the fall at work not occurred. Dr. Dennis did discuss appellant's limitations caused by her preexisting hip condition prior to the work injury and how such limitations were affected after May 3, 2000. He discussed that appellant had returned to preinjury status since certain physical functions and characteristics were unchanged from what they would have been expected to be prior to the injury. Dr. Dennis found that appellant's muscle appearance and measurements were unchanged, that appellant's leg length discrepancy and the way she compensated for her deformity were unchanged, the motion of her hip was unchanged and the way that she walked was also unchanged. He found that appellant's body had accommodated quite well to the deformity she sustained over the many years that she had been working and that she did not need crutches to walk at that time. Dr. Dennis did not specifically discuss aggravation of the preexisting condition in his report, he discussed with sufficient medical reasoning that appellant did not have any limitations or disabling conditions causally related to the May 3, 2000 hip contusion injury, accepted by the Office. The opinion of Dr. Dennis, the impartial medical examiner constitutes the weight of the medical evidence.

The January 24, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 4, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member