

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAPHNE E. ALEXANDER and DEPARTMENT OF THE ARMY,
HEALTH SERVICES COMMAND, Fort Benning, GA

*Docket No. 03-806; Submitted on the Record;
Issued May 12, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective January 14, 2003 on the grounds that she had no disability due to her January 10, 2001 employment injury.

On January 10, 2001 appellant, then a 38-year-old sustained a sprain/strain and intervertebral disc disorder of her neck due to moving a filing cabinet and bookcase at work. Appellant stopped work on January 11, 2001.¹ The record contains reports indicating that diagnostic testing from February 2001 showed appellant had herniated cervical discs at C4-5 and C5-6 with radiculopathy. On March 28, 2001 appellant underwent an anterior cervical discectomy with spinal canal decompression and interbody fusion at C4-5 and C5-6 with left anterior iliac crest and anterior spinal instrumentation. The procedure was authorized by the Office and was performed by Dr. Thomas R. Walsh, an attending Board-certified orthopedic surgeon.

By letter dated October 18, 2001, the Office advised appellant of the proposed termination of her compensation. The Office indicated that the opinion of Dr. John D. Dorchak, an attending Board-certified orthopedic surgeon, showed appellant no longer had residuals of her January 10, 2001 employment injury.² By decision dated January 14, 2003, the Office

¹ She resigned from the employing establishment effective July 2, 2001.

² The record contains a December 4, 2001 decision in which the Office terminated appellant's compensation effective that date. However, the Office vacated this decision shortly thereafter because it had not considered evidence submitted by appellant after she was advised of the proposed termination of her compensation. The record also contains a December 31, 2002 decision in which the Office denied appellant's request for an oral hearing. The Office found that the case was not in posture for an oral hearing because a final decision on appellant's claim had not been issued. Appellant has not requested an appeal of this decision and the matter is not currently before the Board.

terminated appellant's compensation effective January 14, 2003 on the grounds that she had no disability due to her January 10, 2001 employment injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective January 14, 2003 on the grounds that she had no disability due to her January 10, 2001 employment injury.

Under the Federal Employees' Compensation Act,³ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Dorchak, an attending Board-certified orthopedic surgeon. The report of Dr. Dorchak establishes that appellant had no disability due to her January 10, 2001 employment injury after January 14, 2003.

In a report dated June 25, 2001, Dr. Dorchak stated that appellant was complaining of neck pain, but could range her neck and had full neck mobility. He noted, however, that she would not turn her neck on her own. Dr. Dorchak indicated that the wound in appellant's left hip had healed nicely and that, although appellant complained of left hip pain, there was "no objective evidence to support her continued complaints of pain in this region either." He noted that x-rays of the cervical spine showed a solid two-level anterior cervical fusion with no evidence of loosening or failure of the hardware. Dr. Dorchak stated that appellant could return to work on July 2, 2001 without restrictions. In May 30, 2001 reports, Dr. Dorchak further noted that the cervical and iliac sites of appellant's surgery were well healed. He stated that the motor, sensory and reflex examinations of appellant's upper extremities were normal.

The Board has carefully reviewed the opinion of Dr. Dorchak and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Dorchak's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.⁷ Dr. Dorchak provided medical rationale for his opinion by explaining that appellant exhibited no objective evidence of the accepted employment injuries. He indicated that the findings on examination and diagnostic testing showed that the sites of appellant's

³ 5 U.S.C. §§ 8101-8193.

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

surgery were well healed. Dr. Dorchak also suggested that some of appellant's neck complaints were a result of her voluntary lack of cooperation.⁸

Appellant submitted evidence which she felt showed she had employment-related disability after January 14, 2003, but this evidence is of limited probative value on this issue. In an undated report, Dr. Daniel H. Serrato, an attending physician specializing in anesthesiology, indicated that appellant's condition was "status post two-level cervical discectomy with fusion, residual pain, degenerative disc disease of cervical and lumbar spine, and spondylosis" and recommended various work restrictions. Given that the report is undated, the period of appellant's medical condition referenced by the report remains unclear. Moreover, the Office has not accepted appellant's claim for degenerative disc disease. Dr. Serrato did not clearly indicate that appellant's restrictions were due to her accepted conditions, sprain/strain and intervertebral disc disorder of her neck, rather than being solely due to some nonwork-related cause. In several notes dated in early 2001, attending physicians indicated that appellant's neck remained symptomatic, but these notes contained no opinion on the degree of her disability.⁹

⁸ The record contains a July 13, 2001 report in which a nurse described inconsistencies in the examination of appellant by Dr. Dorchak, whose assessment of appellant's condition is supported by the reports of Dr. Walsh, the attending Board-certified orthopedic surgeon who performed her surgery. In a report dated April 24, 2001, Dr. Walsh indicated that diagnostic testing revealed a stable bone graft and anterior plate instrumentation at C4-5 and C5-6 with no complicating features. He noted that appellant's left iliac site was completely healed without fractures and indicated that he probably would allow appellant to return to work in five weeks. In a report dated May 15, 2001, Dr. Walsh noted that appellant continued to complain of symptoms, but that he could not find any source for her complaints. He indicated that he would probably release appellant for work in one week.

⁹ The record also contains a January 26, 2002 report of an emergency room visit in which Dr. Amador J. Ramon, an attending physician specializing in emergency medicine, indicated that appellant had low back pain. However, this report contains no clear diagnosis or opinion on disability.

The January 14, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member