

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LOUISE A. LASSITER and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Lyons, NJ

*Docket No. 03-1684; Submitted on the Record;  
Issued September 24, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits for the accepted cervical and lumbosacral sprains she sustained on October 15, 1991.

On October 15, 1991 appellant, then a 61-year-old psychiatric nursing assistant, sustained an injury at work when she slipped and fell. The Office accepted her claim for cervical and lumbosacral sprain and "multiple trauma." Appellant received compensation for temporary total disability on the periodic compensation rolls effective September 20, 1992.

Dr. Allen S. Glushakow, a Board-certified orthopedic surgeon, first saw appellant on October 18, 1991 and in the years to follow he treated her conservatively with physical therapy and medication. He noted that appellant injured her neck and back in a motor vehicle accident on January 2, 1992. She also injured her left shoulder. Appellant was doing well until June 1995, when she fell down some stairs, causing her to have severe back pain. She was treated conservatively for this and released. On August 14, 1996 Dr. Glushakow offered a final diagnosis of lumbosacral sprain with radiculitis. He noted: "In my opinion [appellant] definitely has a preexisting back problem."

On September 7, 2000 Dr. Glushakow reviewed his care of appellant since August 8, 1994. Examinations in March, May and June 2000 were reported to be similar, with complaints of back and right knee pain. Lumbosacral tenderness plus spasm was present, flexion was to 75 degrees and appellant had patella femoral tenderness. Appellant was fitted with a back brace for support and when she returned in July 2000 she was sore in the back but had full range of motion. Dr. Glushakow concluded as follows:

"In my opinion [appellant] has a spinal stenosis and a degenerative back condition which was aggravated by the accident of October 15, 1991. She was also involved in a motor vehicle accident on January 2, 1992 and these all aggravate her condition. The combination of all these problems, in my opinion, would make

her a poor candidate to return to work. [Appellant] will need a medical clearance for light-duty employment. This may be feasible if she is cleared medically for her heart and hypertensive condition.”

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. David Rubinfeld, a Board-certified orthopedic surgeon, for a second-opinion evaluation. On February 5, 2002 he reported that he examined her on January 31, 2002. Dr. Rubinfeld related appellant’s history, interim injuries, current complaints and findings on physical examination, which included the following:

“Examination of the cervical spine revealed the following range of motion: [F]lexion 45 degrees (normal is 45), extension of 45 degrees (normal is 45), right lateral bending 45 degrees (normal is 45), left lateral bending 45 degrees (normal is 45), right lateral rotation 80 degrees (normal is 80) and left lateral rotation 80 degrees (normal is 80). Compression and distraction tests were negative. Deep tendon reflexes were equal bilaterally in the biceps, triceps and brachioradialis. There was no tenderness on palpation and no spasm was noted.

“Examination of the thoracolumbar spine revealed a range of motion as follows: [F]lexion 90 degrees (normal is 90), extension 30 degrees (normal is 30), right lateral bending 30 degrees (normal is 30), left lateral bending 30 degrees (normal is 30), right rotation 30 degrees (normal is 30) and left rotation 30 degrees (normal is 30). Deep tendon reflexes were equal bilaterally at the knees and ankles. Straight leg raising was to 85 degrees bilaterally in the supine and sitting position. There was no tenderness on palpation and no spasm was noted.”

After reviewing x-rays, test results and medical records, Dr. Rubinfeld responded to the question posed by the Office as follows:

“1. No orthopedic condition was found on examination. [Appellant] is not suffering from residuals of her work injury.

“2. The intervening injuries have not had an impact on [appellant’s] overall work[-]related condition or her overall medical condition.

“3. There is no orthopedic restriction to [appellant] performing her date[-]of[-] injury position as a psychiatric nursing assistant. At a height of 5’5” and a weight of 204 pounds and problems with diabetes and hypertension, [her] other nonorthopedic problems may be a source of disability. If there was an aggravation of her work injuries, it has stopped.

“4. A work[-]related disability is not present.

“5. No additional care for the work-related injury of October 15, 1991 is indicated. [Appellant] would not benefit from any diagnostic testing or surgery at this point in time. No further treatment is recommended.

“6. Transportation to and from doctor’s visits is not indicated as a result of work injuries.

“7. If working as a nursing assistant on a psychiatric unit requires strenuous work, [appellant’s] weight may be a problem.

“8. Maximum medical improvement has been reached.

“9. [Appellant] would not benefit from a [f]unctional [c]apacity [e]valuation or [w]ork [h]ardening [p]rogram.”

On March 4, 2002 the Office proposed to terminate appellant’s compensation benefits on the grounds that the weight of the medical evidence, as represented by the second opinion of Dr. Rubinfeld, established that no injury-related disability remained as it related to the October 15, 1991 work injury. The Office noted that it had received very little contemporaneous medical evidence from appellant’s attending physician, Dr. Glushakow. Further, the evidence received from Dr. Glushakow was outdated and scant with regard to objective findings and medical reasoning and was much the same as documentation received in the past. For these reasons, the Office accepted that Dr. Glushakow’s opinion had severely diminished probative value.

In a decision dated April 10, 2002, the Office terminated appellant’s compensation benefits effective April 20, 2002.

Appellant requested a hearing, which was held on January 23, 2003. After the hearing, appellant submitted a February 27, 2003 report from Dr. Glushakow. He related appellant’s history and treatment from October 18, 1991 to May 16, 2002, when she was last seen. At that time an examination of the neck revealed cervical tenderness and moderate limitation of range of motion. No spasm was noted. Examination of the back revealed lumbosacral tenderness with moderate limitation of range of motion. No spasm was noted. Straight leg raising was positive bilaterally.

Dr. Glushakow offered a final diagnosis of (1) herniated disc, L5-S1; and (2) lumbosacral radiculitis “cause related to the accident of October 15, 1991; and an aggravation of a previous condition, namely spinal stenosis.” He also diagnosed: (3) cervical sprain; and (4) cervical spondylosis “cause related to the accident of October 15, 1991; and aggravated by injuries from a motor vehicle accident.” Lastly, Dr. Glushakow diagnosed (5) myositis of the left shoulder “cause related to the accident of October 15, 1991.”

In a decision dated April 10, 2003, the hearing representative affirmed the termination of appellant’s compensation benefits. The hearing representative found that the Office met its burden of proof to justify the termination with the report obtained from Dr. Rubinfeld, while the subsequent report obtained from Dr. Glushakow offered no rationale and appeared to support that residuals ceased by 1997.

The Board finds that the Office properly terminated appellant’s compensation benefits for the accepted cervical and lumbosacral sprains she sustained on October 15, 1991.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>1</sup> 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.<sup>2</sup> In this case, the Office accepted that appellant sustained a cervical and lumbosacral sprain and multiple traumas, when she slipped and fell at work on October 15, 1991. The Office, therefore, has the burden of proof to establish that these conditions have ceased.

Dr. Rubinfeld, the second-opinion orthopedic surgeon, examined appellant on January 31, 2002 and reported normal findings on physical examination of her cervical and thoracolumbar spine. Range of motion was full, compression and distraction tests were negative, straight leg raising was to 85 degrees bilaterally, deep tendon reflexes were equal bilaterally and there was no tenderness on palpation and no spasm. Dr. Rubinfeld reported that he found no orthopedic condition on examination and that appellant was not suffering residuals of her October 15, 1991 work injury. The Office provided Dr. Rubinfeld with appellant's medical record and a statement of accepted facts so that he could base his opinion on a proper factual and medical history. The Board finds that his opinion is sufficiently rationalized, given the consistently negative findings reported on physical examination, that it constitutes the weight of the current medical evidence and establishes that appellant no longer suffers from the cervical or lumbosacral sprains or "multiple traumas" she sustained when she slipped and fell on October 15, 1991.

In his September 7, 2000 report, Dr. Glushakow, appellant's attending physician, gave no opinion to the contrary. He did not diagnose a cervical or lumbosacral sprain or multiple traumas, nor did he report that the cervical or lumbosacral sprain sustained on October 15, 1991 continued, unresolved, to disable appellant from work. Rather, Dr. Glushakow opined that appellant had a spinal stenosis and a degenerative back condition that were aggravated by the accident on October 15, 1991 and then, by a motor vehicle accident on January 2, 1992. While this opinion raises a question of whether the October 15, 1991 incident affected preexisting conditions, it does not conflict with the opinion of Dr. Rubinfeld that appellant no longer continues to suffer from the cervical or lumbosacral sprain she sustained when she slipped and fell that day. The Office has met its burden of proof.

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.<sup>3</sup>

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

Following the termination of compensation benefits, Dr. Glushakow submitted a report dated February 27, 2003. He noted that he had made some positive findings eight months prior to Dr. Rubinfeld's examination, including cervical and lumbosacral tenderness, moderate limitation of motion and positive straight leg raising bilaterally, but this is insufficient to demonstrate continuing residuals of the October 15, 1991 employment injury or to create a conflict with the medical opinion given by Dr. Rubinfeld. Dr. Glushakow diagnosed a herniated disc at the L5-S1 level, lumbosacral radiculitis, cervical sprain, cervical spondylosis and myositis of the left shoulder, all "cause o[f] the accident October 15, 1991." Of these, only the diagnosis of cervical sprain is relevant to the termination of compensation for the accepted conditions, but Dr. Glushakow offered no explanation of how he was able to determine that appellant's current cervical sprain was a residual of her slip and fall some 11 years earlier, particularly given her history of intervening injuries. Without sound medical reasoning affirmatively establishing a causal connection to the October 15, 1991 slip and fall, Dr. Glushakow's opinion is of little probative value<sup>4</sup> and fails to create a conflict requiring further development.

The April 10, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
September 24, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> See *Connie Johns*, 44 ECAB 560 (1993) (holding that a physician's opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bears on the probative value of medical opinions).