



## **FACTUAL HISTORY**

Appellant, a 63-year-old retired nursing assistant, has an accepted claim for lumbar strain and left sciatica, which arose on July 17, 1997.<sup>2</sup> Dr. Steven R. Gamm, appellant's treating physician, last reported on her condition in December 2003.<sup>3</sup> At that time, he diagnosed lumbosacral sprain with radiculopathy, lumbar disc displacement and L2-3 disc herniation. Dr. Gamm advised appellant to limit strenuous activity. Finding that appellant was able to work, he imposed a 10-pound lifting restriction and precluded her from climbing stairs or ladders. Appellant was also limited to less than two hours of bending, squatting, crouching and kneeling.

After several years of inactivity, the Office received a March 25, 2008 letter from the employing establishment requesting a status update. The employing establishment advised that appellant had been in light-duty positions for several years and was currently detailed as a program support assistant performing light clerical work. The employing establishment noted there had been no medical activity since December 2003 to establish the extent of appellant's continuing residuals from her July 17, 1997 injury.

In a note dated April 22, 2008, Dr. Jodi L. Van Jura, a Board-certified family practitioner, advised that appellant was under her care for low back pain and needed to be on a lifting restriction of no more than 15 pounds, indefinitely.<sup>4</sup>

Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on July 14, 2008. He reviewed a history of the July 17, 1997 injury while appellant was assisting a patient off a commode. Appellant advised Dr. Fisher that for the past three years she had been under the care of her family physician who saw her approximately every four to six months. She explained that her treatment for her back consisted of over-the-counter Tylenol. Dr. Fisher noted that for the past several years there had been no physical therapy, no chiropractic treatment or any injections. Appellant stated that her condition had improved somewhat and that it was tolerable. Her pain was not present on a daily basis. Appellant told Dr. Fisher that it "comes and goes."

On physical examination, Dr. Fisher noted that, while appellant did not appear to be in any distress or discomfort, she stated that her pain in the low back area was three to four on a scale of one to ten. He stated that his findings on clinical examination did not show evidence of a lumbar sprain or evidence of a left sciatic condition. Dr. Fisher explained that a lumbar sprain was a soft tissue injury that would have healed anywhere from two weeks to two months after the original injury. There was no evidence of motor or sensory deficits over the L4-5 and S1 dermatomes, which would otherwise signify a left sciatic condition.<sup>5</sup> Dr. Fisher stated that appellant did not show evidence of active residuals of her work-related conditions. He found that both conditions were no longer present on clinical examination and had "healed and resolved

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<sup>2</sup> Appellant was injured while assisting a patient off the commode.

<sup>3</sup> Dr. Gamm is Board-certified in emergency medicine.

<sup>4</sup> Dr. Van Jura reported the same lifting restriction in a January 2, 2008 certificate of medical examination (Standard Form No. 78).

<sup>5</sup> Dr. Fisher noted a "very slight" decrease in sensation over the anterior lateral aspect of the left thigh, which he attributed to irritation of the left femoral cutaneous nerve and not due to the sciatic nerve.

themselves.” Dr. Fisher advised that appellant did not require any further medical treatment and she was capable of returning to her date-of-injury job as a nursing assistant with regard to those accepted conditions.

On August 6, 2008 the Office issued a notice of proposed termination of compensation and medical benefits based on Dr. Fisher’s July 16, 2008 report. It afforded appellant 30 days to submit additional evidence or argument to the extent she disagreed with the proposed termination of benefits. Appellant did not respond. The employing establishment later advised the Office that she retired effective September 3, 2008.

In a September 9, 2008 decision, the Office terminated appellant’s wage-loss and medical benefits effective that day.

Appellant requested a hearing, which was held on January 14, 2009. She testified at the hearing, but did not submit any additional medical evidence.

By decision dated April 3, 2009, an Office hearing representative affirmed the September 9, 2008 decision terminating benefits.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>6</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has either ceased or that it is no longer related to the employment.<sup>7</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>8</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>9</sup>

### **ANALYSIS**

The Board finds that the Office properly terminated appellant’s benefits based on Dr. Fisher’s July 16, 2008 report. Dr. Fisher concluded that appellant’s accepted lumbar sprain and left sciatic condition had healed and resolved without residual. Consequently, appellant’s accepted conditions did not require further medical treatment. Dr. Fisher found that she was capable of returning to her date-of-injury position. Appellant was injured some 11 years prior to Dr. Fisher’s July 14, 2008 examination. The record was essentially devoid of a comprehensive medical opinion for the four-year period preceding Dr. Fisher’s examination. The only treatment appellant reportedly received during the last few years was examination by her family practitioner and over-the-counter Tylenol. Dr. Fisher explained that appellant’s lumbar strain soft tissue injury that would have resolved within two months of the original injury. He found no

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<sup>6</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>7</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>8</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>9</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

evidence of motor or sensory deficits over the L4-5 and S1 dermatomes, thus reflecting the absence of the accepted left sciatic condition. Dr. Fisher provided a thorough report with findings on examination and a review of the accepted conditions. His opinion constitutes the weight of medical evidence.

Dr. Van Jura's April 22, 2008 note imposed a 15-pound lifting restriction. However, she did not provide a medical narrative setting forth findings on examination or addressing causal relation. Dr. Van Jura did not diagnose a specific medical condition nor did she relate her restrictions to appellant's July 17, 1997 employment injury. She merely noted that appellant was under her care for low back pain and needed to be on a lifting restriction indefinitely. In contrast, Dr. Fisher provided a well-rationalized medical opinion regarding appellant's current medical condition. The Office properly relied upon his findings as a basis for terminating wage-loss compensation and medical benefits.

**CONCLUSION**

The Office met its burden to terminate compensation and medical benefits effective September 9, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 3, 2009 decision of the Office of Workers' Compensation Program is affirmed.

Issued: January 28, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board