

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SCOTT KIMMEL and U.S. POSTAL SERVICE,
OAKLAND GARDENS POST OFFICE, Flushing, N.Y.

*Docket No. 96-1520; Submitted on the Record;
Issued March 16, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits as of January 30, 1996.

The Board has duly reviewed the evidence of record in this appeal and finds that the Office has met its burden of proof in terminating appellant's compensation benefits as of January 30, 1996.

On December 7, 1993 appellant, then a city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 1993 he sustained a bruised right hand, and neck, lower back, legs and buttock pain as a result of an automobile accident. Appellant stopped work on December 6, 1993 and returned to limited duty on March 14, 1994.

The Office accepted appellant's claim for subluxation at C-3 and L-5, and a contusion of the right wrist.

By letter dated September 21, 1995, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Raymond Koval, a Board-certified orthopedic surgeon, for a second opinion examination. By letter of the same date, the Office advised Dr. Koval of the referral.

Dr. Koval submitted an October 11, 1995 medical report accompanied by a work capacity evaluation for musculoskeletal conditions. In a November 9, 1995 letter, the Office advised Dr. Koval to clarify whether his findings on examination of appellant were causally related to the December 6, 1993 employment injury. In response, Dr. Koval submitted a November 13, 1995 supplemental report.

In a notice of proposed termination of compensation dated December 21, 1995, the Office advised appellant that it propose to terminate his compensation because the medical evidence of record, specifically, Dr. Koval's October 11 and November 13, 1995 medical

reports, failed to establish continued disability. The Office also advised appellant to submit additional medical evidence supportive of his continued disability within 30 days.

By decision dated January 30, 1996, the Office terminated appellant's compensation effective January 30, 1996 because the medical evidence of record failed to establish residuals and/or continued disability due to appellant's December 6, 1993 employment injury.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.¹ 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.²

In the present case, the Office accepted that appellant sustained subluxations at C-3 and L-5, and a contusion of the right wrist due to factors of his federal employment. In its proposed notice of termination of compensation, the Office requested that appellant submit additional medical evidence supportive of his continued disability. Appellant did not submit any medical evidence. The Office terminated appellant's compensation benefits based on Dr. Koval's October 11, 1995 medical report, which revealed a history of the December 6, 1993 employment injury, and appellant's medical treatment and employment. Dr. Koval indicated his findings on examination and a review of medical records. He opined that, based on the history, physical examination and review of the records, appellant had made a full recovery. Dr. Koval further opined that appellant no longer needed any medical treatment because he had reached maximum medical treatment. He concluded that appellant did not have any disability and that he could return to his full-duty status. In an accompanying work capacity evaluation for musculoskeletal conditions, Dr. Koval indicated that appellant had no physical limitations and that he could perform his full work duties.

In a November 13, 1995 supplemental medical report, Dr. Koval stated that his findings on examination of appellant, which included tenderness in the midline in the lumbosacral area, limited motion, pain when bringing the legs up to 70 degrees, mild low back pain when rocking the hips on the pelvis and diminished sensation in a sleeve-like circumferential manner, were not substantiated by any objective findings. Dr. Koval stated that these symptoms constituted subjective findings rather than objective findings and concluded that they did not impact appellant's ability to return to full duty as a city postal carrier.

Inasmuch as Dr. Koval's October 11 and November 13, 1995 medical reports revealing that appellant is no longer disabled and that appellant could return to full work duty status constitute the weight of the medical evidence, the Board finds that the Office properly terminated appellant's compensation benefits as of January 30, 1996.

¹ *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163 (1987).

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

The January 30, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
March 16, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member