

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA COLEYWALK and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 98-171; Submitted on the Record;
Issued July 20, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective September 10, 1997,

The Office accepted appellant's claim for an acute cervical strain. Appellant sustained her employment injury on October 29, 1996 and has not worked since that date. Appellant received temporary total disability benefits.

By decision dated September 10, 1997, the Office terminated appellant's compensation benefits, stating the weight of the medical evidence of record established that appellant no longer suffered residuals from the October 29, 1996 employment injury. In making its decision, the Office relied on the reports of the second opinion physician, Dr. Henry M. Suckle, a Board-certified neurologist, dated April 30 and May 29, 1997 that appellant's disability was not work related.

In his report dated April 30, 1997, Dr. Suckle considered appellant's history of injury, reviewed the medical reports of record and performed a physical examination in which he noted some limitation of motion and tenderness on both sides of the paraspinal muscles. He diagnosed cervical musculotendinous strain, degenerative disc disease with bulging at C3-4, C4-5, C5-6 and C6-7 with no nerve root impingement per magnetic resonance imaging (MRI) scan, cervical radiculitis on the left at C5 per needle electromyography, and bilateral carpal tunnel syndrome per electromyogram (EMG) of no clinical significance. He stated that the cervical strain was medically connected to the factors of employment but the other conditions were not work related as documented in the statement of accepted facts. Dr. Suckle stated that appellant continued to have subjective complaints but there were no significant objective findings. He stated that limited range of motion upon physical examination was under appellant's volitional control and was not a true objective finding. Dr. Suckle concluded that appellant's total disability due to her cervical strain should have ceased two to three months after the October 29, 1996 employment injury, and that at such time she "should have been" capable of performing her usual work. He

stated that appellant required no further medical treatment for her cervical strain. Dr. Suckle stated that appellant required restrictions consisting of minimizing neck flexion to about 12 times an hour and minimizing repetitive motion of the arms and hands in her job duties and activities of daily living but these restrictions were not related to the October 29, 1996 employment injury.

In his report dated May 29, 1997, Dr. Suckle reviewed the results of electrodiagnostic studies dated April 28, 1997 showing no evidence of any axonal or demyelinating symmetric polyneuropathy of either upper extremity and a focal median neuropathy at the level of the wrist bilaterally compatible with carpal tunnel syndrome. He also reviewed the results of an MRI dated March 27, 1997 showing a disc bulge at C3-4, a disc protrusion at C4-5 and a disc bulge at C5-6 and C6-7 which flattened the ventral aspect of the cervical spine cord and resulted in a mild narrowing of the spinal canal at these levels. Dr. Suckle stated that he found no reason to change his opinion in his April 30, 1997 report.

To support her claim that her disability is work related, appellant submitted numerous reports from her treating physician, Dr. Gary G. Gregerson, a Board-certified orthopedic surgeon, including those dated June 9 and 23, July 7 and 21, and August 4 and 19, 1997. All of Dr. Gregerson's reports are similar in that in them he indicated that he performed a physical examination, found appellant had pain and limited motion in the cervical spine, and diagnosed persistent cervical spine strain with radicular pain affecting her left upper extremity which prevents her from working. In his August 19, 1997 report, he additionally found that appellant had "quite" intense spasm in the left lower cervical spine. Dr. Gregerson reviewed Dr. Suckle's opinion and stated that his opinion that appellant had a work-related disability remained unchanged. In his work restriction evaluation form dated May 20, 1997, Dr. Gregerson indicated that appellant required sitting, standing and lifting restrictions, and could not work eight hours a day.

The Board finds that the Office has met its burden of proof to terminate appellant's compensation benefits effective September 10, 1997.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

In the present case, the April 30 and May 29, 1997 opinions of Dr. Suckle, a second opinion physician, constitutes the weight of the evidence. He considered appellant's history of injury, performed a physical examination, and reviewed the March 27, 1997 MRI and April 28, 1997 electrodiagnostic studies. Dr. Suckle diagnosed cervical musculotendinous strain, degenerative disc disease, cervical radiculitis and bilateral carpal tunnel syndrome. He stated

¹ *Patricia M. Mitchell*, 48 ECAB ____ (Docket No. 95-384, issued February 27, 1987); *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

that the cervical strain was work related but should have healed two or three months after the October 29, 1996 employment injury. Dr. Suckle stated that appellant continued to have subjective complaints but there were no objective findings, and that, while appellant should be subject to restrictions, the restrictions were not related to the accepted condition of cervical strain. In his reports including those dated from June 9 to August 19, 1997, Dr. Gregerson, appellant's treating physician, opined that appellant continued to be disabled due to her cervical strain but did not provide medical rationale as to why the cervical strain persisted. His opinion is therefore insufficiently rationalized to establish that appellant's current disability is work related. Inasmuch as Dr. Suckle's opinion is well rationalized and establishes that appellant is no longer disabled due to her cervical strain, his opinion justifies the Office's termination of benefits.

The decision of the Office of Workers' Compensation Programs dated September 10, 1997 is hereby affirmed.

Dated, Washington, D.C.
July 20, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member