

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY E. THOMASON and U.S. POSTAL SERVICE,
POST OFFICE, Downingtown, PA

*Docket No. 00-20; Submitted on the Record;
Issued February 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in determining that residuals of appellant's January 25, 1997 employment injury had resolved by October 21, 1998.

In the present case, the Office accepted that appellant, a window clerk, sustained an acute cervical and thoracic strain in the performance of duty on January 25, 1997.¹ Appellant returned to a full-time light-duty position on May 5, 1997.

By letter dated August 20, 1998, the Office notified appellant that it proposed to terminate her compensation on the grounds that the weight of the medical evidence established that the January 25, 1997 employment injury had resolved. By decision dated October 21, 1998, the Office terminated appellant's compensation benefits.

In a decision dated June 21, 1999, an Office hearing representative affirmed the termination of benefits.

The Board has reviewed the record and finds that the Office met its burden to terminate compensation in this case.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.² The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must

¹ Appellant stated that she was attempting to turn a cart around and felt a sharp pain in her upper back.

² *Patricia A. Keller*, 45 ECAB 278 (1993).

establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.³

In this case, the Office found a conflict under 5 U.S.C. § 8123(a)⁴ between an attending physician, Dr. Michael J. Maggitti, an orthopedic surgeon and a referral physician, Dr. Karl Rosenfeld, an orthopedic surgeon. The Board is unable, however, to find an identifiable conflict with respect to appellant's employment-related condition. The referral physician, Dr. Rosenfeld, stated in a July 16, 1997 report that "objectively speaking, I find nothing wrong with [appellant] other than the complaints she offers," and he recommended a two-week work hardening program and eventual return to full duties after one month. Dr. Rosenfeld does not clearly opine that residuals of the employment injury had resolved and his recommendation of work hardening would suggest that he felt at least some residuals remained. Dr. Maggitti indicated in an August 1, 1997 note, that appellant should undergo work hardening and a note dated December 22, 1997 indicated that appellant had no significant change in her symptoms and restrictions would remain permanent due to the chronic nature of her condition. He did not discuss causal relationship with the employment injury.

The Board, therefore, finds that the medical evidence was of limited probative value with respect to a continuing employment-related condition and did not represent a conflict in the medical evidence. The referral to Dr. Edward J. Resnick, a Board-certified orthopedic surgeon, is, therefore, as a second opinion referral physician.⁵ The April 7, 1998 report of Dr. Resnick does, however, represent the weight of the medical evidence in this case. He provided a history and results on examination, stating in pertinent part:

"In my opinion any injuries sustained in the incident at work on January 25, 1997, appear to have objectively resolved. This woman would appear to have had satisfactory objective resolution of her symptoms within a few to several months at most after the incident of January 25, 1997. The objective orthopedic examination at this time does not reveal any residual impairment which could be ascribed to that incident. She has an unrelated low back degenerative syndrome as well as significant degenerative joint disease of the left knee. Neither of these conditions in my opinion is related to the incident of January 25, 1997 and there is no objective evidence that she had any injury or any aggravation of injury of the low back or lower limbs in that incident."

Dr. Resnick concluded that appellant did not require continuing medical services for the employment injury.

Dr. Resnick provided an opinion that appellant's employment injury had resolved, basing his opinion on a review of appellant's medical history and the lack of objective findings on

³ *Furman G. Peake*, 41 ECAB 361 (1990).

⁴ Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.

⁵ *See John H. Taylor*, 40 ECAB 1228, 1236 (1989).

examination. He provided a reasoned medical opinion based on a complete background. On the other hand, appellant's attending physicians did not provide a reasoned medical opinion on the relevant issue. Dr. Maggitti provided a report dated September 9, 1998, stating that appellant was last seen on March 23, 1998. He stated, "Unfortunately [appellant] has preexisting degenerative disease which has resulted in persistent complaints which based upon my treatment I have recommended that she remain in a restricted work capacity. No doubt her accident did result in acute injury with super imposed aggravation of preexisting degenerative disease." To the extent that Dr. Maggitti found an aggravation, he does not address the issue of whether the aggravation caused by the employment injury continued through and after March 1998 and if so, the reasons supporting such an opinion. Dr. Maggitti's report is, therefore, of limited probative value to the termination issue presented in this case.

Accordingly, the Board finds that the weight of the evidence rested with Dr. Resnick and the Office properly terminated compensation benefits effective October 21, 1998. After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.⁶ Appellant submitted a report dated April 12, 1999, from Dr. Maggitti, in which he again stated that appellant's work injury had aggravated preexisting degenerative disease. Dr. Maggitti does not provide a reasoned opinion as to a continuing employment-related aggravation after October 21, 1998 and his report, therefore, is not sufficient to meet appellant's burden of proof.

The decision of the Office of Workers' Compensation Programs dated June 21, 1999 is affirmed.

Dated, Washington, D.C.
February 11, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).