

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ADELYN J. RUGGIERI and U.S. POSTAL SERVICE,
POST OFFICE, Hockessin, DE

*Docket No. 97-1931; Submitted on the Record;
Issued February 2, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective March 3, 1996.

The Board has duly reviewed the case record and finds that the Office improperly terminated appellant's compensation.

On October 15, 1975 appellant, then a 49-year-old window clerk, sustained employment-related cervical and lumbar strains when she was tripped and fell at work. On October 25, 1977 the Office accepted that she also sustained a psychophysiological musculoskeletal reaction to the employment injury. Appellant stopped work the date of injury and, other than for a brief period in 1982, she has not worked since that time. She was placed on the periodic rolls and received appropriate compensation. The Office continued to develop the claim and on March 18, 1994 and May 10, 1995 referred appellant, along with the medical record, a statement of accepted facts and a set of questions, to Dr. David August, an osteopathic physician who practices psychiatry and Dr. Norman Eckbold, a Board-certified orthopedic surgeon, who provided reports dated May 9, 1994 and July 5, 1995.

By letter dated October 2, 1995, the Office informed appellant that it proposed to terminate her compensation, based on the opinions of Drs. August and Eckbold. In response, she submitted additional medical evidence. By decision dated February 20, 1996, the Office terminated appellant's benefits, effective March 3, 1996, on the grounds that the work-related conditions had ceased. Following appellant's request, a hearing was held on September 11, 1996. By decision dated November 15 and finalized November 18, 1996, an Office hearing representative affirmed the prior decision. Appellant timely requested reconsideration and submitted additional medical evidence. In a March 26, 1997 decision, the Office denied modification of its prior decision. The instant appeal follows.

The relevant medical evidence in this case includes reports by appellant's treating neurologist, Dr. Italo Monteleone, who treated her continually from 1976 until his retirement in 1995. In reports dated November 22, 1993 and May 16 and 18, 1994, Dr. Monteleone noted appellant's complaints of constant back pain and findings on examination. He diagnosed cervical and lumbar radiculopathy, noted restrictions to her physical activity, advised that she continued to be totally disabled and opined that he did not expect her to recover from the employment injury. By letter dated October 31, 1995, Dr. Monteleone indicated that he had retired on January 31, 1995.

Appellant also submitted reports dated May 24, July 12 and August 2, 1995 from Dr. Michele Mangum, who is Board-certified in neurology and psychiatry, and evaluated appellant for chronic pain syndrome. Dr. James P. Marvel, a Board-certified orthopedic surgeon, also evaluated appellant and provided treatment notes dated August 26 and October 5, 1995, in which he diagnosed chronic pain syndrome and depression. In a report dated March 28, 1996, Dr. Francis D. Hussey, Jr., who is Board-certified in neurology and psychiatry, noted the history of injury and appellant's chronic pain problems. He noted findings on examination and diagnosed chronic cervical facet and myofascial pain and lumbosacral facet and myofascial pain with bulging discs. In a December 20, 1996 treatment note, Dr. Hussey stated that appellant's myofascial pain and chronic facet pain began with the employment injury in 1975, that while it was aggravated by several automobile accidents, it was caused by the original injury. Dr. Jonathan Q.C. Hall, a neurologist, provided treatment notes dated July 19 and August 22, 1996, in which he noted the history of injury and findings on examination. He diagnosed chronic severe neck and lower back pain.

By report dated May 9, 1994, Dr. August, who evaluated appellant's mental condition for the Office, noted appellant's extensive medical history and chronic pain syndrome and advised that she demonstrated no symptoms of mental illness. He stated that the anxiety and depressive states with hysteroid elements that were present in 1976 had resolved without treatment. In an attached work capacity evaluation, he stated that he was not able to answer questions regarding her medical condition because he did not evaluate this.

In a report dated July 5, 1995, Dr. Eckbold, who provided an orthopedic evaluation for the Office, noted that he had reviewed appellant's medical record and history of injury and advised that, while appellant had subjective complaints, she had no objective orthopedic or neurologic functional deficits referable to the spine or extremities to demonstrate a current lumbar or cervical strain. He concluded that he could find no problem of the spine or extremities which would prevent her from returning to work as a window clerk.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.¹

¹ See *Patricia A. Keller*, 45 ECAB 278 (1993).

In this case, in terminating appellant's compensation benefits, the Office relied upon the opinions of Drs. August and Eckbold. Dr. August advised that appellant demonstrated no symptoms of mental illness and Dr. Eckbold stated that she had no objective orthopedic or neurologic deficits. Appellant's treating physicians, Drs. Monteleone and Hussey diagnosed employment-related chronic pain problems and depression. The Board, therefore, finds that a conflict in medical evidence² exists between the opinions of appellant's treating physicians and Drs. August and Eckbold regarding whether her work-related conditions had ceased. The Office, thus, did not meet its burden of proof in terminating appellant's compensation on March 3, 1996.³

The decisions of the Office of Workers' Compensation Programs dated March 26, 1997 and November 18, 1996 are hereby reversed.

Dated, Washington, D.C.
February 2, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

² When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a) of the Federal Employees' Compensation Act, to resolve the conflict in the medical opinion. 5 U.S.C. § 8123(a).

³ See *Gail D. Painton*, 41 ECAB 492 (1990).