

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MOHAMMAD ALI and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 98-1144; Submitted on the Record;
Issued February 15, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's benefits effective December 13, 1996.

On April 12, 1996 appellant, then a 53-year-old part-time flex letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he sustained a fracture of the left side of his body when he was involved in an automobile accident on April 10, 1996. He stopped work on that date and has not returned. The Office accepted the claim for a concussion, cervical sprain, left shoulder sprain, lumbosacral derangement and rib fracture, and paid compensation for total disability.

In a work capacity evaluation dated June 17, 1996, Dr. Nathan Levin¹ concluded that appellant was totally disabled at that time. Dr. Levin anticipated restrictions on standing, kneeling, bending, lifting and twisting to last three months. Lastly, he expected appellant to have a maximum medical improvement of 70 to 80 percent.

In treatment notes dated June 19, July 10 and August 8, 1996, Dr. Martin S. Weseley² opined that appellant's fractures were healing. Dr. Weseley noted on August 8, 1996 that there was no reason appellant should be experiencing severe pain, which appeared "to be out of proportion to the injuries." He stated that there was no objective reason to support appellant's use of a cane. In treatment notes dated August 22, September 9 and October 8, 1996, Dr. Weseley stated that appellant's symptoms were not resolving despite physical therapy. On September 9, 1996 he indicated that appellant's "symptomatology is out of proportion to what is anticipated for his problem," but on October 8, 1996 noted appellant's physical findings were

¹ An attending Board-certified internist.

² A Board-certified orthopedic surgeon.

unchanged and that he was “unable to lift over his head with left shoulder motion.” Dr. Wesley noted that appellant was unable to return to work.

On June 25, 1996 the Office referred appellant to Dr. Alcides C. Pomina³ and Dr. Michael V. Marrone⁴ for a second opinion on whether appellant continued to have any residual disability from his accepted April 7, 1996 employment injury.

In a report dated July 16, 1996, Dr. Marrone, based upon review of the employment injury, medical record, physical examination and statement of accepted facts, concluded that appellant had a marked partial disability. He diagnosed a cervical strain which was resolved and an unresolved left shoulder acromioclavicular separation. It was recommended that appellant continue physical therapy for another six weeks. In an attached work restriction form dated July 17, 1996, Dr. Marrone indicated that appellant could work two hours per day provided he did not lift more than 10 pounds twice per hour and was limited in bending, lifting and overhead reaching. He opined that these restrictions were for possibly six weeks.

In a report dated July 18, 1996, Dr. Pomina, based upon a review of the medical record, physical examination and history of injury, opined that “at the present time the neurological examination shows changes in the deep tendon reflexes in the left upper extremity and changes in the sensory examination of the right foot” which he believed were consistent with a radiculopathy at the cervical and lumbosacral levels. Concerning appellant’s ability to return to work, he indicated that appellant was unable to perform any work at that time and was totally disabled. In an attached work restriction form dated July 19, 1996, Dr. Pomina indicated that appellant could not work and was totally disabled. He also indicated that he anticipated the restrictions to apply for six months and that appellant should reach maximum medical improvement in January 1997.

In an addendum dated August 22, 1996, Dr. Marrone noted that a diagnosis of a herniated disc based on a computerized tomography (CT) scan and that his clinical findings supported that the cervical strain had resolved.

In a letter dated September 12, 1996, Dr. Pomina noted that appellant had a magnetic resonance imaging (MRI) test performed on September 10, 1996 and that “[n]one of the radiological findings account for the patient’s neurological changes noted in my examination of July 18, 1996.” He then concluded that appellant could return to light-duty work from a neurological point of view, but might require restrictions due to his orthopedic injuries.

In a work capacity evaluation dated October 1, 1996, Dr. Pomina concluded that, from a neurological point of view, appellant could work eight hours per day without restrictions. He indicated that appellant had reached maximum medical improvement on September 30, 1996.

³ A Board-certified neurological surgeon.

⁴ A Board-certified orthopedic surgeon.

On October 4, 1996 the Office referred appellant, together with a statement of accepted facts, medical records and list of questions, to Dr. Lawrence E. Miller⁵ for a second opinion as to whether appellant remained totally disabled due to his accepted employment injury.

In a report dated October 31, 1996, Dr. Miller, based upon a review of the medical evidence, physical examination and statement of accepted facts, opined that appellant was capable of returning to his regular work full time. He stated that appellant's subjective complaints were not supported by objective evidence and there was no continuing disability or need for further medical treatment. In a work capacity evaluation form dated November 4, 1996, Dr. Miller concluded that appellant could work full time with no restrictions.

On November 12, 1996 the Office issued a notice of proposed termination of benefits.

By decision dated December 13, 1996, the Office finalized the termination of benefits effective December 13, 1996.

By letter dated January 10, 1997, appellant requested reconsideration and submitted a letter from the Al-Shafa Family Medical Center and stated that medical evidence from Cortelyou Medical, P.C. and from Dr. Malik M.P. Akhtar would be submitted at a later date.

In a letter dated December 9, 1996 from Al-Shafa Family Medical Center,⁶ it was noted that appellant came in with complaints of pain in his left rib, right knee joint and numbness in his hands. Appellant was referred to an orthopedic clinic for further evaluation.

In a December 11, 1996 report from Cortelyou Medical, P.C., Dr. James T. Gilas⁷ diagnosed cervical/lumbar sprain/strain syndrome, cervical/lumbar spine internal derangement, cervicocranial syndrome, cervical radiculopathy, left shoulder sprain/strain with rotator cuff syndrome and rib sprain/strain with left rib fracture. Dr. Gilas noted that the goals of the physical treatment was "to decrease muscle spasm and hypertonicity; decrease inflammation and pain; increase joint mobility and strength; and increase functional capacity."

In a report dated December 13, 1996 from Cortelyou Medical, P.C., Dr. Jeffrey Davis⁸ diagnosed postconcussive syndrome resulting in post-traumatic headaches, post-traumatic cervical myositis, post-traumatic lumbar myositis, post-traumatic left shoulder derangement and post-traumatic left heel derangement. Dr. Davis recommended that appellant have computerized axial tomography (CAT) scans performed.

In a letter dated January 12, 1997, appellant, through his attorney, requested an oral hearing before an Office hearing representative.

⁵ A Board-certified orthopedic surgeon.

⁶ The Board notes that the signature on the letter is illegible and it cannot be determined whether the letter was signed by a physician.

⁷ Board-certified in physical medicine and rehabilitation.

⁸ A Board-certified neurologist.

In a January 17, 1997 follow-up report from Cortelyou Medical, P.C., Dr. Michael L. Russ⁹ noted subjective complaints of neck pain, low back pain, left shoulder pain, left rib pain and headaches and recommended a treatment plan.

In a report dated February 20, 1997, Dr. Akhtar¹⁰ noted that appellant still had difficulties breathing and use of his left shoulder. Dr. Akhtar recommended a CAT scan of the chest and surgical decompression of the left shoulder and repair of the rotator cuff.

In a letter dated October 22, 1997, Dr. Akhtar diagnosed left shoulder impingement requiring surgical decompression, left rib fracture with pleural limitation requiring CT and MRI scans, cervical and lumbar spine syndrome, right ankle and foot sprain and post-traumatic depression.

A hearing was held on October 22, 1997 at which appellant was represented by counsel.

By letter dated November 6, 1997, Dr. Akhtar opined that appellant remained disabled and required authorization for treatment.

By decision dated December 29, 1997, the Office hearing representative affirmed the Office's December 13, 1996 decision terminating benefits. In support of the decision, the Office hearing representative found that Dr. Miller's opinion to constitute the weight of the evidence as his opinion was well reasoned and supported by objective evidence. The Office hearing representative found that the opinions of Drs. Davis, Russ and Akhtar, submitted by appellant subsequent to the termination of his benefits, were not well rationalized nor did they explain how appellant's complaints were supported by the objective evidence.

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits effective December 13, 1996.

Under the Federal Employees' Compensation Act,¹¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.¹² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.¹³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is

⁹ A physician Board-certified in physical medicine and rehabilitation.

¹⁰ An attending orthopedic surgeon.

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *William Kandel*, 43 ECAB 1011, 1020 (1992).

¹³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.¹⁴ The Office burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁵

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁶

In the present case, the Office accepted that appellant sustained a concussion, cervical sprain, left shoulder sprain, lumbosacral derangement and rib fracture. The Office has the burden of proof to justify termination of compensation for disability resulting from those conditions and it has met that burden.

In a comprehensive report dated October 31, 1996, Dr. Miller advised that there was no objective evidence to support any continuing disability and that appellant was capable of working full time with no restrictions. The physician based his opinion upon a proper factual background and provided sufficient medical rationale.

In a September 4, 1996 work restriction form, Dr. Levin reiterated that appellant remained disabled and that he expected appellant to reach maximum medical improvement of 70 to 80 percent in 3 months. His report does not constitute a rationalized medical opinion to support that appellant continued to be disabled due to his April 7, 1996 employment injury. Dr. Levin provided no medical rationale explaining why appellant continued to be disabled due to his employment injury and how the objective evidence supported that rationale. Furthermore, his September 4, 1996 form appeared to be a duplicate of the June 17, 1996 work restriction form he had previously submitted to the Office with only the date changed. The Board has held that medical reports not containing rationale on causal relationship are entitled to little probative value.¹⁷ Thus, the Board finds that the Office properly terminated appellant's benefits based upon the well-rationalized opinion of Dr. Miller who found that appellant no longer had any residual disability due to his accepted April 7, 1996 employment injury.

Subsequent to the Office's December 13, 1996 termination decision, the burden of proof in this case shifted to appellant, who thereafter submitted a December 9, 1996 letter from the Al-Shafa Family Medical Center, a December 11, 1996 report from Dr. Gilas, a December 13, 1996

¹⁴ *Dawn Sweazey*, 44 ECAB 824 (1993).

¹⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

¹⁶ *Connie Johns*, 44 ECAB 560, 570 (1993).

¹⁷ *See John Watkins*, 47 ECAB 597, 602 (1996); *William C. Thomas*, 45 ECAB 591, 594 (1994).

report from Dr. Davis, a January 17, 1997 report from Dr. Russ, reports dated February 20, October 22 and November 6, 1997 from Dr. Akhtar.

The December 9, 1996 report from the Al-Shafa Family Medical Center is insufficient to support appellant's burden. The signature is illegible and, thus, it cannot be determined if the report was signed by a physician. Furthermore, the letter contains no opinion, supported by medical rationale, relating appellant's disability to his accepted employment injury. Similarly, the reports of Drs. Gilas, Russ and Davis from Coreyou Medical, P.C. are also insufficient as they fail to provide any opinion as to whether appellant's disability was due to his accepted employment injury. These reports all concerned the goals of appellant's physical treatment and recommendations for further treatment. Thus, none of these reports are sufficient to establish that appellant had any continuing disability causally related to his accepted employment injury.

In a report dated February 20, 1997, Dr. Akhtar recommended a CAT scan and surgical decompression of the left shoulder and repair of the rotator cuff while noting that appellant had difficulty breathing and using his left shoulder. Dr. Akhtar, in his October 22, 1997 report, diagnosed left shoulder impingement, left rib fracture, cervical and lumbar spine syndrome, right ankle and foot sprain and post-traumatic depression. In a November 6, 1997 report, Dr. Akhtar opined that appellant remained disabled and recommended authorization for treatment. None of Dr. Akhtar's reports are sufficient to establish that appellant has any continuing disability due to his accepted employment injury as he failed to provide a rationalized opinion, supported by medical rationale, explaining how appellant's continuing disability was causally related to his accepted employment injury.

As appellant has not submitted evidence sufficient to counter Dr. Miller's October 31, 1996 report that appellant is no longer disabled due to the April 10, 1996 employment injury based on the lack of objective evidence, Dr. Miller's opinion which is well rationalized constitutes the weight of the evidence and justifies the Office's termination of appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated December 29, 1997 is affirmed.

Dated, Washington, D.C.
February 15, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member