

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHELLE M. OCHLAN and U.S. POSTAL SERVICE,  
POST OFFICE, Bay Port, NY

*Docket No. 01-417; Submitted on the Record;  
Issued December 21, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of January 30, 2000.

On March 18, 1993 appellant, a 28-year-old letter carrier, slipped on an icy surface and injured her neck. She filed a claim for benefits on March 19, 1993, which the Office accepted for trapezius strain and cervical strain.

Appellant returned to work on April 5, 1993, but stopped working on June 11, 1993 due to the pain in her neck. She returned to work for six hours a day on light duty on July 6, 1993 with restrictions. Appellant has been working in that capacity since that time, although she has missed work for intermittent periods. The Office paid appellant compensation for appropriate periods.

In a report dated November 22, 1994, Dr. David Besser, Board-certified in psychiatry and neurology and appellant's treating physician, advised that appellant complained of headaches and continued cervical pain. He outlined work restrictions of intermittent lifting and carrying no more than ten pounds, not exceeding six hours, intermittent standing for three to six hours, intermittent sitting not exceeding six hours and intermittent simple grasping and thigh manipulation not exceeding six hours. Dr. Besser also prescribed reaching above the shoulder, bending, stooping, pulling and pushing for no more than one hour, with no climbing stairs or ladders and no kneeling.<sup>1</sup>

In order to determine whether appellant continued to suffer residuals from her accepted conditions and whether she was currently totally disabled due to this condition, the Office referred appellant for a second opinion examination with Dr. Chandra M. Sharma, a Board-certified orthopedic surgeon, for October 8, 1998.

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<sup>1</sup> Dr. Besser reaffirmed these work restrictions in a work restriction evaluation dated January 28, 1997.

In a report dated October 8, 1998, Dr. Sharma, after reviewing the statement of accepted facts and appellant's medical history, stated that appellant complained of headaches in addition to pain in her spine and neck. He advised that appellant had soft tissue sprains and a normal neurological examination and concluded:

"The examination shows no neurological problems. There is no further need for neurological testing or treatment. Based on my examination I see no neurological limitations to continuation of usual activities and work. There will be no long-term neurological problems of causally related nature. More specifically, I do not see any neurological signs of lumbar disc herniation."

In a supplemental report dated October 26, 1999, Dr. Sharma advised that appellant was able to return to work as a letter carrier without restrictions for eight hours a day.

In a report dated January 15, 1999, Dr. Besser advised that appellant continued to relate complaints of neck and spinal pain and stated that she believed she was unable to perform any heavy lifting because this would exacerbate her cervical and lumbar pain.

The Office found that there was a conflict in the medical evidence between Drs. Besser and Sharma regarding whether appellant continued to suffer residuals from her accepted conditions and scheduled an independent medical examination for appellant with Dr. Suranganee DeLanerolle, Board-certified in psychiatry and neurology, for February 8, 1999.

In a report issued the date of the examination, Dr. DeLanerolle, after examining appellant, reviewing the medical records and stating findings on examination, stated:

"Neurological examination today including cervical and lumbar spinal examination does not demonstrate any significant deficits. [Appellant] has been extensively evaluated and treated ... chiropractically as well as with physical therapy with significant improvement in the post-traumatic headaches, cervical sprain and the lumbar disc herniation. She has reached maximum medical improvement. [Appellant] is capable of returning to her occupation working [eight] hours without any restrictions."

In a supplemental report dated April 29, 1999, Dr. DeLanerolle stated:

"In my opinion [appellant] herniated a disc at L4-5 interspace centrally and mainly to the left side during a fall on March 18, 1993. She was symptomatic from the herniation and developed radicular symptoms, which improved with conservative treatment including physical therapy. As she was treated symptomatically, my examination on February 9, 1999 did not reveal any clinical signs. As [appellant] had no prior history of a back injury and became symptomatic following the accident, I can state with medical certainty that the lumbar herniated disc at L4-5 is causally related to the accident of [March 18, 1993]. As the radicular symptoms that she had were not persistent and the radiculopathy was not proven by [electromyography] EMG nerve conduction studies, the lumbar radiculopathy is not significant... At the time of my

evaluation on February 9, 1999 she was completely better.... I have stated in my conclusion of February 9, 1999 that [appellant] has reached maximum medical improvement and [is] able to return to her regular occupation, without any restriction. As she has reached maximum medical improvement further neurological care or treatment is not indicated.”

In a report and work capacity evaluation dated December 16, 1999, Dr. Besser essentially reiterated his previous findings, conclusions and work restrictions.

On December 20, 1999 the Office issued a notice of proposed termination of compensation to appellant. The Office found that the weight of the medical evidence, as represented by Dr. DeLanerolle’s referee opinion, established that her employment-related disability had ceased and that she could return to full-time work without restrictions. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. Appellant did not respond to this notice within 30 days.

By decision dated January 21, 2000, the Office terminated appellant’s compensation, effective January 30, 2000.

By letter dated February 11, 2000, appellant requested an oral hearing, which was held on June 13, 2000. In support of her request, appellant submitted a January 21, 2000 report from Dr. Besser. He stated:

“I understand that other neurologists state that [appellant] can return to her regular occupation without any restrictions; however, I do not agree. [Appellant] has been of very good character. She continues to work albeit in a limited fashion. [Appellant] continues to have cervical and lumbar pain, which is of a chronic nature at this point as she has had this problem since 1993. She continues to have pain on cervical and lumbar paraspinal palpation as well as pain on straight leg raising. [Appellant] ha[d] magnetic resonance imaging [MRI] [scan] studies. In my last dictation I had wanted [her] to have repeat MRI studies, especially of the lumbar spine for further evaluation of her continued complaints. There is a possibility that the herniated disc has enlarged in size. I cannot understand why [appellant] is being returned to full-duty work. I believe that this will cause her a great deal of discomfort and possibly exacerbate her underlying medical condition to increase her level of work beyond the restrictions that I had suggested. My diagnosis at this point is chronic myofascial pain syndrome involving the cervical and lumbar regions, possible lumbosacral radiculopathy is noted.”

By decision dated August 31, 2000, an Office hearing representative affirmed the January 31, 2000 Office decision.

The Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits as of January 30, 2000.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened [in] order to justify termination or modification of compensation benefits.<sup>2</sup> 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.<sup>3</sup>

In the present case, the Office based its decision to terminate appellant's compensation on the February 8 and April 29, 1999 reports from Dr. DeLanerolle, the independent medical examiner. In her referee medical opinion, Dr. DeLanerolle stated that, based on her February 9, 1999 evaluation, appellant had completely recovered from her 1993 work injury, that her cervical and lumbar spinal examination did not show any significant deficits and that further neurological care or treatment was not indicated. She concluded that appellant was capable of returning to her usual occupation as a letter carrier for eight hours without restrictions. The Office relied on Dr. DeLanerolle's opinion in its January 21, 2000 termination decision, finding that all residuals of the previously accepted condition had ceased and that appellant currently suffered from no condition or disability causally related to her March 18, 1993 accepted employment injury.

The Board holds that the Office properly found that Dr. DeLanerolle's referee opinion negating a causal relationship between appellant's claimed current conditions and disability and her March 18, 1993 employment injury and that she no longer had any residuals from the employment injury was sufficiently probative, rationalized and based upon a proper factual background and that, therefore, the Office acted correctly in according Dr. DeLanerolle's opinion the special weight of an independent medical examiner.<sup>4</sup> Accordingly, the Board finds that Dr. DeLanerolle's opinion constituted sufficient medical rationale to support the Office's January 21, 2000 decision terminating appellant's compensation. The Board, therefore, affirms the January 21, 2000 Office decision terminating compensation as of January 30, 2000.

Following the Office's termination of compensation, the burden of proof in this case shifted to appellant, who requested an oral hearing and submitted Dr. Besser's January 21, 2000 report. This report, however, did not contain countervailing, probative medical evidence that appellant continued to have residual disability from her accepted March 18, 1993 injury, or that she was physically unable to return to full duty without restrictions. Dr. Besser recommended a spinal MRI to further evaluate appellant's continued complaints and to ascertain the extent of her chronic myofascial pain syndrome and advised that appellant's condition would be exacerbated if she was required to return to full duty. This report, however, was repetitive of Dr. Besser's previous reports, as he merely restated his work restrictions and reiterated his previous findings and conclusions regarding appellant's condition. In addition, he indicated that appellant's problems were primarily related to her lumbar condition, which was not a condition accepted by the Office. Thus, Dr. Besser's report did not satisfy appellant's burden of proof to submit medical evidence sufficient to warrant modification of the Office's January 21, 2000 termination

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<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Id.*

<sup>4</sup> *Gary R. Seiber*, 46 ECAB 215 (1994).

decision, which properly found that Dr. DeLanerolle's referee opinion constituted the weight of the medical evidence. Accordingly, the Board affirms the Office's August 31, 2000 decision, affirming the January 21, 2000 termination decision.

The decisions of the Office of Workers' Compensation Programs dated August 31 and January 21, 2000 are hereby affirmed.

Dated, Washington, DC  
December 21, 2001

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member