

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHIRLEY A. TEMPLE and U.S. POSTAL SERVICE,  
POST OFFICE, Cleveland, OH

*Docket No. 00-428; Submitted on the Record;  
Issued February 7, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of December 29, 1998.

The case has been on appeal previously.<sup>1</sup> In a March 18, 1997 decision, the Board found that appellant's injuries occurred within the performance of duty on February 16, 1995 and remanded the case to the Office for a determination as to the nature and extent of appellant's disability.

The Office accepted appellant's claim for right wrist sprain, right elbow strain, right shoulder strain and skin abrasions to the right arm for a work-related altercation on February 16, 1995. Appellant stopped work on February 16, 1995 and returned with restrictions the next day. The record reflects that appellant had a prior claim of a right carpal tunnel syndrome with subsequent decompression of the right wrist.

The Office referred appellant to Dr. Charles J. Paquelet, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his June 19, 1997 report, he noted the history of appellant's work injuries and set forth the results of the physical examination. He stated that, based on appellant's medical history, physical examination and allowed claim, the right wrist sprain and skin abrasions had resolved. Dr. Paquelet added that appellant had no medical conditions that were caused, aggravated, accelerated or precipitated by the February 16, 1995 accident. Appellant had been working in a limited capacity since December 23, 1994 and her limitations had remained the same since that time. Dr. Paquelet stated that appellant had been medically capable of performing the limited-duty job activities at the time of her accident. He further related that while the causes of appellant's current complaints were not clear, her present symptoms were not directly and proximately related to the injury of February 16, 1995.

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<sup>1</sup> Docket No. 96-883 (issued March 18, 1997).

In a September 4, 1997 report, Dr. Martin Melnick, a Board-certified internist, specializing in physical medicine and rehabilitation stated that appellant was seen for wrist strain, skin abrasions and neck problems. Dr. Melnick stated that a magnetic resonance imaging (MRI) scan on May 19, 1997 showed disc herniation at C6, with impingement on the spinal cord and nerve roots, along with arthritic changes and disc bulging at C4-5 levels with impingement on the spinal cord. He diagnosed appellant's current condition as cervical radiculopathy.

After reviewing appellant's chart, Dr. Melnick stated that he could not absolutely say that the previous injuries appellant sustained on February 16, 1995 were directly related to neck problems; however, appellant had been complaining through multiple office visits about neck problems. He noted that appellant's MRI was conclusive for physical pathology, but stated he was not certain whether the changes stemmed from the 1995 incident. Electromyograms (EMG) were obtained and their findings were within normal limits. Dr. Melnick recommended work limitations based on his finding of cervical radiculopathy, and reiterated that he could not state with certainty any direct relationship between the February 16, 1995 injuries and appellant's neck condition and radiculopathy at this time.

In a September 24, 1997 letter, the Office indicated that appellant's case was closed because both appellant's physician and the second opinion physician opined that there were no residuals from the accepted injuries. On September 26, 1997 appellant filed a recurrence of disability claim. In an October 16, 1997 letter, the Office advised appellant that they were reopening her case.

In a November 24, 1997 report, Dr. Thomas Reinsel stated that the degenerative changes on the cervical spine MRI did not explain appellant's right upper extremity symptoms. He opined that appellant's workers' compensation injuries with degenerative disc disease at C6-7 and other symptoms were not completely explained by the MRI findings. Dr. Reinsel did think it reasonable to assume that the February 16, 1995 injuries were causally related to her neck condition. He stated that it was not unusual to sustain an injury to the neck area that is not noticed until later. Dr. Reinsel's objective findings substantiating appellant's claim of neck pain were the muscle spasms noted. There were no neurological findings. He further related that appellant should continue with her light duties, but he was uncertain exactly what restrictions had been placed on her.

In an August 20, 1998 report, Dr. Michael W. Mulcahy, a chiropractor, opined that appellant suffered a strain/sprain injury to her cervical spine at the same time of her right shoulder injury. He stated that the former was a direct and proximal result of the February 16, 1995 industrial injury. Dr. Mulcahy reasoned that appellant had her right arm/shoulder twisted/hyperextended. Due to the direct relationship between the muscular attachments of the cervical spine and shoulder (origin and insertion of muscle groups) she also had a strain/sprain injury induced to her cervical spine. He stated that, it was not uncommon for a spinal strain/sprain to reach full symptomatology two to four weeks following the initial injury.

Dr. Mulcahy further related that appellant's subjective complaints and objective examination findings were consistent with the history and mechanism of injury. He diagnosed cervicobrachial syndrome, myofascitis of the cervical and thoracic spine and segmental dysfunction/subluxation of the cervical and thoracic spine.

In an August 28, 1998 report, Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon and an Office referral physician, noted appellant's history of injury and her medical care. After setting forth his examination findings and reviewing the medical records, Dr. Kaffen diagnosed cervical sprain/strain, sprain right shoulder and sprain right wrist. He opined that the accepted diagnoses of right shoulder, wrist and elbow sprains have resolved. Dr. Kaffen stated that there were no objective physical findings to indicate that symptoms of these accepted conditions were currently active.

On the basis of the history and physical examination and review of the medical file, he opined that the current complaints were no longer related to her injuries of February 16, 1995. Regarding appellant's current complaints, he stated that he was unable to provide a cause. Dr. Kaffen further opined that appellant may work without restrictions.

In a letter dated November 6, 1998, the Office notified appellant of its proposal to terminate compensation benefits. Appellant was given 30 days in which to submit additional evidence or argument.

In a letter of December 1998, appellant argued that the doctor on which the Office relied did not give a sound medical opinion regarding her condition. Dr. Paguelit's opinion was not reliable because he could not say for sure what her complaints and symptoms were, so how could he definitely say that they were not related to her 1995 injuries. Further, Dr. Paguelit diagnosed her more than two years after her injury but stated that she was capable of performing her job duties since the time of the altercation. Appellant raised similar complaints with Dr. Kaffen's report.

By decision dated December 29, 1998, the Office terminated appellant's compensation benefits effective the same day. By decision dated August 26, 1999, an Office hearing representative affirmed the prior decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation on December 29, 1998.

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.<sup>2</sup>

The Board finds that appellant has no further disability causally related to her work injuries of February 16, 1995. The medical reports of the Office referral physicians, Drs. Paquelet and Kaffen and of appellant's physician, Dr. Melnik, show that the accepted conditions of right wrist sprain and skin abrasions have resolved and that appellant was medically capable of resuming her job held at the time of the injury. These physicians further opined that appellant's current neck problems were not caused, aggravated, accelerated or precipitated by the

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<sup>2</sup> See *Alice J. Tysinger*, 51 ECAB \_\_\_\_ (Docket No. 98-2423, issued August 29, 2000); *Patricia A. Keller*, 45 ECAB 278 (1993).

February 16, 1995 work incident. Dr. Paquelet stated that the cause of appellant's current complaints was not clear and opined that appellant's present symptoms were not directly and proximately related to the February 16, 1995 injuries. His opinion was based upon a complete review of the medical record and his physical examination.

Dr. Kaffen stated that there were no objective physical findings to indicate that symptoms of the accepted conditions were active or that appellant's current complaints were related to the injury of February 16, 1995. He further stated that he was unable to provide a cause for her current complaints. Like Dr. Paquelet, Dr. Kaffen's opinion was based upon a complete review of the medical record and the results of the physical examination.

Although, Dr. Melnick diagnosed appellant's current condition as cervical radiculopathy, he stated that he could not absolutely attribute appellant's injuries from February 16, 1995 to appellant's current condition relating to her neck and radiculopathy. He noted that the MRI was conclusive for physical pathology, but the EMG was within normal limits and stated that those results do not sufficiently explain why appellant was experiencing a sensory loss in her right hand.

Drs. Paquelet and Kaffen provided well-rationalized opinions, based on clinical and objective findings upon examination. These reports, taken together with the report of Dr. Melnick, show that appellant had no disability remaining due to the accepted conditions.

None of the other medical evidence of record shows any disability remaining due to the accepted conditions. Although, in his November 24, 1997 report, Dr. Reinsel stated that it is reasonable to assume that appellant's neck condition was causally related to the February 16, 1995 incident, his opinion regarding causal relationship is of limited probative value as he failed to provide a well-rationalized opinion. He specifically stated that the MRI findings did not explain appellant's right upper extremity symptoms and, although, muscle spasms were noted, there were no neurological findings. This is in line with the opinions of Drs. Paquelet, Kaffen and Melnick.

Although, Dr. Mulcahy provided a diagnosis of subluxation based on radiographic evidence and opined that it was causally related to appellant's February 16, 1995 injury, the Board notes that this diagnosis was rendered almost two years after the February 16, 1995 injury on April 11, 1997. The record reflects that an earlier radiographic x-ray of April 23, 1995 stated that no subluxations were present. While Dr. Mulcahy attempted to draw a link between appellant's cervical spinal condition and the February 16, 1995 injury, he failed to provide an explanation or medical rationale as to how or why a subluxation diagnosis could occur almost two years post injury when he specifically stated that it was not uncommon for a spinal strain/sprain to reach full symptomatology two to four weeks following the initial injury. Accordingly, Dr. Mulcahy's diagnosis of subluxation is not accepted and his opinion on causal relationship is of diminished probative value. The Board, therefore, finds appellant had no employment-related disability on or after December 29, 1998 and the Office met its burden of proof to terminate her compensation on that date.

The August 26, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 7, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member