

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFREY R. FOSTER and DEPARTMENT OF THE ARMY,
Fort Lewis, WA

*Docket No. 00-443; Submitted on the Record;
Issued January 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's entitlement to medical benefits effective January 7, 1999.

The Office accepted that appellant's January 16, 1997 employment injury, sustained when he tripped over a fallen branch and fell onto his outstretched arms, resulted in a bilateral shoulder strain. The Office paid for medical treatment of this condition, including physical therapy and paid for the time appellant missed from work to undergo such treatment. This was the only time appellant missed from work, as he continued to perform his regular duty.

On November 25, 1998 the Office issued a notice of proposed termination of compensation and medical benefits on the basis that the disability resulting from his injury had ceased. By decision dated January 7, 1999, the Office terminated appellant's entitlement to continuing compensation for wage loss and medical benefits effective that date on the basis that he had recovered from the residuals of his employment-related bilateral shoulder strain. Appellant requested a hearing, which was held before an Office hearing representative on June 7, 1999. He testified and submitted additional evidence. By decision dated July 28, 1999, an Office hearing representative found that the weight of the medical evidence established that appellant had no residuals of his January 16, 1997 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹ The Board notes, however, that appellant has not claimed and the Office has not paid, compensation for disability from work in this case. The only compensation the Office has

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

paid has been for medical services, including time appellant missed from work to undergo treatment and examinations. Thus, although the Office's decisions state that compensation for wage loss is being terminated, these decisions in actuality only terminate appellant's entitlement to medical benefits. The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.² To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further treatment.³

The Board finds that there is a conflict of medical opinions on the question of whether appellant continued to have residuals of an employment-related condition which require further treatment.

To justify its termination of appellant's entitlement to medical benefits, the Office relied upon the opinion of Dr. Franklin Paudler, a Board-certified orthopedic surgeon to whom the Office referred him for a second opinion. In a report dated July 2, 1998, he stated, "The neurologic and orthopedic examination today was within normal limits. There is no objective evidence at this time to account for the claimant's continued symptoms." Regarding further treatment, Dr. Paudler stated: "No further treatment is indicated for this condition except for a self-directed exercise regimen with aerobic conditioning, weight training and a stretching program. [Appellant] has had rather detailed, prolonged and varied treatment in the past year and a half consisting of the aforementioned physical therapy and nonsteroidal anti-inflammatories and also a holistic or alternative care. The examiner would conclude that he has reached maximum medical benefit from this treatment."

Following the Office's proposed termination of compensation, appellant submitted a report from Dr. Henry A. Tanz, a Board-certified orthopedic surgeon, dated December 14, 1998. In this report he reported findings of tenderness over the anterior shoulder in the area of the bicipital groove, slightly limited internal rotation on the right compared to the left and a "pop" that appeared to be subacromial. Dr. Tanz then stated, "I do think continuation of massage treatment and manipulation which has been beneficial for [appellant] does make continued sense. [He] has had significant improvement." In a report dated May 19, 1999, Dr. Tanz reiterated that his "findings in December 1998 suggested some residual right shoulder strain," although he also stated that his examinations of appellant "lacked objective evidence of specific diagnosis." In addition, Dr. Daniel T. Dugaw, an osteopath, stated in a December 14, 1998 report that appellant "clearly is not recovered from the effects of the industrial injury of January 16, 1997 and continues to experience symptoms with objective findings," though Dr. Dugaw did not specify what those objective findings were. In a report dated May 21, 1999, Dr. Julia Sokoloff, a Board-certified family practitioner who first examined appellant on January 30, 1997, stated that she agreed with a physical therapist who stated on December 23, 1998 that appellant should have two or three more physical therapy visits.

² *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

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

The Office has not exercised its discretion with regard to the treatment by Dr. Dugaw, despite appellant's requests to do so and must do so upon return of the case. The Office should also determine whether the acupuncture and massage therapy appellant underwent by individuals not considered "physicians" under the Act⁴ are payable under the Act, keeping in mind that such treatment can be payable only if done upon the referral of or under the direction of an authorized physician.⁵

The decisions of the Office of Workers' Compensation Programs dated July 28 and January 7, 1999 are reversed.

Dated, Washington, DC
January 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

⁴ 5 U.S.C. § 8101(2) defines "physician" to include "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

⁵ *Sheila G. Peckenschneider*, 49 ECAB 430 (1998); *Edward Schoening*, 41 ECAB 977 (1990).