

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT H. SNIDER and U.S. POSTAL SERVICE,  
POST OFFICE, Detroit, Mich.

*Docket No. 96-1986; Submitted on the Record;  
Issued July 23, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant had any disability after March 12, 1996, the date the Office of Workers' Compensation Programs terminated his compensation benefits, causally related to his February 24, 1994 injuries; (2) whether the Office abused its discretion in denying appellant's request for a hearing under 5 U.S.C. § 8124; and (3) whether the Office abused its discretion in denying appellant's request for a review of the case on its merits under 5 U.S.C. § 8128.

The Office accepted that on February 24, 1994 appellant sustained a lumbosacral contusion and sprain, and a right shoulder strain when he fell in the performance of duty. The Office further accepted that on June 12, 1995 appellant underwent injury-related right shoulder surgery to repair a posterior capsular tear.

By form report dated June 22, 1995, appellant's treating physician, Dr. Denege A. Ward, an internist, diagnosed lumbar strain with radiculopathy, severe discogenic disease, and right shoulder capsular tear, described appellant's present impairment as severe posterior capsulitis and lumbar strain, and opined that appellant had a poor prognosis and was permanently disabled. Dr. Ward also opined that appellant's disability for regular work would continue for 90 days or longer.

On August 14, 1995 the Office referred appellant to Dr. Philip J. Mayer, a Board-certified orthopedic surgeon, with a statement of accepted facts and questions to be answered, for evaluation of his continuing disability.

By report dated September 8, 1995, Dr. Mayer reviewed appellant's history of injury and subsequent symptoms, conducted a physical examination, particularly of appellant's spine, noted inconsistent straight leg raising test results between supine and sitting testing, and noted appellant's nonanatomic sensory aberrations. Dr. Mayer opined that he did not find that appellant's symptoms could be causally related to his employment slip and fall.

In September 20, 1995 addenda, Dr. Mayer reviewed appellant's spinal x-rays and opined that they revealed no symptoms that could be causally related to the February 1994 slip and fall. Dr. Mayer recommended that appellant's right shoulder be evaluated by an orthopedic physician who specialized in that area. Dr. Mayer noted appellant's June 12, 1995 right shoulder surgery, indicated that he had not yet begun rehabilitative exercises, and opined that he would not anticipate appellant's rehabilitation would exceed three months following the surgery. Dr. Mayer also found no restrictions relative to appellant's spine.

By form report dated September 28, 1995, Dr. Ward diagnosed lumbar strain, L5 radiculopathy, and a right posterior capsular tear, noted appellant's present impairment as including severe pain, status post surgical repair of his shoulder, and noted anticipated permanent effects as including loss of abduction of the right shoulder and lower extremity weakness. Dr. Ward opined that appellant was permanently disabled, and would remain so for 90 days or longer.

By form report dated December 11, 1995, Dr. Ward described appellant's impairment as severe shoulder pain and severe, chronic low back pain, he diagnosed lumbar radiculopathy and right posterior shoulder tear, and he noted that appellant was unable to abduct his right shoulder. Dr. Ward indicated that appellant's prognosis was poor and that he was permanently disabled. Dr. Ward also indicated that appellant's disability for regular work would continue for 90 days or longer.

In a December 12, 1995 report, Dr. John E. Kuhn, a Board-certified orthopedic surgeon specializing in sports medicine, noted that appellant's right shoulder injury, an avulsion of the glenohumeral ligaments from the posterior aspect of his shoulder at the humerus, was very unusual. Dr. Kuhn noted that at that time appellant was undergoing physical therapy, and he recommended that appellant continue the physical therapy to improve his range of motion and strength. Dr. Kuhn opined that appellant had not reached his full potential in his rehabilitation program and that he required further physical therapy, particularly to strengthen his rotator cuff musculature which would help to stabilize his shoulder. Dr. Kuhn opined that appellant would need no more than three months of additional physical therapy.

By letter dated January 4, 1996, the Office advised appellant that three months of physical therapy from the date of that letter, were authorized. The Office, therefore, authorized physical therapy for appellant through April 4, 1996.

On January 9, 1996 the Office referred appellant to Dr. Jerry Matlen, a Board-certified orthopedic surgeon who specialized in shoulders, with a statement of accepted facts and questions to be answered.

By report dated January 22, 1996, Dr. Matlen reviewed appellant's history and present symptomatology, performed a physical examination, and concluded that, with respect to the right shoulder, appellant had no clinical objective evidence of an orthopedic disability. Dr. Matlen noted appellant's excellent range of motion, his deep tendon reflexes, and his motor strength without evidence of spasm or atrophy. He found no evidence of shoulder instability, noted that appellant's symptoms were mild and consisted of a deep muscle pulling type of feeling, and opined that appellant had had excellent reparative surgical results and could return to all

activities of daily living and work without restrictions or limitations. Dr. Matlen opined that no further treatment or physical therapy modalities were necessary with respect to the right shoulder.

On February 9, 1996 the Office issued appellant a notice of proposed termination of compensation indicating that in September 1995 Dr. Mayer found some of appellant's symptomatology to be non-organic, non-anatomic and bizarre. The Office noted that Dr. Mayer stated that he could find no symptoms that could be causally related to appellant's slip and fall, and he proposed no spinal restrictions. The Office further noted that in January 1996 Dr. Matlen could find no clinical objective evidence of a right shoulder orthopedic disability, with appellant's excellent range of motion, intact deep tendon reflexes, and motor strength without spasm or atrophy. The Office noted that Dr. Matlen did not feel further treatment or therapy was necessary. The Office concluded that the opinions of Drs. Mayer and Matlen constituted the weight of the medical opinion evidence because they were clear, concise and were well rationalized.

By letter dated February 14, 1996, appellant disagreed with the Office's proposed termination of compensation, noting that appellant still had pain and numbness, was still being seen and tested for his injury-related conditions, was still going to physical therapy, and had future orthopedic appointments with Dr. Kuhn.

Also submitted was a February 15, 1996 form report from Dr. Ward which diagnosed lumbar strain, described appellant's present impairment as including L5 radiculopathy, lumbar strain, cervical radiculopathy, and right posterior shoulder tear, and opined that appellant would have disability continuing for 90 days or longer. Dr. Ward indicated that appellant's prognosis was poor.

By narrative report dated February 19, 1996, Dr. Ward reviewed appellant's medical history, noted that appellant continued to have right shoulder pain, myofascial neck pain, and subsequent adhesive capsulitis, and indicated that, even with a moderate amount of exercise, appellant was unable to lift or stand for a long period of time due to increased pain. Dr. Ward indicated that appellant had been advised to continue physical therapy to improve his overall condition through the end of March 1996, and at that time he would make a recommendation about appellant returning to work. Dr. Ward opined that appellant's prognosis was poor and that he would not be able to return to his usual level of work because of his subsequent injuries. Dr. Ward recommended light duty only for four hours per day for a period of two to four weeks, with no lifting over 10 pounds and no extreme ranges of motion, and with no lifting over his head. Dr. Ward noted that appellant was unable to sit for long periods of time, and would need to stand to relieve his lumbar strain. Dr. Ward clarified that appellant's prognosis was poor for his return to his usual duties, and he doubted appellant would return to his usual state of health. Dr. Ward noted that the recommended work restrictions were permanent, and he further recommended that appellant undergo work reconditioning.

By decision dated March 12, 1996, the Office terminated appellant's compensation benefits and entitlement to continuing medical treatment, finding that appellant was no longer suffering from residuals of his accepted employment injuries. The Office found that Dr. Ward's form reports were not well reasoned, and that Dr. Ward's narrative report cited conditions that

were not accepted by the Office as being injury-related. The Office reiterated that the reports of Drs. Mayer and Matlen constituted the weight of the medical opinion evidence because they were orthopedic specialists in their fields and because Dr. Ward was merely an internist, and was not as qualified. The Office did not mention the reports of Dr. Kuhn, who was a Board-certified orthopedic surgeon who supported the need to continuing therapy.

The Board finds that this decision must be reversed.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</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>2</sup>

In the instant case there is a conflict between Drs. Ward and Kuhn, who support some amount of continuing disability and continuing need for medical treatment and physical therapy, and Drs. Mayer and Matlen, who do not. The Board further notes that the Office terminated appellant's entitlement to continuing physical therapy effective March 12, 1996, despite the fact that it had previously authorized three months of physical therapy from January 4 through April 4, 1996, based upon the reports of Dr. Kuhn, whose opinions it ignored in its termination decision. As the opinions of Drs. Mayer and Matlen do not constitute the weight of the medical opinion evidence, the Office did not meet its burden to terminate appellant's entitlement to all benefits.

Further, as the Board is reversing the March 12, 1996 decision, the decisions of the Office dated May 23 and July 11, 1996 are moot.

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> See *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 12, 1996 is hereby reversed.

Dated, Washington, D.C.  
July 23, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member